

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON PROPOSED
Use, Certificates 53000, 53001, 80852,)	INSTREAM LEASE
80853, 7641, 45299, 67090, Klamath)	
County)	

Authority

ORS 537.348 establishes the process in which a water right holder may submit a request to lease an existing water right for instream purposes. OAR Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

JaCox Ranch
PO Box 435
Fort Klamath, OR 97626

Lessee

Klamath Basin Rangeland Trust (KBRT)
700 Main Street, Suite 201A
Klamath Falls, OR 97601

Findings of Fact

1. On March 11, 2009, the KBRT and JaCox Ranch filed an application to renew instream lease L-695, involving a portion of certificate 45299 and all of certificates 53000, 53001, 80582, 80583, 7641, and 67090. The Department assigned the application number IL-695.
2. On January 5, 2005, the Department issued final orders approving instream leases L-479 (Special Order Volume 63, Page 26) (Sevenmile Creek) and L-480 (Special Order Volume 63, Page 36) (Annie Creek) incorporating a Stipulated Agreement signed by JaCox Ranch, the Klamath Basin Rangeland Trust, Roger Nicholson and the Oregon Water Resources Department. The term of the order approving instream lease L-479 expired on September 30, 2008.
3. On December 6, 2005, JaCox Ranch and the KBRT filed an application to modify how water rights were leased instream under L-480. The new lease application was assigned number L-695. A final order superseding Special Order Volume 63, Page 36 for L-480 and approving L-695 was issued by the Department on June 5, 2006, as evidenced by Special Order Volume 68, Page 611. The term of this order expired on October 31, 2008.
4. The terms of the Stipulated Agreement, as referenced in the orders issued approving instream leases L-479 (Special Order Volume 63, Page 26) and L-480 (Special Order Volume 63, Page 36) remain in effect and are incorporated by reference herein. A copy of this Stipulated Agreement is located in the instream lease file IL-695.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. The priority dates for certificates 45299 and 7641 are described by the certificates as being June 25, 1927. Pursuant to findings in the Wood River Decree, the priority dates on lands covered by certificates 45299 (permit S-8029) and 7641 (permit S-8029) should be 1900. See finding 3 of the Wood River Decree, Volume 12, Page 269. To reflect the corrections made in the Wood River Decree to the priority dates of these rights, water will be leased instream under the 1900 priority date.

6. The first right to be leased is as follows:

Certificate: 53000
Use: Irrigation, domestic and stock
Acres: 126.0 acres
Priority Date: 1883
Season of Use: April 1 through October 31
Quantity: Rate: April 1 to July 20: 1.575 CFS
 July 20 through October 31: 0.788 CFS
Duty: 378.0 AF
Source: Annie Creek (or Anna Creek), tributary to the Wood River
Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	NE	SW	Shattuck Ditch - 1850 feet North and 1650 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	7.5	E	W.M.	6	SW	NW	1883	28.0
33	S	7.5	E	W.M.	6	NW	SW	1883	21.3
33	S	7.5	E	W.M.	6	SW	SW	1883	36.7
33	S	7.5	E	W.M.	6	SE	SW	1883	40.0
Total acres									126.0

7. The second right to be leased is as follows:

Certificate: 53001
Use: Irrigation, domestic and stock
Acres: 139.5 acres
Priority Date: 1883
Season of Use: April 1 through October 31
Quantity: Rate: April 1 to July 20: 1.758 CFS
 July 20 through October 31: 0.879 CFS
Duty: 418.5 AF
Source: Annie Creek (or Anna Creek), tributary to the Wood River
Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	NE	SW	Shattuck Ditch - 1850 feet North and 1650 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	6	E	W.M.	12	NE	NE	1883	1.0
33	S	6	E	W.M.	12	SE	NE	1883	21.8
33	S	6	E	W.M.	12	NE	SE	1883	36.7
33	S	6	E	W.M.	12	SE	SE	1883	40.0
33	S	6	E	W.M.	13	NE	NE	1883	40.0
								Total acres	139.5

8. The third right to be leased is as follows:

Certificate: 80582

Use: Irrigation, stockwater and domestic

Acres: 34.0 acres

Priority Date: 1883

Season of Use: April 1 through October 31

Quantity: Rate: April 1 to July 20: 0.425 CFS
 July 20 - Oct. 31: 0.212 CFS

(if available at the original point of diversion, described as the Shattuck Ditch)

Duty: 102.0 AF

Source: Anna Creek, tributary to the Wood River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	6	E	W.M.	1	SE	SE	1883	12.0
33	S	7.5	E	W.M.	6	NW	SW	1883	18.7
33	S	7.5	E	W.M.	6	SW	SW	1883	3.3
								Total acres	34.0

9. The fourth right to be leased is as follows:

Certificate: 80583

Use: Irrigation, stockwater and domestic

Acres: 297.5 acres

Priority Date: 1883

Season of Use: April 1 through October 31

Quantity: Rate: April 1 to July 20: 3.742 CFS
 July 20 - Oct. 31: 1.871 CFS

(if available at the original point of diversion, described as the Shattuck Ditch)

Duty: 892.5 AF

Source: Anna Creek, tributary to the Wood River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
33	S	6	E	W.M.	12	NE	NE	1883	36.0
33	S	6	E	W.M.	12	SE	NE	1883	18.2
33	S	6	E	W.M.	12	NE	SW	1883	40.0
33	S	6	E	W.M.	12	SE	SW	1883	40.0
33	S	6	E	W.M.	12	NE	SE	1883	3.3
33	S	6	E	W.M.	12	NW	SE	1883	40.0
33	S	6	E	W.M.	12	SW	SE	1883	40.0
33	S	6	E	W.M.	13	NW	NE	1883	40.0
33	S	6	E	W.M.	13	NE	NW	1883	40.0
								Total acres	297.5

10. The portion of the fifth right to be leased is as follows:

Water Right: Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) (the applicant requested to lease a portion of this right instream)

Use: Irrigation

Acres: 184.0 acres, being 167.6 acres of primary irrigation and 16.4 acres of supplemental irrigation (for the purpose of this lease, supplemental to certificate 10900 (leased instream under L-479))

Priority Date: 1900

Season of Use: Primary: May 1 through October 31 (based upon Anna Creek Decree)

Quantity: **Supplemental:** April 1 to October 1 (legal season for certificate 10900)
Rate: 2.297 CFS, being 2.092 CFS for primary irrigation and 0.205 CFS for supplemental irrigation

Duty: 552.0 AF, being 502.8 AF for primary irrigation and 49.2 AF for supplemental irrigation

Source: Annie Creek (or Anna Creek), tributary to the Wood River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres
33	S	6	E	W.M.	1	NE	NE	6/25/1927	20.0	
33	S	6	E	W.M.	1	SE	NE	6/25/1927	20.0	
33	S	6	E	W.M.	1	NE	SE	6/25/1927	20.0	
33	S	6	E	W.M.	12	NW	SW	6/25/1927	10.0	
33	S	6	E	W.M.	12	SW	SW	6/25/1927	20.0	

Township	Range	Meridian	Sec	1/4 1/4	Priority Date	Primary Acres	Supp. Acres			
33	S	6	E	W.M.	13	NW	NW	6/25/1927	40.0	
33	S	6	E	W.M.	13	SE	NW	6/25/1927	12.0	
33	S	6	E	W.M.	13	SE	NE	6/25/1927	13.6	16.4
33	S	7.5	E	W.M.	6	SW	NW	6/25/1927	12.0	
Total acres									167.6	16.4

11. The sixth right to be leased is as follows:

Water Right: Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) (the applicant has requested to lease the entire right instream)

Use: Irrigation

Acres: 70.0 acres, being 42.8 acres of primary irrigation and 27.2 acres of supplemental irrigation (supplemental to certificate 10900 (leased instream under L-479))

Priority Date: 1900

Season of Use: Primary: May 1 through October 31 (based upon Anna Creek Decree)

Supplemental: April 1 to October 1 (legal season for certificate 10900)

Quantity: 0.88 Cubic Foot per Second (CFS) (limited to 1/80th CFS per acre), being 0.54 CFS for primary irrigation and 0.34 CFS for supplemental irrigation
Duty (limited to 3.0 Acre-Feet (AF) per acre by decree): 210 AF, being 128.4 AF for primary irrigation and 81.6 AF for supplemental irrigation

Source: Annie Creek (or Anna Creek), tributary to the Wood River

Authorized Point of Diversion (POD):

Township	Range	Meridian	Sec	1/4 1/4	Location			
32	S	7.5	E	W.M.	31	SW	NW	Scott Ditch - 3650 feet North and 460 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township	Range	Meridian	Sec	1/4 1/4	Priority Date	Primary Acres	Supp. Acres			
33	S	7.5	E	W.M.	18	NE	SW	6/25/1927	30.8	9.2
33	S	7.5	E	W.M.	18	NW	SW	6/25/1927	12.0	4.0
33	S	7.5	E	W.M.	18	SE	SW	6/25/1927		14.0
Total acres									42.8	27.2

12. The seventh right to be leased is as follows:

Certificate: 67090

Use: Irrigation and supplemental irrigation (the applicant requested to lease the entire right instream)

Acres: 452.0 acres, being 3.0 acres for primary irrigation and 449.0 acres for supplemental irrigation (12.0 acres supplemental to certificate 80582, 139.5 acres supplemental to certificate 53001, and 297.5 acres supplemental to certificate 80583)

Priority Date: August 3, 1981

Season of Use: Primary: May 1 through October 31 (based upon Anna Creek Decree)

Supplemental: April 1 through October 31 (legal season for certificates 80583, 53001, 80583)

Quantity: Rate: cumulative total of 2.81 CFS, being
0.038 CFS for primary irrigation (limited to 1/80th CFS/acre) and
2.81 CFS for supplemental irrigation, being

April 1 through July 20 (for purposes of this lease,
limited to 1/159.8th CFS/acre)

0.075 CFS supplemental to certificate 80582

0.873 CFS supplemental to certificate 53001

1.862 CFS supplemental to certificate 80583

July 21 through October 31 (1/160th CFS/acre)

0.075 CFS supplemental to certificate 80582

0.872 CFS supplemental to certificate 53001

1.859 CFS supplemental to certificate 80583

Duty (limited to 3.0 AF per acre):

1356 AF, being

9.0 AF for primary irrigation and

1347.0 AF for supplemental irrigation, being

36.0 AF supplemental to certificate 80582

418.5 AF supplemental to certificate 53001

892.5 AF supplemental to certificate 80583

Source: Annie Creek (or Anna Creek), tributary to the Wood River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	1/4 1/4		Location
32	S	7.5	E	W.M.	31	SW	NW	3650 feet North and 460 feet East from the SW Corner, Section 31

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Primary Acres	Supp. Acres 53001	Supp. Acres 80582	Supp. Acres 80583
33	S	6	E	W.M.	1	NE	NE	8/3/1981			12.0	
33	S	6	E	W.M.	12	NE	NE	8/3/1981	3.0	1.0		36.0
33	S	6	E	W.M.	12	SE	NE	8/3/1981		21.8		18.2
33	S	6	E	W.M.	12	NE	SW	8/3/1981				40.0
33	S	6	E	W.M.	12	SE	SW	8/3/1981				40.0
33	S	6	E	W.M.	12	NE	SE	8/3/1981		36.7		3.3
33	S	6	E	W.M.	12	NW	SE	8/3/1981				40.0
33	S	6	E	W.M.	12	SW	SE	8/3/1981				40.0
33	S	6	E	W.M.	12	SE	SE	8/3/1981		40.0		
33	S	6	E	W.M.	13	NE	NE	8/3/1981		40.0		
33	S	6	E	W.M.	13	NW	NE	8/3/1981				40.0
33	S	6	E	W.M.	13	NE	NW	8/3/1981				40.0
Total acres									3.0	139.5	12.0	297.5

13. Certificates 45299 and 7641 are partially supplemental to a water right (certificate 10900) on Sevenmile Creek, which is leased instream under instream lease L-479.

14. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.

15. The instream use is as follows:

Annie Creek (or Anna Creek), tributary to the Wood River

Certificate	Priority Date	Instream Reach	Period Protected Instream	Primary Rate Instream	Supplemental Rate Instream	Primary Vol. Instream	Supp. Volume Instream
53000	1883	Shattuck Ditch POD to the Wood River	April 1 - July 19 July 20 - Sept. 30	1.2 CFS 0.788 CFS		378.0 AF	
53001	1883	Shattuck Ditch POD to the Wood River	April 1 - July 19 July 20 - Sept. 30	1.338 CFS 0.879 CFS		418.5 AF	
80582	1883	Scott Ditch POD to the Wood River	April 1 - July 19 July 20 - Sept. 30	0.327 CFS 0.212 CFS		102.0 AF	
80583	1883	Scott Ditch POD to the Wood River	April 1 - July 19 July 20 - Sept. 30	2.84 CFS 1.871 CFS		892.5 AF	
Wood River Decree, Volume 12, Page 269, Finding 3	1900 (see also cert. 7641)	Scott Ditch POD to the Wood River	June 2 - Sept. 30	0.535 CFS	0.34 CFS	128.4 AF	81.6 AF
Wood River Decree, Volume 12, Page 269, Finding 3	1900 (see also cert. 45299)	Scott Ditch POD to the Wood River	June 2 - Sept. 30	2.1 CFS	0.205 CFS	502.8 AF	49.2 AF
67090	8/3/1981	Scott Ditch POD to the Wood River	Primary: May 1 - Oct 31 Supplemental: April 1 - July 20 July 21 - Sept. 30	0.025 CFS	Cert 80582 - 0.074 CFS Cert 53001 0.865 CFS Cert 80583 1.845 CFS	9.0 AF	Cert 80582 - 36.0 AF Cert 53001 418.5 AF Cert 80583 892.5 AF

16. The Department finds that a portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) is supplemental to certificate 10900 (see Instream Lease L-479). The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 45299) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency in the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.

17. The Department finds that a portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) is supplemental to certificate 10900 (see Instream Lease L-479). The portion of the water right described in the Wood River Decree, Volume 12, Page 269, Finding 3 (also see certificate 7641) being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency in the rate and duty of the primary supply under certificate 10900 during the period for which water is being leased instream.
18. The Department finds that a portion of certificate 67090 is supplemental to certificates 53001, 80582 and 80583. The portion of certificate 67090 being leased instream that is supplemental shall only be protected instream when necessary to make up a deficiency of the respective rates and duties of the primary supply under certificates 53001, 80582 and/or 80583 during the period for which water is being leased instream.
19. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
20. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the lease may be modified or revoked under OAR 690-077-0077 if the Department later finds that the lease is causing injury to any existing water right or enlargement of the original right. The lease may be modified by the parties as provided in Paragraph VII of the Stipulated Agreement, or the lease shall be terminated by the Department, as provided therein, if the lease is determined by the Department to result in injury or enlargement that cannot be prevented by modifying the lease terms.
21. If a right that has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. Transfers applications will be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380 and Division 077. Approval of this lease does not establish a precedent for approval of future leases or transfers.
22. The Lessor has requested that the lease terminate on October 31, 2013.
23. The lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.


ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.

2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2013. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (March 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 24th day of April, 2009.


p. Phillip C. Ward, Director

Mailing date: APR 29 2009