

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

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

**Lessor**

JaCox Ranch  
 PO Box 435  
 Fort Klamath, OR 97626

**Lessee**

Klamath Basin Rangeland Trust (KBRT)  
 340 A Street, Suite 201  
 Ashland, OR 97520

**Findings of Fact**

1. 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. These leases are to terminate on September 30, 2008, and October 31, 2008, respectively.
2. On December 6, 2005, JaCox Ranch and the KBRT filed an application to lease a portion of certificate 45299 and all of certificates 53000, 53001, 80582, 80583, 7641, and 67090 to instream use. The Department assigned the application number L-695. Instream lease application L-695 was amended by the applicant on March 3, 2006. This application was submitted to modify how water rights are leased instream on Annie Creek and supersedes instream lease L-480.
3. Lease application L-695 includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6) on March 7, 2006. A comment was received during the open comment period, which ended March 28, 2006, from Martha Pagel, on behalf of Roger Nicholson, party to the Stipulated Agreement affecting instream leases L-479 and L-480, expressing concerns as to whether the proposed lease affected the terms of the Stipulated Agreement.

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.

4. On March 29, 2006, Department staff held a telephone conference with Shannon Peterson of the Klamath Basin Rangeland Trust (Lessee), Jim Popson of JaCox Ranch (Lessor), Roger Nicholson, and Martha Pagel. As a result of this discussion, the Klamath Basin Rangeland Trust provided additional information describing the changes that the Lessor and Lessee would like to make to how water rights are leased instream on Annie Creek under lease L-695.
  
5. Additional information describing the differences between the existing instream lease L-480 and the proposed instream lease L-695 was submitted to the Department on April 17, 2006. The following is a summary of the differences between existing instream lease L-480 and proposed instream lease L-695 (differences are highlighted in bold text):

**Instream Lease L-480**

Cert	Priority Date	Acreage		Instream Period	Primary Rate – CFS	Supplemental Rate - CFS	Primary Volume - AF	Supplemental Volume - AF
		Primary	Supplemental					
53000	1883	126.0		4/1 – 7/19 7/20 – 9/30	1.2 0.788		378.0	
<b>53001</b>	1883	<b>99.5</b>		4/1 – 7/19 7/20 – 9/30	<b>0.952</b> <b>0.627</b>		<b>298.5</b>	
80582	1883	34.0		4/1 – 7/19 7/20 – 9/30	0.327 0.212		102.0	
80583	1883	297.5		4/1 – 7/19 7/20 – 9/30	2.84 1.871		892.5	
7641	1900	42.8	27.2	6/2 – 9/30	0.535	0.34	128.4	81.6
45299	1900	<b>203.1</b>	16.4	6/2 – 9/30	<b>2.54</b>	<b>0.2</b>	<b>609.3</b>	49.2
<b>2432</b>	<b>6/22/1914</b>	<b>29.0</b>		<b>6/2 – 9/30</b>	<b>0.36</b>		<b>87.0</b>	
<b>2412</b>	<b>10/22/1914</b>	<b>32.5</b>	<b>35.5</b>	<b>6/2 – 9/30</b>	<b>0.35 – T1</b> <b>1.06 – T2</b>	<b>0.39 – T1</b> <b>0.05 – T2</b>	<b>84.0 – T1</b> <b>253.5 – T2</b>	<b>93.0 – T1</b> <b>13.5 – T2</b>
67090	8/3/1981	3.0	449.0	Primary: 5/1 – 10/31 Supp: 4/1 – 7/20 & 7/21 – 9/30	0.025	3.45	9.0	1347.0
Totals		<b>867.4</b>	<b>528.1</b>	4/1 – 5/1 5/1 – 6/1 6/2 – 7/20 7/21 – 9/30 9/30 – 10/31	<b>5.319</b> <b>5.344</b> <b>10.189</b> <b>8.358</b> 0.025	3.450 3.450 <b>4.430</b> <b>4.430</b> <b>0</b>	<b>2833.2</b>	<b>1584.3</b>

\*T1 is Tract 1 and T2 is Tract 2.

**Proposed Instream Lease L-695**

Cert	Priority Date	Acreage		Instream Period	Primary Rate – CFS	Supplemental Rate - CFS	Primary Volume - AF	Supplemental Volume - AF
		Primary	Supplemental					
53000	1883	126.0		4/1 – 7/19 7/20 – 9/30	1.2 0.788		378.0	
<b>53001</b>	1883	<b>139.5</b>		4/1 – 7/19 7/20 – 9/30	<b>1.338</b> <b>0.879</b>		<b>418.5</b>	
80582	1883	34.0		4/1 – 7/19 7/20 – 9/30	0.327 0.212		102.0	
80583	1883	297.5		4/1 – 7/19 7/20 – 9/30	2.84 1.871		892.5	
7641	1900	42.8	27.2	6/2 – 9/30	0.535	0.34	128.4	81.6
<b>45299</b>	1900	<b>167.6</b>	16.4	6/2 – 9/30	<b>2.1</b>	<b>0.205</b>	<b>502.8</b>	49.2
<b>2432</b>	<b>Not included in proposed lease</b>							
<b>2412</b>	<b>Not included in proposed lease</b>							

Cert	Priority Date	Acreage		Instream Period	Primary Rate - CFS	Supplemental Rate - CFS	Primary Volume - AF	Supplemental Volume - AF
		Primary	Supplemental					
67090	8/3/1981	3.0	449.0	Primary: 5/1 - 10/31 Supp: 4/1 - 7/20 & 7/21 - 9/30	0.025	3.45*	9.0	1347.0
Totals		<b>810.4</b>	<b>492.6</b>	4/1 - 5/1 5/1 - 6/1 6/2 - 7/20 7/21 - 9/30 9/30 - 10/31	<b>5.705</b> <b>5.730</b> <b>8.365</b> <b>6.400</b> <b>0.025</b>	3.450 3.450 <b>3.995</b> <b>3.995</b> <b>0</b>	<b>2422.2</b>	<b>1477.8</b>

\*This rate is modified in Finding of Fact #11.

6. 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. These same portions of certificates 45299 and 7641 are proposed to be leased instream under L-695. None of the proposed modifications to how water is leased instream on Annie Creek under L-695 affect water rights leased instream under L-479 on Sevenmile Creek.
7. On May 2, 2006, Martha Pagel submitted a letter to the Department on behalf of Roger Nicholson. The letter confirmed that, based upon review of the information provided by the Lessor and Lessee on April 17, 2006, Mr. Nicholson would not oppose the application and would not request to reopen the Stipulated Agreement at this time. 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 has been placed in the instream lease file L-695.
8. The Department finds that instream lease L-480 may be superseded and that the final order, Special Order Volume 63, Page 36, approving L-480 should be terminated.
9. 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.
10. The following is a summary of the water rights of record proposed to be leased instream:
  - Certificate:** 53000 (the applicant is requesting to lease the entire right to instream use)
  - 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
								<b>Total acres</b>	<b>126.0</b>

**Certificate:** 53001

**Use:** Irrigation, domestic and stock (the applicant is requesting to lease the entire right instream)

**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
								<b>Total acres</b>	<b>139.5</b>

**Certificate:** 80582 (the applicant is requesting to lease the entire right instream)  
**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	12.0
33	S	7.5	E	W.M.	6	NW	SW	18.7
33	S	7.5	E	W.M.	6	SW	SW	3.3
<b>Total acres</b>								<b>34.0</b>

**Certificate:** 80583 (the applicant is requesting to lease the entire right instream)  
**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	36.0
33	S	6	E	W.M.	12	SE	NE	18.2

Township		Range		Meridian	Sec	1/4 1/4		Priority Date	Acres
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
								<b>Total acres</b>	<b>297.5</b>

**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)

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

**Quantity:** 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	
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	
								<b>Total acres</b>	<b>167.6</b>	<b>16.4</b>

**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 1/80<sup>th</sup> 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
<b>Total acres</b>								<b>42.8</b>	<b>27.2</b>

**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 1/80<sup>th</sup> CFS/acre) and 2.81 CFS for supplemental irrigation, being April 1 through July 20 (for purposes of this lease, limited to 1/159.8<sup>th</sup> 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 (1/160<sup>th</sup> 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
<b>Total acres</b>									<b>3.0</b>	<b>139.5</b>	<b>12.0</b>	<b>297.5</b>



11. The lessor and lessee have proposed to lease water instream under each water right as described in the table below. The table includes a modification to correct a typographical error made in L-480 to how water was leased instream. The quantity of water previously leased instream under L-480 for certificate 67090, being the portion that is supplemental to certificate 80582, was misidentified as 0.74 CFS. The correct rate is 0.074 CFS. The instream use is as follows (modification is shown in bold text):

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 - <b>0.074 CFS</b> 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

12. 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.

13. 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.
14. 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.
15. 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.
16. 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.
17. The lease will terminate on October 31, 2008.
18. 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 agreement conforms to the applicable provisions of OAR 690-077-0015.

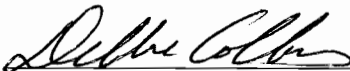
### **ORDER**

Therefore, it is ORDERED:

1. That the Short-Term Lease L-695 as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of instream lease L-695.

3. Instream lease L-480, approved by Special Order Volume 63, Page 36 through 49, is terminated and superseded by L-695.
4. Instream lease L-695 shall terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any irrigation has occurred on the property. In addition, 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.

Dated at Salem, Oregon this 5<sup>th</sup> day of June 2006.

  
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Phillip C. Ward, Director

Mailing date: JUN 0 8 2006