

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

In the Matter of the Proposed Lease of)
Existing Water Rights for Instream Use,)
Certificates 1091, 1094, and 1108, Klamath)
County) DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

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

LM Cattle (Owens Family)
1561 Arch Way
Chico, CA 95973

Lessee

Shannon Peterson
Klamath Basin Rangeland Trust (KBRT)
340 A Street, Suite #302
Ashland, OR 97520
shannon.peterson@kbrt.org

Findings of Fact

1. On April 21, 2008, LM Cattle and the KBRT filed an application to renew instream lease IL-680, involving a portion of Certificates 1091, 1094, and 1108. The Department assigned the application number IL-680.

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

Certificate: 1091
Use: Irrigation
Acres: 214.0 acres
Priority Date: April 1898
Season of Use: April 1 to November 1
Quantity: Rate: 2.67 Cubic Foot per Second (CFS) from April 1 to July 20
1.34 CFS from July 20 to November 1
Duty: 642.0 Acre-Feet (AF)
Source: Anna Creek (aka Annie Creek), tributary to the Wood River

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	7.5 E	WM	5	NE SW	Stormer Ditch (as described in the decree)

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.

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Acres
33	S	7.5	E	W.M.	8	SE	SE	30.0
33	S	7.5	E	W.M.	9	NE	SW	40.0
33	S	7.5	E	W.M.	9	NW	SW	40.0
33	S	7.5	E	W.M.	9	SW	SW	40.0
33	S	7.5	E	W.M.	9	SE	SW	40.0
33	S	7.5	E	W.M.	9	SW	SE	24.0
							Total	214.0

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

Certificate: 1094
Use: Irrigation
Acres: 58.0 acres in Tract 1
Priority Date: 1892 for Tract 1
Season of Use: April 1 to November 1
Quantity: Rate: 0.85 Cubic Foot per Second (CFS) from April 1 to July 20
0.43 CFS from July 20 to November 1
Duty: 174.0 Acre-Feet (AF)
Source: Anna Creek (aka Annie Creek), tributary to the Wood River
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	7.5 E	WM	5	NE SW	Stormer Ditch (as described in the decree)

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Acres
33	S	7.5	E	W.M.	9	NE	NW	24.0
33	S	7.5	E	W.M.	9	SE	NW	34.0
							Total	58.0

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

Certificate: 1108
Use: Irrigation
Acres: 160.0 acres in Tract 1
Priority Date: 1892 for Tract 1
Season of Use: April 1 to November 1
Quantity: Rate: 2.00 Cubic Foot per Second (CFS) from April 1 to July 20
1.00 CFS from July 20 to November 1
Duty: 480.0 Acre-Feet (AF)
Source: Anna Creek (aka Annie Creek), tributary to the Wood River
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	7.5 E	WM	5	NE SW	Stormer Ditch (as described in the decree)

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Acres
33	S	7.5	E	W.M.	8	NE	NE	40.0
33	S	7.5	E	W.M.	8	SE	NE	40.0
33	S	7.5	E	W.M.	9	NW	NW	40.0
33	S	7.5	E	W.M.	9	SW	NW	40.0
Total							160.0	

2. 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.

1. The instream use is as follows:
 Anna Creek (aka Annie Creek)
 Tributary to the Wood River in the Klamath Basin

Instream Point: At the POD (as described in Finding of Fact #2, #3, and #4)

Certificate	Priority Date	Instream Rate (cfs)	
		April 1 through July 19	July 20 through Oct. 31
1091	April 1, 1898	1.68	1.34
1094	1892	0.40	0.43
1108	1892	1.26	1.00
Totals		3.34	2.77

2. Other conditions to prevent injury and enlargement are:
3. The Department may require, as a condition of any future renewal of this lease, the installation of a staff gage, or other suitable measuring device, below the headgate on Stormer Ditch so that the quantity of water being diverted into Stormer Ditch and the quantity of water being water left instream at the point of diversion may be measured.
4. 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.
5. 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.
6. If a right which 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 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.

7. The lease will terminate on October 31, 2008.

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, 2008.

Dated at Salem, Oregon this 21 day of May 2008.



Phillip C. Ward, Director

Mailing date: MAY 27 2008