

Lease Agreement Number (assigned by WRD): L-479

**STATE OF OREGON
WATER RESOURCES DEPARTMENT**

**Short-Term Water Right Lease Agreement
Pursuant to ORS 537.348(2) and OAR 690-077-0077
for
Leases of Existing Water Rights for Instream Use**

This Lease Agreement is between:

Lessor #1:

(Name) JaCox Ranch
(Mailing address) PO Box 435
(City, State, Zip Code) Ft. Klamath, OR 97626
(Telephone number) 541-381-2308

Lessor#2, 3, etc.

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WATER RESOURCES DEPT
SALEM, OREGON

The water right to be leased is located in Klamath County

Lessee (if different than Oregon Water Resources Department):

(Name) Klamath Basin Rangeland Trust
(Mailing address) 340 A Street, Ste. 201
(City, State, Zip Code) Ashland, OR 07520
(Telephone number) (541) 488-4822

Trustee:

Oregon Water Resources Department
158 12th Street NE
Salem OR 97301
(503) 378-8455

~I~

1.1 Lessor #1 is the owner, or authorized agent for owner of property located at: Township 33 S, Range 6 E, Section 24 and 13; T33S R7.5E Section 18 and Tax Lot number 00100. If the water right appurtenant to these lands is also appurtenant to lands owned by others, then Attachment 1, (tax lot map of lessor's property) needs to be included.

1.2 Lessor #2 is the (Check one):

- Not applicable
- Official representative of _____, the irrigation district which conveys water to the subject water rights.
- Another party with an interest in the subject water rights representing _____.

- 1.3 For the lands being leased, list all water rights appurtenant to the lessor's property. Indicate if there are any supplemental or overlying rights.

Certificate No. 10901 includes primary and overlying rights with 10900, 10900, and supplemental 8679 (see attached).

Are some or all of the lands being leased part of a Conservation Reserve Enhancement Program. Yes No

- 1.4 **Subject Water Rights.** Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: 10901

Priority date: 1898 Type of use: irrigation, domestic, and stock

Legal Season of Use: April 1 to October 1

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 2) showing the lands which will not receive water.

Place of use: T __, R __, Section __, $\frac{1}{4}$ $\frac{1}{4}$ - ____ acres to be leased

Enter additional places of use here, using format above:

All lands associated with the certificate will be dried up, but 0.025 cfs will be reserved to provide stockwater.

T 33S, R6E, Section 24: SW1/4NW1/4 - 17.30 acres; NE1/4SW1/4 - 20 acres; NW1/4SW1/4 - 20 acres; SW1/4SW1/4 - 15 acres; SE1/4SW1/4 - 40 acres; NW1/4SE1/4 - 5 acres; SW1/4SE1/4 - 35 acres; SE1/4SE1/4 - 15 acres

Of these lands the 17.3 acres located in SW1/4NW1/4 and 6 of the acres located in NW1/4SW1/4 overly a senior primary right, and will be considered supplemental soley for the purposes of this instream lease application. The location of these lands is shown on the attached map.

Page 1 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres being leased, if for irrigation: 167.3 of which 144 are primary and 23.3 overly a more senior primary right.

Acre-feet of storage, if applicable: 0

Total rate associated with leased rights (cfs): 2.078cfs from 4/1 to 7/20 and 1.775cfs from 7/21 to 10/1 are primary rights, 0.466cfs from 4/1 to 7/20 and 0.291cfs from 7/21 to 10/1 are overlying rights shown on certificate 10900. All stockwater was taken from the primary right.

(Use additional lines if there is more than one rate associated with the water right.)

Total duty associated with leased rights (AF): 710.925AF primary and 116.5AF overlying rights under certificate 10900. Volume diverted for stockwater was removed from the primary right.

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: None.

If you need to enter another leased right, please use the additional water rights form.

1.5 Validity of Rights. Lessor(s) attests (mark one) that:

- the water has been used over the past five years according to the terms and conditions of the owner's water right certificate or as an instream water right or
- the water has not been used over the past five years according to the terms and conditions of the owner's water right certificate, however the water right is not subject to forfeiture under ORS 540.610(2)()(include necessary supporting documentation as Attachment 3).

~II~

2.1 Public Use. This lease will increase streamflows which will benefit:

- Conservation, maintenance and enhancement of aquatic and fish life, wildlife, and fish and wildlife habitat
- Pollution abatement
- Recreation and scenic attraction

2.2 Instream use created by lease. The instream use to be created is described as follows:

Sevenmile Creek
Tributary to Agency Lake in the Klamath Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): The Melhase Kingdon Ditch is the point of diversion. The water will be protected from the POD to the mouth of Sevenmile Creek at Agency Lake.

Total volume in acre-feet: 710.925AF primary and 116.5AF overlying rights under certificate 10900. The overlying rights will be considered supplemental to the primary rights for the purposes of this lease application. In addition, 9.074AF of the right will not be leased instream in order to provide stockwater.

Rate in cfs: 2.078cfs from 4/1 to 7/20 and 1.775 cfs from 7/21 to 10/1 of primary rights and 0.367cfs from 4/1 to 7/20 and 0.291cfs from 7/21 to 10/1 of overlying rights.

(0.025cfs will be reserved for stock water and is therefore not included in the rate specified above)
(Use the section below to indicate a more restrictive period of use than allowed by the water right.)

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from ____ through ____.
- Other (describe):

If you need to enter more instream uses, please use the additional water rights form.

2.3 Term of lease. This lease shall terminate on October 1, 2008.

2.4 Compensation. The Lessor has agreed to lease subject water right for the sum of \$1.00, or other valuable considerations and for the benefit of the state of Oregon.

2.5 Flow protection. The Trustee will regulate use of water from the source, subject to prior appropriation and the agency enforcement guidance, to assure the water is delivered to the point of diversion, and through the reach past junior downstream users, so long as flow is sufficient to meet the demand under priority date of the new instream use (see section 2.2). As part of regulation activities the watermaster or a designee has access to the point of diversion and place of use for the water rights involved in this lease. No party is required to continuously measure the flow of the waterway described in Section 2.2.

2.6 Termination provision.

- For multiyear leases, lessor *shall* have the option of terminating the lease each year, prior to the lease being exercised (April 1st), with 30 day written notice to the Department.
- For multiyear leases, lessor *shall not* have the option of terminating the lease each year, prior to the lease being exercised, with written notice to the Department.

~III~

3.1 Accuracy. The Undersigned Lessor/s, Lessee and Trustee declare that, to the best of their knowledge and belief, the information contained in this lease is true, correct and complete. If after the lease is signed, any information is determined to be false, the lease may be modified or terminated. This lease only exercises the water rights being leased; for the term of the lease; it shall not be construed to overcome any claim that the water right may otherwise be subject to forfeiture for nonuse pursuant to ORS 540.610 during the period of time prior to the execution of the lease.

3.2 Lease. All Lessors agree to lease the water rights listed in 1.4 for instream use for the term of this Agreement through Lessee to Trustee, the Oregon Water Resources Department, pursuant to the provisions of ORS 537.348(2) and OAR 690-077-0077.

3.3 Precedent. 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, and a prior short term lease shall not set a precedent for the amount of water to be leased or transferred instream.

3.4 Suspension of original use. During the period of the lease, the owner agrees to suspend use of water allowed under the subject water rights and under any water right that is supplemental to the subject water rights. In the event that a supplemental water right is not part of this lease, it may be subject to forfeiture.

Lessor #1: Skor Ranch by James C. [Signature] Date: 12/3/03

For additional Lessors, type in space for signature and date

- [Signature]

Lessee: Executive Director, Klamath Basin Range and Trust Date: 12/4/03

3.5 Allocation of water to the instream use described in Section 2.2 during the term of this lease is not reasonably expected to cause injury to other rights to use water from the same

Additional Information

Section 1.4, (Standard Leasing Form) cont.

Subject Water Rights. Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: 10900

Priority date: 1891 Type of use: irrigation, domestic, and stock

Legal Season of Use (if not listed on the certificate): April 1 to October 1

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T S, R E., Section , $\frac{1}{4}$ $\frac{1}{4}$ - acres to be leased

Enter additional places of use here, using format above:

T33S R6E Section 13: SW1/4NE1/4 - 36.8, SE1/4NE1/4 - 26.4, SE1/4NW1/4 - 14.4, NE1/4SW1/4 - 30, NE1/4SE1/4 - 39.9, SE1/4SW1/4 - 28.8, NW1/4SE1/4 - 40, SW1/4SE1/4 - 40, SE1/4SE1/4 - 40

T33S R6E Section 24: NE1/4NE1/4 - 20, NW1/4NE1/4 - 40, SW1/4NE1/4 - 39.9, SE1/4NE1/4 - 20, NE1/4NW1/4 - 31.2, NW1/4NW1/4 - 8.8, SW1/4NW1/4 - 22.4, SE1/4NW1/4 - 38.4, NE1/4SW1/4 - 20, NW1/4SW1/4 - 6, NE1/4SE1/4 - 20, NW1/4SE1/4 - 35, SW1/4SE1/4 - 5, SE1/4SE1/4 - 10

T33S R7.5E Section 18: NE1/4SW1/4 - 9.2, NW1/4SW1/4 - 28, SW1/4SW1/4 - 40, SE1/4SW1/4 - 39.3

Of these lands the 17.3 acres located in SW1/4NW1/4 and 6 of the acres located in NW1/4SW1/4 of Section 24 overly a junior primary right (certificate 10901). The rights associated with this certificate (10900) will be considered primary for the purposes of this instream lease application. The location of these lands is shown on the attached map.

There are additional overlying primary rights with junior priority dates that originate from the Annie Creek Drainage. These include Section 18: NE1/4SW1/4 - 9.2 acres, SE1/4SW1/4 - 14.0 acres, NW1/4SW1/4 - 4.0 acres on certificate 7641; and Section 13: SE1/4NE1/4 - 16.4 acres, and SE1/4NW1/4 - 14.4 acres on certificate 45299.

All of the lands listed above will remain unirrigated.

Page 1 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 729.5

Acre-feet of storage, if applicable: 0

Additional Information

Rate associated with leased rights (cfs): 14.09cfs from 4/1 to 7/20, and 8.62 cfs from 7/21 to 10/1. (0.5cfs are not included in the lease in order to provide stockwater)

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 3466.026 (181.488AF are not included in order to provide stockwater).

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: None.

Section 2.2, cont.

Instream use created by lease. The instream use to be created is described as follows:

Sevenmile Creek

Tributary to Agency Lake in the Klamath Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): Upper Seven Mile also known as Upper Cox Ditch is the point of diversion. To be protected from the POD to Agency Lake.

Total volume in acre-feet: 3466.026

Rate in cfs: 9.905cfs from 4/1 to 7/20 and 9.0cfs from 7/21 to 10/1. This rate will be reduced if insufficient water is available at the POD.

Conditions to prevent injury, if any:

None

The instream flow will be allocated on a daily average basis up to the described rate from _____ through _____.

Other (describe): This point of diversion serves two users. Flow in Sevenmile Creek may not be sufficient to fulfill both users water rights during portions of the season. During those times, the available creek water will be split based on the acreage served by the diversion to allow the lessor's (JaCox Ranch) portion of the water to remain instream, and the secondary user's (Roger Nicholson) portion of the water to be diverted into the supply canal. The supply canal runs across the JaCox Ranch property before reaching Mr. Nicholson's property, however JaCox Ranch will not divert any water out of the canal, but instead only deliver water to Mr. Nicholson. A discharge monitoring station is operated immediately above the point of diversion by the US Forest Service (USFS), and a second discharge monitoring station is maintained on the diversion canal by the Klamath Basin Rangeland Trust. Data from the USFS station are available in real time. An automatically splitting diversion will be installed at the point of diversion to ensure that the appropriate ration of instream water and diverted water is maintained at all times. The existing monitoring stations will be used to monitor the effectiveness of the improved diversion. Since the diversion is located on US Forest Service (USFS) Property, we are currently working with the USFS on permitting to improve the diversion structure. The new diversion will also facilitate and improve fish passage.

Additional Information

Section 1.4, (Standard Leasing Form) cont.

Subject Water Rights. Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: 8679

Priority date: September 25, 1928 Type of use: supplemental irrigation, domestic, and stock

Legal Season of Use (if not listed on the certificate): May 11 to October 1, unless special permission is granted by Oregon State Game Commission to divert earlier than May 11.

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T S, R E., Section , $\frac{1}{4}$ $\frac{1}{4}$ - acres to be leased

Enter additional places of use here, using format above:

T33S R6E Section 24: SW1/4SW1/4 - 15 acres, SE1/4SW1/4 - 40 acres, SW1/4SE1/4 - 30 acres, SE1/4SE1/4 - 15 acres.

Page 1 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 100

Acre-feet of storage, if applicable: 0

Rate associated with leased rights (cfs): 1.35 cfs

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 500 ac-ft per acre combined with primary rights

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: The amount of water used for irrigation together with any irrigation water secured from other sources such as the primary right (certificate 10901) is limited to 1/80cfs per acre irrigated (1.25cfs in total). The additional water under the instantaneous diversion rate is for stock and domestic use.

Section 2.2, cont.

Instream use created by lease. The instream use to be created is described as follows:

Blue Springs, Tributary of Sevenmile Creek

Tributary to Agency Lake in the Klamath Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): Blue Springs Ditch is the point of diversion. The ditch is located 1320 ft. N. of the corner common to Sect 23, 24, 25, and 26 in T 33S R 6E being within the NW1/4SW1/4 of Section 24 and NE1/4SE1/4 of Section 25. Water will be protected in the natural Blue Springs channel, to the mouth of Sevenmile Creek at Agency Lake.

Total volume in acre-feet: 500

Additional Information

Rate in cfs: 1.35 This water will only be protected instream if insufficient water is available under the primary water right (certificate 10901).

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from _____ through _____.
- Other (describe):

Additional Information

Section 1.4, (Standard Leasing Form) cont.

Subject Water Rights. Lessor proposes to lease the water rights listed in 1.3.

The right(s) to be leased are further described as follows:

Certificate No.: 42822

Priority date: September 24, 1971 Type of use: irrigation

Legal Season of Use (if not listed on the certificate): April 1 to October 1

Is the entire water right certificate being leased? Yes No

If no, list the acres to be leased by legal description of township, range, section, and $\frac{1}{4}$ $\frac{1}{4}$ which will be dried up as part of this lease, and include a map (Attachment 3) showing the lands which will not receive water.

Place of use: T N, R W, Section , $\frac{1}{4}$ $\frac{1}{4}$ - acres to be leased

Enter additional places of use here, using format above:

T33S R6E Section 13: SE1/4NW1/4 - 13.6 acres; NE1/4SW1/4 - 10.0 acres; SE1/4SW1/4 - 11.2 acres

T33S R6E Section 24: NE1/4NW1/4 - 8.8 acres; NW1/4NW1/4 13.0 acres.

Page 1 (Identify page number of certificate, if certificate is greater than 10 pages.)

Number of acres, if for irrigation: 56.6

Acre-feet of storage, if applicable: 0

Rate associated with leased rights (cfs): 1.0

(Use additional lines if there is more than one rate associated with the water right.)

Duty associated with leased rights (AF): 283

(Use additional lines if there is more than one duty associated with the water right.)

Conditions or other limitations, if any: Water is to primarily consist of drain water, with additional appropriations from Sevenmile Creek only to be made when insufficient drainwater is available.

Section 2.2, cont.

Instream use created by lease. The instream use to be created is described as follows:

Sevenmile Creek

Tributary to Agency Lake in the Klamath Basin.

Describe the point of diversion and any associated reach(es) of the instream use being created. If possible list the reach by river mile, if no reach is identified, the lease will be processed to be protected at the point of diversion): Reach One: Ditch - SE1/4NW1/4, NE1/4 SW1/4, SE1/4 SW1/4, Section 13; Drainage collected in ditch between points 3320 feet north and 20 feet north, both from SW corner, SE1/4SW1/4 Section 13. Protected at the POD. Reach Two: Creek -150 feet north and 960 feet west from SE corner Section 11, T33s R6E. Creek POD to mouth of Sevenmile Creek.

Total volume in acre-feet: 283

Rate in cfs: 1.0 from May 11 to September 30 in Sevenmile Creek, less any water that may be in the ditch.

Additional Information

Conditions to prevent injury, if any:

- None
- The instream flow will be allocated on a daily average basis up to the described rate from ____ through ____.
- Other (describe):