

**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 10912, 10929, 80691,	)	INSTREAM LEASE
42581, 3579, 27657, 42582, and 42583,	)	
Klamath County	)	

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 #1**

Brush Creek, partnership  
Charles W. Bacchi, Henry F. Bacchi,  
Nicki Bari, James P. Bacchi, and Cheri B. Little  
PO Box 479  
Lotus, CA 95651

**Lessor #2**

Meadows Drainage District  
PO Box 426  
Fort Klamath, OR 97626

**Lessee**

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

**Findings of Fact**

1. Brush Creek, partnership, Meadows Drainage District and the KBRT filed an application to renew L-585 (entered into by the parties on September 8, 2004), involving lease a portion of Certificates 10912, 10929, 80691, 42581, 3579, 27657, 42582, and 42583 (portion) to instream use. The Department assigned the application number L-585.

2. The rights to be leased are as follows:

<b>Certificate:</b>	80691 (leasing a portion of the right)
<b>Use:</b>	Irrigation
<b>Acres:</b>	169.3 acres
<b>Priority Date:</b>	1890
<b>Season of Use:</b>	April 1 to October 1
<b>Quantity:</b>	Rate:
	April 1 to July 20 (limited to 1/50 <sup>th</sup> CFS/acre): 3.39 CFS
	July 20 to October 1(limited to 1/80 <sup>th</sup> CFS/acre): 2.12 CFS
	Duty (limited to 5.0 Acre-Feet (AF)/acre): 846.5 AF

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.

**Source:** Sevenmile Creek, tributary to Agency Lake  
**Authorized Point of Diversion (POD):** Not specified by certificate  
**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application maps (Attachments 1 and 2) filed with the Department on June 30, 2004.

**Certificate:** 10912 (leasing a portion of the right)  
**Use:** Irrigation  
**Acres:** 58.7 acres  
**Priority Date:** 1886  
**Season of Use:** April 1 to October 1  
**Quantity:** Rate:  
April 1 to July 20 (limited to 1/50<sup>th</sup> CFS/acre): 1.17 CFS  
July 20 to October 1 (limited to 1/80<sup>th</sup> CFS/acre): 0.734 CFS  
Duty (limited to 5.0 AF/acre): 293.5 AF

**Source:** Sevenmile Creek, tributary to Agency Lake  
**Authorized Point of Diversion (POD):** Not specified by certificate  
**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application maps (Attachments 1 and 2) filed with the Department on June 30, 2004.

**Certificate:** 10929 (leasing a portion of the right)  
**Use:** Irrigation, Domestic and Stock  
**Acres:** 53.6 acres  
**Priority Date:** 1891  
**Season of Use:** April 1 to October 1  
**Quantity:** Rate:  
April 1 to July 20 (limited to 1/50<sup>th</sup> CFS/acre): 1.07 CFS  
July 20 to October 1 (limited to 1/80<sup>th</sup> CFS/acre): 0.67 CFS  
Duty (limited to 5.0 AF/acre): 268.0 AF

**Source:** Sevenmile Creek, tributary to Agency Lake  
**Authorized Points of Diversion (POD):** Not specified by certificate  
**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application map (Attachment 2) filed with the Department on June 30, 2004.

**Certificate:** 3579 (leasing a portion of the right)  
**Use:** Irrigation (supplemental to certificates 10912 and 80691)  
**Acres:** 26.71 acres  
**Priority Date:** May 8, 1919  
**Season of Use:** April 1 to October 1  
**Quantity:** Rate: 0.335 CFS  
Duty: 133.35 AF (limited to 5.0 AF/acre by Wood River Decree)  
**Source:** Sevenmile Creek, tributary to Agency Lake

**Authorized Point of Diversion (POD):** Not specified by certificate  
**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application map (Attachment 2) filed with the Department on June 30, 2004.

**Certificate:** 27657 (leasing the entire right)  
**Use:** Supplemental Irrigation  
**Acres:** 103.0 acres  
**Priority Date:** February 6, 1957  
**Season of Use:** May 1 to November 1 (irrigation season pursuant to the Anna Creek Decree)  
**Quantity:** Rate (limited to 1/80<sup>th</sup> CFS/acre): 1.29 CFS  
Duty: 309.0 AF (limited to 3.0 AF/acre by Anna Creek Decree)  
**Source:** Annie Creek Slough Drain, tributary to Seven Mile Creek  
**Authorized Points of Diversion (POD):** Not specified by certificate  
**Authorized Place of Use:** See description on certificate.

**Certificate:** 42581 (leasing a portion of the right)  
**Use:** Irrigation  
**Acres:** 478.65 acres  
**Priority Date:** January 26, 1910  
**Season of Use:** April 1 to October 1  
**Quantity:** Rate (limited to 1/80<sup>th</sup> CFS/acre): 5.98 CFS  
Duty (limited to 5.0 AF/acre): 2393.25 AF  
**Source:** Wood River, tributary to Agency Lake  
**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	Lot	Location
34	S	7.5	E	W.M.	3	3	2470 feet South and 940 feet East from the NW Corner, Section 3

**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application map (Attachment 2) filed with the Department on June 30, 2004.

**Certificate:** 42582 (leasing a portion of the right)  
**Use:** Irrigation  
**Acres:** 662.16 acres  
**Priority Date:** September 13, 1920  
**Season of Use:** April 1 to October 1 for Seven Mile Creek and Four Mile Creek  
May 1 to November 1 for Anna Creek Slough  
**Quantity:** Rate (limited to 1/80<sup>th</sup> CFS/acre): 8.3 CFS, being 1.8 CFS from Four Mile Creek, 5.3 CFS from Seven Mile Creek and 1.2 CFS from Anna Creek Slough  
Duty: 3122.48 AF, being  
5.0 AF/acre: 720.0 AF from Four Mile Creek and 2120.0 AF from Seven Mile Creek  
3.0 AF/acre: 282.48 AF from Anna Creek Slough

**Source:** Four Mile Creek, Seven Mile Creek, and Anna Creek Slough (aka Annie Creek Slough), tributaries of Agency Lake

**Authorized Points of Diversion (POD):**

Township		Range		Meridian	Sec	Lot	1/4 1/4		Location
34	S	7.5	E	W.M.	18	3	NW	SW	Fourmile Cr - 2050 feet North & 30 feet East from SW Corner, Section 18
34	S	7.5	E	W.M.	6	20			Sevenmile Cr - 620 feet North & 30 feet East from SW Corner, Lot 20, Section 6
34	S	7.5	E	W.M.	5	3			Anna Creek Slough - 40 feet South & 1350 feet East from NW corner, Section 5

**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application map (Attachment 2) filed with the Department on June 30, 2004.

**Certificate:** 42583 (leasing a portion of the right)

**Use:** Supplemental Irrigation (supplemental to Certificate 42582)

**Acres:** 662.16 acres

**Priority Date:** February 5, 1955

**Season of Use:** April 1 to October 1 for that portion supplemental to water from Seven Mile Creek and Four Mile Creek  
 May 1 to November 1 for that portion supplemental to water from Anna Creek Slough

**Quantity:** Rate (limited to 1/50<sup>th</sup> CFS/acre): 8.59 CFS  
 Duty (limited to 5.0 Af/acre): 3310.8 AF

The rate described is a proportioned rate. Certificate 42583 does not allow the appropriation of the full rate per acre if all acres were being irrigated under the right. The rate at which water may be leased must then be proportioned. By first removing water that may be appropriated for primary irrigation, at a full rate of 1.548, 1/77.09<sup>th</sup> cfs/acre may be appropriated for supplemental irrigation if water were being applied to all irrigated acres allowed under this right. At this proportioned rate, 8.59 CFS may be appropriated for supplemental irrigation of 662.16 acres.

**Source:** Wood River, tributary to Agency Lake

**Authorized Point of Diversion (POD):**

Township		Range		Meridian	Sec	Lot	Location
34	S	7.5	E	W.M.	3	3	2470 feet South and 940 feet East from the NW Corner, Section 3

**Authorized Place of Use:** See description provided in Attachment 5 to the original Instream Lease Application and Instream Lease Application map (Attachment 2) filed with the Department on June 30, 2004.

- The lease application 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). No comments were received.

4. The instream use is as follows:

Sevenmile Creek

Tributary to Agency Lake in the Klamath Basin

<b>Certificate</b>	<b>Priority Date</b>	<b>Reach</b>	<b>Primary Instream Rate (cfs)</b>	<b>Supp. Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
80691	1890	Loosely Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	3.39		May 1 – July 19
			2.12		July 20 – Sept. 30
10912	1886	Loosely Ditches to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.17		May 1 – July 19
			0.734		July 20 – Sept. 30
10929	1891	Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.07		May 1 – July 19
			0.67		July 20 – Sept. 30
3579 (supp to certs 10912, 10929, & 80691)	2/6/1957	POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		0.335	May 1 – Sept. 30

Annie Creek Slough, Four Mile Creek and Sevenmile Creek

Tributary to Agency Lake in the Klamath Basin

<b>Certificate</b>	<b>Priority Date</b>	<b>Reach</b>	<b>Primary Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
42582	9/13/1920	Annie Creek Slough POD to mouth of Annie Creek Slough	1.2	May 1 – Oct. 31
		Four Mile Creek POD to Agency Lake	1.8	April 1 – Sept. 30
		Seven Mile Creek POD to Agency Lake	5.3	April 1 – Sept. 30

Wood River

Tributary to Agency Lake in the Klamath Basin

**Instream Reach:** From the POD (as described in Finding of Fact #2 for Certificates 42581 and 42583) to Agency Lake

<b>Certificate</b>	<b>Priority Date</b>	<b>Primary Instream Rate (cfs)</b>	<b>Supp. Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
42581	1/26/1910	5.98		April 1 – Sept. 30
42583 (supp to cert 42582)	2/5/1955		Supp. to Annie Cr. Slough water: 1.22 CFS	April 1 – Sept. 30
			Supp. to Four Mile and Seven Mile Creeks water: 7.37 CFS	May 1 – Oct. 31

5. Other conditions to prevent injury and enlargement are:

Certificate 3579 is supplemental to certificates 80691 and 10912. The portion of certificate 3579 being leased instream shall only be protected instream if the full rate and duty under certificates 80691 and 10912 are not available during the period for which water is being leased instream.

Certificate 27657 is supplemental to certificates 80691, 10912, and 10929. The portion of certificate 27657 being leased instream shall only be protected instream if the full rate and duty under certificates 80691, 10912, and 10929 are not available during the period for which water is being leased instream.

Certificate 42583 is supplemental to certificate 42582. The portion of certificate 42583 being leased instream shall only be protected instream if the full rate and duty under certificate 42582 are not available during the period for which water is being leased instream. A portion of certificate 42583 may also be protected instream to bring the rate and duty allowed under the primary right, certificate 42582, up to the full rate and duty allowed, being 1/50<sup>th</sup> CFS/acre and 5.0 AF/acre.

6. 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.
7. 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.

8. The instream lease renewal requests to terminate the lease on October 1, 2004. Instream leases generally terminate on the last day of the season of use. The last day of the irrigation season for portions of certificates 42582 and 42583 is October 31. Therefore, the lease will terminate on October 31, 2005.

### CONCLUSIONS OF LAW

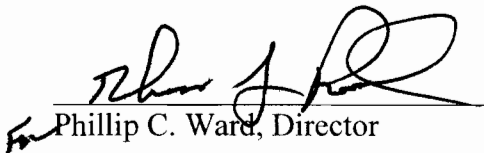
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease 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 the lease.
3. The lease shall terminate on October 31, 2005.

Dated at Salem, Oregon this 20<sup>th</sup> day of June 2005.

  
Phillip C. Ward, Director

Mailing date: JUN 23 2005