

**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
Shannon.peterson@KBRT.org

Findings of Fact

1. Brush Creek, partnership, Meadows Drainage District and the KBRT filed an application to renew instream lease L-585, involving a portion of Certificates 10912, 10929, 80691, 42581, 3579, 27657, 42582, and 42583.

2. The rights to be leased are as follows:

Certificate: 80691 (leasing a portion of the right)

Use: Irrigation

Acres: 169.3 acres

Priority Date: 1890

Season of Use: April 1 to October 1

Quantity: Rate:

April 1 to July 20 (limited to 1/50th CFS/acre): 3.39 CFS

July 20 to October 1 (limited to 1/80th 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 1/50th CFS/acre): 1.17 CFS
July 20 to October 1 (limited to 1/80th 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 1/50th CFS/acre): 1.07 CFS
July 20 to October 1 (limited to 1/80th 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 1/80th 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 1/80th 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 1/80th 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 1/50th 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, 1/77.09th 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.
- The instream use is as follows:
Sevenmile Creek
Tributary to Agency Lake in the Klamath Basin

| Certificate | Priority Date | Reach | Primary Instream Rate (cfs) | Supp. Instream Rate (cfs) | Period Protected Instream |
|--------------------------------------------|----------------------|-----------------------------------------------------------------------------------------------------|------------------------------------|----------------------------------|----------------------------------|
| 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

| Certificate | Priority Date | Reach | Primary Instream Rate (cfs) | Period Protected Instream |
|--------------------|----------------------|-------------------------------------------------------|------------------------------------|----------------------------------|
| 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

| Certificate | Priority Date | Primary Instream Rate (cfs) | Supp. Instream Rate (cfs) | Period Protected Instream |
|-------------------------------|----------------------|------------------------------------|-------------------------------------------------------------|----------------------------------|
| 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 1/50th 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 lease will terminate on October 31, 2006.

CONCLUSIONS OF LAW

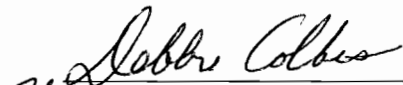
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

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, 2006.

Dated at Salem, Oregon this 24th day of July 2006.



Phillip C. Ward, Director

Mailing date: AUG 0 1 2006