

**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
Use, Certificates 42581, 42582, and 42583,) PROPOSED INSTREAM
Klamath County, Oregon) LEASE

FINDINGS OF FACT

1. A Short-Term Lease Application, which proposed to lease a portion of certificates 42581 and 42582, for primary irrigation, and 42583, for supplemental irrigation, for instream purposes was submitted to the Department by:

Lessor #1

Franklin and Jane Barnes
PO Box 1570
Julian, CA 92036

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

2. The instream lease application included the required fees. The Department assigned this lease agreement number L-573.
3. 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) on December 23, 2003. No comments were received during the comment period.
4. The rights to be leased, as requested by the applicant, are as follows:

Certificate: 42581
Use: Irrigation
Acres: 1238.0 acres
Priority Date: January 26, 1910
Season of Use: May 1 to October 1
Quantity: Rate (limited to 1/80th Cubic foot per Second (CFS/acre): 15.475 CFS
Duty (limited to 3.0 Acre-Feet (AF)/acre): 3714.0 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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

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:

| Township | Range | Meridian | Sec | 1/4 | 1/4 | Priority Date | Acres | |
|----------|-------|----------|-----|------|-----|---------------|-----------|------|
| 34 | S | 7.5 | E | W.M. | 29 | NE NE | 1/26/1910 | 8.8 |
| 34 | S | 7.5 | E | W.M. | 29 | NW NE | 1/26/1910 | 29.3 |
| 34 | S | 7.5 | E | W.M. | 29 | SW NE | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 29 | SE NE | 1/26/1910 | 29.9 |
| 34 | S | 7.5 | E | W.M. | 29 | NE NW | 1/26/1910 | 29.3 |
| 34 | S | 7.5 | E | W.M. | 29 | NW NW | 1/26/1910 | 29.3 |
| 34 | S | 7.5 | E | W.M. | 29 | SW NW | 1/26/1910 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 29 | SE NW | 1/26/1910 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 29 | NE SW | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 29 | NW SW | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 29 | SW SW | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 29 | SE SW | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 29 | NE SE | 1/26/1910 | 30.0 |
| 34 | S | 7.5 | E | W.M. | 29 | NW SE | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 29 | SW SE | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 29 | SE SE | 1/26/1910 | 37.1 |
| 34 | S | 7.5 | E | W.M. | 32 | NE NE | 1/26/1910 | 28.8 |
| 34 | S | 7.5 | E | W.M. | 32 | NW NE | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 32 | SW NE | 1/26/1910 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 32 | SE NE | 1/26/1910 | 37.7 |
| 34 | S | 7.5 | E | W.M. | 32 | NE NW | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 32 | NW NW | 1/26/1910 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 32 | SW NW | 1/26/1910 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 32 | SE NW | 1/26/1910 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 32 | NE SW | 1/26/1910 | 39.2 |
| 34 | S | 7.5 | E | W.M. | 32 | NW SW | 1/26/1910 | 34.2 |
| 34 | S | 7.5 | E | W.M. | 32 | SW SW | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 32 | SE SW | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 32 | NE SE | 1/26/1910 | 31.2 |
| 34 | S | 7.5 | E | W.M. | 32 | NW SE | 1/26/1910 | 39.2 |
| 34 | S | 7.5 | E | W.M. | 32 | SW SE | 1/26/1910 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 32 | SE SE | 1/26/1910 | 37.9 |

| | | | | | | | | | |
|----|---|-----|---|------|---|----|----|--------------------|---------------|
| 35 | S | 7.5 | E | W.M. | 5 | NE | NE | 1/26/1910 | 17.4 |
| 35 | S | 7.5 | E | W.M. | 5 | NW | NE | 1/26/1910 | 18.8 |
| 35 | S | 7.5 | E | W.M. | 5 | NE | NW | 1/26/1910 | 18.8 |
| 35 | S | 7.5 | E | W.M. | 5 | NW | NW | 1/26/1910 | 18.8 |
| | | | | | | | | Total acres | 1238.0 |

Certificate: 42582
Use: Irrigation
Acres: 1269.48 acres
Priority Date: September 13, 1920
Season of Use: May 1 to October 1
Quantity: Rate (limited to 1/80th CFS/acre):
 15.87 CFS, being 2.27 CFS from Annie Creek Slough, 10.2 CFS
 from Sevenmile Creek and 3.4 CFS from Fourmile Creek
 Duty (limited to 3.0 AF/acre):
 3808.8 AF, being 544.6 AF from Annie Creek Slough, 2448.8 AF
 from Sevenmile Creek, and 815.0 AF from Fourmile Creek
Source: Annie Creek Slough, Sevenmile Creek and Fourmile Creek, 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:

| Township | Range | Meridian | Sec | 1/4 | 1/4 | Priority Date | Acres | | |
|----------|-------|----------|-----|------|-----|---------------|-------|-----------|------|
| 34 | S | 7.5 | E | W.M. | 30 | NE | NE | 9/13/1920 | 29.3 |
| 34 | S | 7.5 | E | W.M. | 30 | NW | NE | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 30 | SW | NE | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 30 | SE | NE | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 30 | NE | NW | 9/13/1920 | 29.3 |
| 34 | S | 7.5 | E | W.M. | 30 | NW | NW | 9/13/1920 | 25.4 |
| 34 | S | 7.5 | E | W.M. | 30 | SW | NW | 9/13/1920 | 36.5 |
| 34 | S | 7.5 | E | W.M. | 30 | SE | NW | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 30 | NE | SW | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 30 | NW | SW | 9/13/1920 | 35.0 |
| 34 | S | 7.5 | E | W.M. | 30 | SW | SW | 9/13/1920 | 36.1 |
| 34 | S | 7.5 | E | W.M. | 30 | SE | SW | 9/13/1920 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 30 | NE | SE | 9/13/1920 | 39.0 |

| | | | | | | | | | |
|----|---|-----|---|------|----|----|----|--------------------|----------------|
| 34 | S | 7.5 | E | W.M. | 30 | NW | SE | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 30 | SW | SE | 9/13/1920 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 30 | SE | SE | 9/13/1920 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 31 | NE | NE | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 31 | NW | NE | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 31 | SW | NE | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 31 | SE | NE | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 31 | NE | NW | 9/13/1920 | 39.0 |
| 34 | S | 7.5 | E | W.M. | 31 | NW | NW | 9/13/1920 | 34.0 |
| 34 | S | 7.5 | E | W.M. | 31 | SW | NW | 9/13/1920 | 34.9 |
| 34 | S | 7.5 | E | W.M. | 31 | SE | NW | 9/13/1920 | 40.6 |
| 34 | S | 7.5 | E | W.M. | 31 | NE | SW | 9/13/1920 | 39.2 |
| 34 | S | 7.5 | E | W.M. | 31 | NW | SW | 9/13/1920 | 33.4 |
| 34 | S | 7.5 | E | W.M. | 31 | SW | SW | 9/13/1920 | 34.4 |
| 34 | S | 7.5 | E | W.M. | 31 | SE | SW | 9/13/1920 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 31 | NE | SE | 9/13/1920 | 39.2 |
| 34 | S | 7.5 | E | W.M. | 31 | NW | SE | 9/13/1920 | 39.2 |
| 34 | S | 7.5 | E | W.M. | 31 | SW | SE | 9/13/1920 | 40.8 |
| 34 | S | 7.5 | E | W.M. | 31 | SE | SE | 9/13/1920 | 40.8 |
| 35 | S | 7.5 | E | W.M. | 6 | NE | NE | 9/13/1920 | 18.8 |
| 35 | S | 7.5 | E | W.M. | 6 | NW | NE | 9/13/1920 | 18.8 |
| 35 | S | 7.5 | E | W.M. | 6 | NE | NW | 9/13/1920 | 18.8 |
| 35 | S | 7.5 | E | W.M. | 6 | NW | NW | 9/13/1920 | 15.5 |
| | | | | | | | | Total acres | 1269.48 |

Certificate: 42583
Use: Supplemental Irrigation (supplemental to certificate 42582)
Acres: 1269.48 acres
Priority Date: February 5, 1955
Season of Use: May 1 to October 1
Quantity: Rate (limited to 1/80th CFS/acre): 15.87 CFS
Duty (limited to 3.0 AF/acre): 3808.8 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: Same as described for Certificate 42582.

5. The Department finds that the lease application requires modification in order to clarify water rights to be leased. The following modifications are needed:
- a. The duty identified in the lease application for all three certificates was described as being limited to 3.0 acre-feet per acre. However, the correct duty for certificate 42581, 42583 and a portion of 42582 is 5.0 acre-feet per acre.
 - b. The rate at which water may be appropriated, under certificate 42583, is higher than the rate identified in the lease application. By first removing water that may be appropriated for primary irrigation, at a full rate of 1.548, the Department has determined that 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, 16.47 CFS may be appropriated for supplemental irrigation of 1269.48 acres.
6. Based on Finding 5 above, the rights to be leased are clarified as follows (all changes are shown in bold text):

Certificate: 42581
Use: Irrigation
Acres: 1238.0 acres
Priority Date: January 26, 1910
Season of Use: May 1 to October 1
Quantity: Rate (limited to 1/80th CFS/acre): 15.475 CFS
Duty (**limited to 5.0 AF/acre**): **6190.0 AF**
Source: Wood River, tributary to Agency Lake

Certificate: 42582
Use: Irrigation
Acres: 1269.48 acres
Priority Date: September 13, 1920
Season of Use: May 1 to October 1
Quantity: Rate (limited to 1/80th CFS/acre):
15.87 CFS, being 2.27 CFS from Annie Creek Slough, 10.2 CFS
from Sevenmile Creek and 3.4 CFS from Fourmile Creek
Duty: **5984.44 AF, being**
5.0 AF/acre: 4080.0 AF from Sevenmile Creek and
1360.0 AF from Fourmile Creek
3.0 AF/acre: 544.44 AF from Annie Creek Slough
Source: Annie Creek Slough, Sevenmile Creek and Fourmile Creek, tributaries of
Agency Lake

Certificate: 42583
Use: Supplemental Irrigation (supplemental to certificate 42582)
Acres: 1269.48 acres
Priority Date: February 5, 1955
Season of Use: May 1 to October 1
Quantity: Rate (**limited to 1/50th CFS/acre**): **16.47 CFS (proportioned rate)**
Duty (**limited to 5.0 af/acre**): **6347.4 AF**

Source: Wood River, tributary to Agency Lake

The rate described is a proportioned rate. This certificate allows for a maximum diversion of 71.31 CFS for 77.4 acres of primary irrigation and 5378.1 acres of supplemental irrigation. However, this water right does not allow for the full diversion of a 1/50th CFS/acre, which would be 109.11 CFS, if all acres were being irrigated evenly. The rate identified above has been proportioned as described in Finding 5.

7. The lessee has agreed to the above modifications.
8. The application proposes to lease water for instream as follows:

| Certificate | Priority Date | Instream Reach | Primary Rate Instream | Supplemental Rate Instream | Period Protected Instream | Primary Vol. Instream | Supp. Volume Instream |
|-------------|---------------|-------------------------------|-----------------------|----------------------------|---------------------------|-----------------------|-----------------------|
| 42581 | 1/26/1910 | Wood River POD to Agency Lake | 15.475 CFS | | June 2 - Sept 30 | 3714.0 AF | |
| 42582 | 9/13/1920 | Annie Creek POD | 2.27 CFS | | June 2 - Sept 30 | 544.6 AF | |
| " | " | Fourmile Creek POD | 3.4 CFS | | June 2 - Sept 30 | 815.0 AF | |
| " | " | Sevenmile Creek POD | 10.2 CFS | | June 2 - Sept. 30 | 2448.8 AF | |
| 42583 | 2/5/1955 | Wood River POD to Agency Lake | | 15.87 CFS | June 2 - Sept. 30 | | 3808.4 AF |

9. The lease application requests to protect water under certificate 42582 at the point of diversion on each of the source streams. On June 29, 2004, the Lessee submitted a request to clarify that water should be protected from the point of diversion on each stream to Agency Lake. Fourmile Creek and Sevenmile Creek are both tributary to Agency Lake and water leased instream may be protected to Agency Lake. Annie Creek Slough is tributary to Sevenmile Creek. Normally, an instream use is maintained downstream from the point of diversion to the mouth of the source stream. However, if the quantity of water is measurable in the receiving stream, then an instream use may be maintained further downstream (OAR 690-077-0015 (7)). The Department has determined that the quantity of water to be leased in Annie Creek Slough is not measurable in Sevenmile Creek. Therefore the instream use in Annie Creek Slough may only maintained to the mouth of Annie Creek Slough.
10. The Department finds that the volume of water as well as the period during which water may leased be leased instream under each water right may be increased based on Findings 5 and 6. However, the period during which water may be leased instream in Annie Creek Slough has been reduced. At the rate to be leased, 2.27 CFS, and given the volume limitation on the right, 544.44 AF, water may be leased instream for a period of 120 days. The original period requested, June 2 through September 30, is 121 days.
11. To clarify the amount of water that may be leased instream under each right, the Department has made the following modifications (changes shown in bold text):

| Certificate | Priority Date | Instream Reach | Primary Rate Instream | Supplemental Rate Instream | Period Protected Instream | Primary Vol. Instream | Supp. Volume Instream |
|-------------|---------------|-------------------------------------|-----------------------|--|--|-----------------------|-----------------------------|
| 42581 | 1/26/1910 | Wood River POD to Agency Lake | 15.475 CFS | | April 1 - Sept 30 | 3714.0 AF | |
| 42582 | 9/13/1920 | Annie Creek Slough POD to the mouth | 2.27 CFS | | June 2 - Sept 29 | 544.44 AF | |
| " | " | Fourmile Creek POD to Agency Lake | 3.4 CFS | | April 1 - Sept 30 | 1234.116 AF | |
| " | " | Sevenmile Creek POD to Agency Lake | 10.2 CFS | | April 1 - Sept. 30 | 3702.347 AF | |
| 42583 | 2/5/1955 | Wood River POD to Agency Lake | | Annie Creek Slough: 2.25 CFS Sevenmile and Fourmile Cr: 14.11 CFS | April 1 - Sept. 30 May 1 - Nov 30 | | 854.47 AF 5150.66 AF |

12. The Department finds that certificate 42583 is supplemental to certificate 42582. The portion of certificate 42583 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 certificate 42582 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.

13. 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, as modified, will not result in injury or enlargement.

14. The lease application 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, 2004.

CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

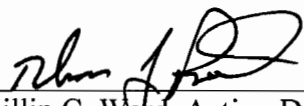
Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

| Certificate | Priority Date | Instream Reach | Primary Rate Instream | Supplemental Rate Instream | Period Protected Instream | Primary Vol. Instream | Supp. Volume Instream |
|-------------|---------------|-------------------------------------|-----------------------|--|--|-----------------------|-----------------------------|
| 42581 | 1/26/1910 | Wood River POD to Agency Lake | 15.475 CFS | | April 1 - Sept 30 | 3714.0 AF | |
| 42582 | 9/13/1920 | Annie Creek Slough POD to the mouth | 2.27 CFS | | June 2 - Sept 29 | 544.44 AF | |
| " | " | Fourmile Creek POD to Agency Lake | 3.4 CFS | | April 1 - Sept 30 | 1234.116 AF | |
| " | " | Sevenmile Creek POD to Agency Lake | 10.2 CFS | | April 1 - Sept. 30 | 3702.347 AF | |
| 42583 | 2/5/1955 | Wood River POD to Agency Lake | | Annie Creek Slough: 2.25 CFS Sevenmile and Fourmile Cr: 14.11 CFS | April 1 - Sept. 30 May 1 - Nov 30 | | 854.47 AF 5150.66 AF |

4. Certificate 42583 is supplemental to certificate 42582. The portion of certificate 42583 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 certificate 42582 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.
5. The lease will terminate on October 31, 2004.

Dated at Salem, Oregon this 16th day of August 2004.


 Phillip C. Ward, Acting Director