

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

**FINDINGS OF FACT**

1. On June 30, 2004, a Short-Term Lease Application, which proposed to lease a portion of certificates 10912, 10929, 80691, 42581, and 42582, for primary irrigation, and to lease certificates 42583 (a portion of), 27657 (all), and 3579 (a portion of), for supplemental irrigation, for instream purposes was submitted to the Department by:

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

2. The instream lease application included the required fees. The Department assigned this lease agreement number L-585.
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 July 6, 2004. No comments were received during the comment period.
4. On August 26, 2004, the Lessor amended the application to clarify the total number of acres to be leased instream under certificates 42581, 42582 and 42583. The rates and duties associated with each right, as requested in the application, have been modified to reflect this amendment. Also, on August 30, 2004, the Lessor requested to amend the application to clarify the correct duty and season of use for certificates 3579 and 27657. In addition, the Department has also made the following modification:

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.

The portion of the rate that may be leased instream under certificate 42583 has been proportioned. This right allows the diversion of water at 1/80<sup>th</sup> Cubic Foot per Second (CFS)/acre. If water were to be applied to each acre authorized by this certificate, the maximum rate allowed by the right, being 71.31 CFS, would be exceeded. Therefore, the portion of this right that may be leased instream has been proportioned to prevent enlargement.

5. The rights to be leased, as requested and amended by the Lessee and as modified by the Department, are as follows (modifications to the original lease application shown in bold text):

**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 1/50<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  
**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 Instream Lease Application and Instream Lease Application maps (Attachments 1 and 2)

**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 Instream Lease Application and Instream Lease Application maps (Attachments 1 and 2)

**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 Instream Lease Application and Instream Lease Application map (Attachment 2)

**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 Instream Lease Application and Instream Lease Application map (Attachment 2)

**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 Instream Lease Application and Instream Lease Application map (Attachment 2)

**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 Instream Lease Application and Instream Lease Application map (Attachment 2)

**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 Instream Lease Application and Instream Lease Application map (Attachment 2)

6. The application proposes to lease water for instream as follows:

Certificate	Priority Date	Source	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream
80691	1890	Seven Mile Creek	Loosely Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	3.39 CFS 2.12 CFS		April 1 - July 19 July 20 - Sept 30
10912	1886	Seven Mile Creek	Loosely Ditches to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.17 CFS 0.734 CFS		April 1 - July 19 July 20 - Sept 30
10929	1891	Seven Mile Creek	Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.07 CFS 0.67 CFS		April 1 - July 19 July 20 - Sept 30
3579 (supp. to certs 10912 & 80691)	5/8/1919	Seven Mile Creek	POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		0.335 CFS	April 1 - Sept 30
27657 (supp. to certs 10912, 10929 & 80691)	2/6/1957	Annie Creek Slough Drain	POD (lot 4, NW NW, Sec 6, T34S, R7.5E) to confluence with West Canal and Sevenmile Creek		1.29 CFS	April 1 - Sept 30
42581	1/26/1910	Wood River	Wood River POD to Agency Lake	5.69 CFS		April 1 - Sept. 30

Certificate	Priority Date	Source	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream
42582	9/13/1920	Annie Creek Slough	Annie Creek Slough POD to Agency Lake	1.23 CFS		May 1 - Oct. 31
		Four Mile Creek	Four Mile Creek POD to Agency Lake	1.83 CFS		April 1 - Sept. 30
		Seven Mile Creek	Seven Mile Creek POD to Agency Lake	5.51 CFS		April 1 - Sept. 30
42583 (supp. to cert. 42582)	2/5/1955	Wood River	Wood River POD to Agency Lake		13.72 CFS	May 28 - Sept 30

7. On August 30, 2004, the Lessor requested to amend the application to clarify that water under each right, except certificates 42581, 42582, and 42583, should be protected instream beginning May 1. Based upon continued evaluation and as a result in modifications made to the portions of the water rights to be leased in Finding 5, the Department finds that the following modifications are necessary to clarify the rates, volumes and time periods that water may be protected instream under each right:

- a. At the rate requested, and given a duty of 3.0 AF/acre, water under certificate 27627 may be leased instream for a period of 120 days. The period requested, originally being 183 days, has been reduced.
- b. The instream rates for certificates 42581, 42582 and 42583 have been modified to reflect the amendment made to the application by the Lessor to clarify the number of acres of irrigation being leased instream.
- c. In addition, the instream supplemental rate for certificate 42583 has been reduced and proportioned as described in Finding 5. With the reduction in instream rate, the Department has also split the rate to clarify the amounts supplemental to each part of certificate 42582. The time period during which water may be protected instream has also been modified to match the time periods of the primary right.
- d. The lease application requests to protect water under certificate 42582 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 be maintained to the mouth of Annie Creek Slough.

8. Based upon Finding 9, water is leased instream as follows (changes shown in bold text):

Certificate	Priority Date	Source	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream
80691	1890	Seven Mile Creek	Loosely Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	3.39 CFS 2.12 CFS		<b>May 1 - July 19</b> July 20 - Sept 30
10912	1886	Seven Mile Creek	Loosely Ditches to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.17 CFS 0.734 CFS		<b>May 1 - July 19</b> July 20 - Sept 30
10929	1891	Seven Mile Creek	Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.07 CFS 0.67 CFS		<b>May 1 - July 19</b> July 20 - Sept 30
3579 (supp. to certs 10912 & 80691)	5/8/1919	Seven Mile Creek	POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		0.335 CFS	<b>May 1 - Sept 30</b>
27657 (supp. to certs 10912, 10929 & 80691)	2/6/1957	Annie Creek Slough Drain	POD (lot 4, NW NW, Sec 6, T34S, R7.5E) to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		1.29 CFS	<b>May 1 - Aug. 28</b>
42581	1/26/1910	Wood River	Wood River POD to Agency Lake	<b>5.98 CFS</b>		April 1 - Sept. 30
42582	9/13/1920	Annie Creek Slough  Four Mile Creek  Seven Mile Creek	<b>Annie Creek Slough POD to mouth of Annie Creek Slough</b>  Four Mile Creek POD to Agency Lake  Seven Mile Creek POD to Agency Lake	<b>1.2 CFS</b>  <b>1.8 CFS</b>  <b>5.3 CFS</b>		May 1 - Oct. 31  April 1 - Sept. 30  April 1 - Sept. 30
42583 (supp. to cert. 42582)	2/5/1955	Wood River	Wood River POD to Agency Lake		<b>Supp. to Annie Cr. Slough water: 1.22 CFS</b>  <b>Supp. to Four Mile and Seven Mile Creeks water: 7.37 CFS</b>	<b>April 1 - Sept. 30</b>        <b>May 1 - Oct. 31</b>

9. The Department finds that certificate 3579 is supplemental to certificates 80691 and 10912. The portion of certificate 3579 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 certificates 80691 and 10912 during the period for which water is being leased instream.

10. The Department finds that certificate 27657 is supplemental to certificates 80691, 10912, and 10929. The portion of certificate 27657 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 certificates 80691, 10912, and 10929 during the period for which water is being leased instream.
11. 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 1/50<sup>th</sup> CFS/acre and 5.0 AF/acre.
12. 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.
13. 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.



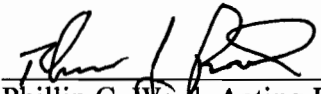
3. Water is leased instream as follows:

Certificate	Priority Date	Source	Instream Reach	Primary Rate Instream	Supplemental Rate Instream	Period Protected Instream
80691	1890	Seven Mile Creek	Loosely Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	3.39 CFS 2.12 CFS		May 1 - July 19 July 20 - Sept 30
10912	1886	Seven Mile Creek	Loosely Ditches to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.17 CFS 0.734 CFS		May 1 - July 19 July 20 - Sept 30
10929	1891	Seven Mile Creek	Culbertson Ditch POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.07 CFS 0.67 CFS		May 1 - July 19 July 20 - Sept 30
3579 (supp. to certs 10912 & 80691)	5/8/1919	Seven Mile Creek	POD to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		0.335 CFS	May 1 - Sept 30
27657 (supp. to certs 10912, 10929 & 80691)	2/6/1957	Annie Creek Slough Drain	POD (lot 4, NW NW, Sec 6, T34S, R7.5E) to confluence of Seven Mile Creek with West Canal and Seven Mile Canal		1.29 CFS	May 1 - Aug. 28
42581	1/26/1910	Wood River	Wood River POD to Agency Lake	5.98 CFS		April 1 - Sept. 30
42582	9/13/1920	Annie Creek Slough	Annie Creek Slough POD to mouth of Annie Creek Slough	1.2 CFS		May 1 - Oct. 31
		Four Mile Creek	Four Mile Creek POD to Agency Lake	1.8 CFS		April 1 - Sept. 30
		Seven Mile Creek	Seven Mile Creek POD to Agency Lake	5.3 CFS		April 1 - Sept. 30
42583 (supp. to cert. 42582)	2/5/1955	Wood River	Wood River POD to Agency Lake		Supp. to Annie Cr. Slough water: 1.22 CFS Supp. to Four Mile and Seven Mile Creeks water: 7.37 CFS	April 1 - Sept. 30  May 1 - Oct. 31

4. Certificate 3579 is supplemental to certificates 80691 and 10912. The portion of certificate 3579 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 certificates 80691 and 10912 during the period for which water is being leased instream.

5. Certificate 27657 is supplemental to certificates 80691, 10912, and 10929. The portion of certificate 27657 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 certificates 80691, 10912, and 10929 during the period for which water is being leased instream.
6. 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 1/50<sup>th</sup> CFS/acre and 5.0 AF/acre.
7. The lease will terminate on October 31, 2004.

Dated at Salem, Oregon this 8<sup>th</sup> day of September 2004.

  
Phillip C. Ward, Acting Director