

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Instream Lease Application) DETERMINATION and
IL-1096, Certificates 10912, 10929, 80691,) FINAL ORDER ON PROPOSED
42581, 3579, 27657, 42582, and 42583,) INSTREAM LEASE
Klamath County)

Authority

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 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)
700 Main Street, Suite 201 A
Klamath Falls, OR 97601
shannon.peterson@kbrt.org

Findings of Fact

1. On March 26, 2010, the KBRT, Brush Creek Partnership, and Meadows Drainage District filed an application to renew instream lease IL-585, involving lease all of Certificate 27657 and a portion of Certificates 10912, 10929, 80691, 42581, 3579, 42582, and 42583.
2. While evaluating the renewal request, the Department also identified a number of scrivener's errors in the original Final Order approving this instream lease and subsequent Final Orders approving the renewal of the lease. The Department also identified that subsequent Final Order approving the renewal of the lease did not include Certificate 27657 in the instream use description. This Certificate had been included in the instream use described in the original Final Order, approved by the Department on September 8, 2004, as evidenced by Special Order Volume 61, Page 378. In addition, the previous Final Orders did not include complete descriptions of the authorized place of use associated with each right being leased instream. As part this order, the Department is correcting several scrivener's

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.

errors, clarifying the portions of the rights being leased and the description of the instream use created as a result of the instream lease.

3. On September 7, 2010, the Lessor submitted modified maps to provide a more complete description of the portion of Certificates 42581, 42582, and 42583 being leased instream. Prior descriptions for each of these rights were not complete. In addition to providing a more complete description of each of these three rights, the Lessor also excluded some acres due to potential sub-irrigation from ditches and canals that run through several of the quarter quarter sections. Based on the modified maps, the number of acres leased under each of the identified rights has been changed. Due to the change, the Department is reassigning this lease to lease application number IL-1096 to differentiate it from IL-585.

4. The portion of the first right to be leased is as follows:

Certificate: 80691 in the name of JACOB D. WOOD, CHARLES W. BACCHI, L. PAUL LITTLE and CHERI B. LITTLE
Use: Irrigation of 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
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Point of Diversion (POD): Not specified by certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
33 S	6 E	WM	36	SW SE		15.0
33 S	6 E	WM	36	NE SE		39.3
33 S	6 E	WM	36	SE SE		40.0
34 S	6 E	WM	1		1	27.0
34 S	6 E	WM	1		2	8.0
34 S	6 E	WM	1		8	40.0

5. The portion of the second right to be leased is as follows:

Certificate: 10912 in the name of J. F. LOOSLEY
Use: Irrigation of 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: Seven Mile Creek, tributary to Agency Lake
Authorized Point of Diversion (POD): Not specified by certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	6 E	WM	1		2	18.7
34 S	6 E	WM	1	SW NW	9	40.0

6. The portion of the third right to be leased is as follows:

Certificate: 10929 in the name of LEONARD J. WOODRUFF
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: Seven Mile Creek, tributary to Agency Lake
Authorized Points of Diversion (POD): Not specified by certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	Lot	Acres
34 S	6 E	WM	1	7	38.4
34 S	6 E	WM	1	10	15.2

7. The portion of the fourth right to be leased is as follows:

Certificate: 3579 in the name of J. F. LOOSLEY
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: Seven Mile Creek, tributary to Agency Lake
Authorized Point of Diversion (POD): Not specified by certificate
Authorized Place of Use:

Twp	Rng	Mer	Sec	Lot	Acres
34 S	6 E	WM	1	2	26.71

8. The fifth right to be leased is as follows:

Certificate: 27657 in the name of PUCKETT and SCHERER
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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Lot	Survey Coordinates
34 S	7.5 E	WM	6	NW NW	4	Not specified by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Lot	Acres
34 S	6 E	WM	1	7	17.6
34 S	6 E	WM	1	8	29.8
34 S	6 E	WM	1	9	39.4
34 S	6 E	WM	1	10	16.2

9. The portion of the sixth right to be leased is as follows:

Certificate: 42581 in the name of JOHN WARREN ABEL

Use: Irrigation

Acres: 407.4 acres

Priority Date: January 26, 1910

Season of Use: April 1 to October 1

Quantity: **Rate** (limited to 1/80th CFS/acre): 5.09 CFS

Duty (limited to 5.0 AF/acre): 2037.0 AF

Source: Wood River, tributary to Agency Lake

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Lot	Survey Coordinates
34S	7.5 E	WM	3	3	2470 FEET SOUTH AND 940 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	7.5 E	WM	6		20	5.0
34 S	7.5 E	WM	6		21	26.0
34 S	7.5 E	WM	6		22	6.0
34 S	7.5 E	WM	6	NW SE		9.8
34 S	7.5 E	WM	6	SW SE		20.8
34 S	7.5 E	WM	6	SE SE		23.0
34 S	7.5 E	WM	7	NE NE		32.6
34 S	7.5 E	WM	7	NW NE		17.4
34 S	7.5 E	WM	7	SW NE		18.9
34 S	7.5 E	WM	7	SE NE		35.6
34 S	7.5 E	WM	7	NE SE		35.6
34 S	7.5 E	WM	7	NW SE		18.9
34 S	7.5 E	WM	7	SW SE		18.8
34 S	7.5 E	WM	7	SE SE		35.2
34 S	7.5 E	WM	20	NE SW		2.0
34 S	7.5 E	WM	20	NW SW		8.0
34 S	7.5 E	WM	20	SW SW		36.2
34 S	7.5 E	WM	20	SE SW		34.0
34 S	7.5 E	WM	20	SW SE		14.0
34 S	7.5 E	WM	29	NE NE		0.6
34 S	7.5 E	WM	29	NW NE		3.0
34 S	7.5 E	WM	29	NE NW		3.0
34 S	7.5 E	WM	29	NW NW		3.0
Total Acres						407.4

10. The portion of the seventh right to be leased is as follows:

Certificate: 42582 in the name of MEADOWS DRAINAGE DISTRICT
Use: Irrigation
Acres: 535.7 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): 6.7 CFS, being 1.45 CFS from Four
 Mile Creek, 4.28 CFS from Seven
 Mile Creek and 0.97 CFS from
 Anna Creek Slough

Duty: 3122.48 AF, being
 5.0 AF/acre: 580.0 AF from Four Mile Creek and
 1712.0 AF from Seven Mile Creek
 3.0 AF/acre: 231.9 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):

Twp	Rng	Mer	Sec	Lot	Q-Q	Survey Coordinates
34 S	7.5 E	WM	18	3	NW SW	FOUR MILE CREEK- 2050 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 18
34 S	7.5 E	WM	6	20		SEVEN MILE CREEK - 620 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER AND LOT 20, SECTION 6
34 S	7.5 E	WM	5	3		ANNA CREEK SLOUGH - 40 FEET SOUTH AND 1350 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	7.5 E	WM	18	NE NE		35.6
34 S	7.5 E	WM	18	NW NE		18.9
34 S	7.5 E	WM	18	SW NE		18.9
34 S	7.5 E	WM	18	SE NE		35.6
34 S	7.5 E	WM	18	NE SE		35.6
34 S	7.5 E	WM	18	NW SE		18.9
34 S	7.5 E	WM	18	SW SE		17.4
34 S	7.5 E	WM	18	SE SE		32.6
34 S	7.5 E	WM	19	NE NE		35.2
34 S	7.5 E	WM	19	NW NE		18.7
34 S	7.5 E	WM	19	SW NE		20.2
34 S	7.5 E	WM	19	SE SE		38.2
34 S	7.5 E	WM	19	NW SW	3	2.5
34 S	7.5 E	WM	19	SW SW	4	32.5
34 S	7.5 E	WM	19	SE SW		32.0
34 S	7.5 E	WM	19	NE SE		38.2
34 S	7.5 E	WM	19	NW SE		19.7
34 S	7.5 E	WM	19	SW SE		30.0
34 S	7.5 E	WM	19	SE SE		36.2
34 S	7.5 E	WM	30	NE NE		5.0
34 S	7.5 E	WM	30	NW NE		5.0
34 S	7.5 E	WM	30	NE NW		5.0

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	7.5 E	WM	30	NW NW		3.8
Total Acres						535.7

11. The portion of the seventh right to be leased is as follows:

Certificate: 42583 in the name of MEADOWS DRAINAGE DISTRICT

Use: Supplemental Irrigation (supplemental to Certificate 42582)

Acres: 535.7 acres

Priority Date: February 2, 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): 6.95 CFS
Duty (limited to 5.0 Af/acre): 2534.05 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, 6.95 CFS may be appropriated for supplemental irrigation of 535.7 acres.

Source: Wood River, tributary to Agency Lake

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Lot	Survey Coordinates
34 S	7.5 E	WM	3	3	2470 FEET SOUTH AND 940 FEET EAST FROM THE NW CORNER OF SECTION 3

Authorized Place of Use:

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	7.5 E	WM	18	NE NE		35.6
34 S	7.5 E	WM	18	NW NE		18.9
34 S	7.5 E	WM	18	SW NE		18.9
34 S	7.5 E	WM	18	SE NE		35.6
34 S	7.5 E	WM	18	NE SE		35.6
34 S	7.5 E	WM	18	NW SE		18.9
34 S	7.5 E	WM	18	SW SE		17.4
34 S	7.5 E	WM	18	SE SE		32.6
34 S	7.5 E	WM	19	NE NE		35.2
34 S	7.5 E	WM	19	NW NE		18.7
34 S	7.5 E	WM	19	SW NE		20.2
34 S	7.5 E	WM	19	SE SE		38.2
34 S	7.5 E	WM	19	NW SW	3	2.5
34 S	7.5 E	WM	19	SW SW	4	32.5
34 S	7.5 E	WM	19	SE SW		32.0
34 S	7.5 E	WM	19	NE SE		38.2
34 S	7.5 E	WM	19	NW SE		19.7
34 S	7.5 E	WM	19	SW SE		30.0
34 S	7.5 E	WM	19	SE SE		36.2
34 S	7.5 E	WM	30	NE NE		5.0
34 S	7.5 E	WM	30	NW NE		5.0

Twp	Rng	Mer	Sec	¼ ¼	Lot	Acres
34 S	7.5 E	WM	30	NE NW		5.0
34 S	7.5 E	WM	30	NW NW		3.8

12. The authorized point of diversion is not described on Certificate 80691, 10912, and 10929. These are decreed water rights. The Wood River Decree identifies the ditch name for each of these water rights as follows:

Cert	Ditch Name
80691	Loosley-Culbertson Ditch
10912	Loosley Ditches
10929	Woodruff Irrigation System

The original instream lease application further describes the point of diversion for Certificate 10929 as Culbertson Ditch.

13. The authorized point of diversion is also not described on Certificate 3579. However, the map associated with the water right of record identifies the point of diversion located as follows:

Cert	Ditch Name/Location
3579	JF Loosley Ditch: N 56 degrees East, 360 Feet from ¼ corner common to Sections 35 and 36, T33S R6E

14. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.

15. The instream use has been modified from the original lease application to prevent injury and enlargement and is as follows:

Seven Mile Creek, tributary to Agency Lake

Certificate	Priority Date	Reach	Primary Instream Rate & Volume	Supp. Instream Rate & Volume	Period Protected Instream
80691	1890	Loosely Culbertson Ditch POD to the confluence of Seven Mile Creek with West Canal and Seven Mile Canal	3.39 CFS (537.92 AF)		May 1 – July 19
			2.12 CFS (306.96 AF)		July 20 – Sept. 30
10912	1886	Loosely Ditches to the confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.17 CFS (185.65 AF)		May 1 – July 19
			0.734 CFS (106.28 AF)		July 20 – Sept. 30
10929	1891	Culbertson Ditch POD to the confluence of Seven Mile Creek with West Canal and Seven Mile Canal	1.07 CFS (169.79 AF)		May 1 – July 19
			0.67 CFS (97.01 AF)		July 20 – Sept. 30
3579 (supp to cert. 10912 & 80691)	5/8/1919	POD (as described in Finding #13) to the confluence of Seven Mile Creek with West Canal and Seven Mile Canal		0.335 CFS (133.55 AF)	May 1 – Sept. 30

Certificate	Priority Date	Reach	Primary Instream Rate & Volume	Supp. Instream Rate & Volume	Period Protected Instream
27657 (supp to cert. 10912, 10929 & 80691)	2/6/1957	Annie Creek Slough Drain POD (lot 4, NW NW, Sec 6, T34S, R7.5E) to the confluence of Seven Mile Creek with West Canal and Seven Mile Canal		1.29 CFS (309.0 AF)	May 1 – August 28

Annie Creek Slough, Four Mile Creek and Seven Mile Creek

Tributary to Agency Lake in the Klamath Basin

Certificate	Priority Date	Reach	Primary Instream Rate & Volume	Period Protected Instream
42582	9/13/1920	Annie Creek Slough POD to the mouth of Annie Creek Slough	0.64 (231.9 AF)	May 1 – Oct. 31
		Four Mile Creek POD to Agency Lake	1.45 CFS (580.0 AF)	April 1 – Sept. 30
		Seven Mile Creek POD to Agency Lake	5.3 CFS (1712.0 AF)	April 1 – Sept. 30

Wood River

Tributary to Agency Lake in the Klamath Basin

Instream Reach: From the POD (as described in Findings of Fact #9 and #11 for Certificates 42581 and 42583) to Agency Lake

Certificate	Priority Date	Primary Instream Rate & Volume	Supp. Instream Rate & Volume	Period Protected Instream
42581	1/26/1910	5.09 CFS (1848.45 AF)		April 1 – Sept. 30
42583 (supp to certificate 42582)	2/5/1955	0.36 CFS (132.05 AF)	Supp. to Annie Creek Slough water: 0.64 CFS (231.9 AF)	May 1 – Oct. 31
		0.25 CFS (90.25 AF)	Supp. to Four Mile and Seven Mile Creeks water: 5.7 CFS (2079.84 AF)	April 1 – Sept. 30

16. 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.

17. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
18. 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.
19. 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.
20. The Lessor has requested that the lease terminate on October 31, 2010.

CONCLUSIONS OF LAW

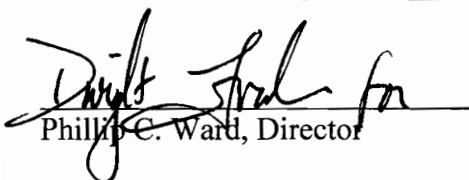
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2010.

Dated at Salem, Oregon this 23 day of September, 2010.


Phillip C. Ward, Director

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: 9-27-10

