

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

In the Matter of the Proposed Lease of Existing Water Rights for Instream Use, Certificates 8201, 7168, and 42756, Klamath County))))	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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
 Glen & Sharline Crouch
 180 Commercial Street, SE, Suite 9
 Salem, Oregon 97301

Lessor #2
 Henry and Deborah Caldwell, Trustees
 Caldwell Family Trust
 7990 Hill Road
 Klamath Falls, Oregon 97603

Findings of Fact

1. Glen & Sharline Crouch and Henry and Deborah Caldwell filed an application to renew L-363, involving a portion of Certificates 8201, 7168, and 42756 to instream use. The Department assigned the application number IL-363.

2. The rights to be leased are as follows:

Certificate: 8201 in the name of IVAN PANKEY (perfected under Permit S-6765)
Use: IRRIGATION of 29.6 ACRES
Priority Date: MAY 28, 1925
Rate: 0.36 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre
Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
36 S	10 E	WM	3	NW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	10 E	WM	32	NE SE	12.6
35 S	10 E	WM	32	NW SE	7.2
35 S	10 E	WM	33	NW SW	3.5
35 S	10 E	WM	33	SW SW	1.0
35 S	10 E	WM	33	SE SW	5.3

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.

Certificate: 7168 in the name of L. PANKY (perfected under Permit S-4829)

Use: IRRIGATION of 12.6 ACRES

Priority Date: JULY 21, 1920

Rate: 0.16 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: SPRAGUE RIVER (WILLIAMSON RIVER), tributary to KLAMATH RIVER

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
36 S	10 E	WM	4		4	1.0
36 S	10 E	WM	4	SW NW		8.0
36 S	10 E	WM	4	NW SW		3.6

Certificate: 42756 in the name of JOSEPH CABRAL (perfected under Permit S-37147)

Use: IRRIGATION of 18.0 ACRES

Priority Date: NOVEMBER 23, 1973

Rate: 0.45 CUBIC FEET PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

Source: SPRAGUE RIVER, tributary to WILLIAMSON RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	10 E	WM	4	SW NW	1990 FEET SOUTH & 600 FEET EAST FROM NW CORNER, SECTION 4

Authorized Place of Use:

IRRIGATION

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
35 S	10 E	WM	4	NW NE	2	1.3
35 S	10 E	WM	4	NE NW	3	5.3
35 S	10 E	WM	4	SE NW		1.4
35 S	10 E	WM	32	SE SW		3.1
36 S	10 E	WM	5	NE NW	3	0.3
36 S	10 E	WM	5	SE NW		6.6

3. The point of diversion for Certificate 7168 is in:

Twp	Rng	Mer	Sec
36 S	10 E	WM	4

4. 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.

5. The instream use is as follows:
SPRAGUE RIVER tributary to WILLIAMSON RIVER

Instream Reach: From POD (as described in Finding of Fact #2 and 3) to River Mile 41

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
8201	MAY 28, 1925	0.37	April 1 through August 19
7168	JULY 21, 1920	0.16	June 12 through October 31
42756	NOVEMBER 23, 1973	0.45	April 1 through May 30

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 application requests that the lease commence on October 31, 2007 and continue through October 31, 2010. The existing lease terminates on October 31, 2007. Special Order Volume 57, Page 826. Typically, leases commence at the beginning of the irrigation season and terminate at the end of the irrigation season. Therefore, this lease will commence on April 1, 2008 and terminate on October 31, 2010.
9. The Lessor has requested the option of terminating the lease early with written notice to the Department.

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 ground water registrations for the same use during the term of the lease.
3. The lease will terminate on October 31, 2010. The Lessor has the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 15th day of February 2007.



Phillip C. Ward, Director

Mailing date: FEB 20 2007