

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificates 10928 and 10929, Klamath) INSTREAM LEASE
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

John von Schlegell / Sevenmile Creek Ranch
920 SW 6th Avenue, Suite 1400
Portland, Oregon 97204-1241

Lessee

Shannon Peterson
Klamath Basin Rangeland Trust (KBRT)
700 Main Street, Suite 201 A
Klamath Falls, OR 97601
shannon.peterson@kbrt.org

Findings of Fact

1. On May 8, 2008, John von Schlegell / Sevenmile Creek Ranch and the KBRT filed an application to renew instream lease IL-572, involving a portion of Certificates 10928 and 10929.
2. Following submission of the renewal request, the Department identified that there were scrivener’s errors in the description of the portion of the rights leased instream for both Certificates 10928 and 10929. The scrivener’s errors appeared in the first order issued approving lease application IL-572, Special order Volume 61, Page 272, and has carried forward in subsequent orders issued approving renewals of this lease application. The scrivener’s errors are corrected in this order and shown in bold and italics in Findings of Fact #4 and #5. In addition, the instream rates described in Finding of Fact #7 have been adjusted as a result of these corrections.
3. The Department assigned the application number IL-930. The application, however, was public noticed as IL-572.
4. The portion of the first right to be leased is as follows:
Certificate: 10928
Use: Irrigation

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.

Acres: 159.3 acres, being 94 .3 acres (from Springs and Crane Creek) under the 1888 priority date and 65.0 acres (from Sevenmile Creek) under the 1890 priority date

Priority Date: 1888 and 1890

Season of Use: April 1 to October 1

Quantity: Rate:
 Before July 20th – limited to 1/50th Cubic Foot per Second (CFS)/acre
 From July 20th – limited to 1/80th CFS/acre
 Duty - limited to 5.0 Acre-Feet (AF)/acre)

Priority Date	Rate Before July 20	Rate From July 20	Duty
1888	1.89 CFS	1.18 CFS	471.5 AF
1890	1.30 CFS	0.81 CFS	325.0 AF
Totals	3.19 CFS	1.99 CFS	796.5 AF

Source: Springs, Crane Creek and Sevenmile Creek, tributary to Agency Lake

Authorized Points of Diversion (POD): Unspecified by Certificate.

Authorized Place of Use:

Township	Range	Meridian	Sec	1/4 1/4	Priority Date	Acres
33	S	6	E	W.M.	35 NE SE	1890 40.0
33	S	6	E	W.M.	35 NW SE	1888 39.3
33	S	6	E	W.M.	35 SW SE	1888 40.0
33	S	6	E	W.M.	35 SE SE	1888 15.0 1890 25.0
Total acres						159.3

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

Certificate: 10929

Use: Irrigation, domestic and stock

Acres: 493.3 acres, being 491.7 acres (from Mares Egg Spring, Springs and Crane Creek) under the 1889 priority date and 1.6 acres (from Sevenmile Creek) under the 1891 priority date

Priority Date: 1889 and 1891

Season of Use: April 1 to October 1

Quantity: Rate:
 1/50th Cubic Foot per Second (CFS)/acre before July 20
 1/80th CFS/acre from July 20
 Duty - limited to 5.0 Acre-Feet (AF)/acre

Priority Date	Rate Before July 20	Rate From July 20	Duty
1889	9.834 CFS	6.15 CFS	2458.5 AF
1891	0.032 CFS	0.02 CFS	8.0 AF
Totals	9.866 CFS	6.17 CFS	2466.5 AF

Source: Mares Egg Springs, Springs, Sevenmile Creek, and Crane Creek, tributary to Agency Lake

Authorized Points of Diversion (POD): Unspecified by Certificate.

Authorized Place of Use:

Township		Range		Meridian	Sec	Lot	Priority Date	Acres
34	S	6	E	W.M.	1	5	1889	39.6
34	S	6	E	W.M.	1	6	1889	39.2
34	S	6	E	W.M.	1	11	1889	20.0
34	S	6	E	W.M.	1	12	1889	40.0
34	S	6	E	W.M.	1	13	1889	40.0
34	S	6	E	W.M.	1	20	1889	10.0
34	S	6	E	W.M.	1	7	1891	1.6
34	S	6	E	W.M.	2	1	1889	26.2
34	S	6	E	W.M.	2	2	1889	26.1
34	S	6	E	W.M.	2	3	1889	25.6
34	S	6	E	W.M.	2	6	1889	40.0
34	S	6	E	W.M.	2	7	1889	40.0
34	S	6	E	W.M.	2	8	1889	40.0
34	S	6	E	W.M.	2	9	1889	35.0
34	S	6	E	W.M.	2	10	1889	20.0
34	S	6	E	W.M.	2	16	1889	30.0
34	S	6	E	W.M.	2	24	1889	20.0
							Total acres	493.3

6. 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.

7. The instream use is as follows:

Certificate	Priority Date	Source & Reach	Instream Rate (cfs)	Period Protected Instream
10928	1888	Crane Cr.: at the Crane Cr. POD	1.89	May 1 – July 19
			1.18	July 20 – Sept. 30
	1890	Sevenmile Cr.: at the Sevenmile Cr. POD	1.3	May 1 – July 19
			0.81	July 20 – Sept. 30
10929	1889	Mares Egg Springs: at the Mares Egg Springs POD	9.834	May 1 – July 19
			6.15	July 20 – Sept. 30
	1891	Sevenmile Cr.: at the Sevenmile Cr. POD	0.032	May 1 – July 19
			0.02	July 20 – Sept. 30

8. 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.

9. 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.
10. 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.
11. The lease will terminate on October 1, 2008.

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 1, 2008.

Dated at Salem, Oregon this 6th day of June 2008.


Phillip C. Ward, Director

Mailing date: JUN 18 2008