

**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 PROPOSED
Use, Certificates 10895, 10907, 10910,)	INSTREAM LEASE
10918, 10920, 10921, 10923, 10924, 10926,)	
28201, 7899, 8261, 8262, 10036, 10896,)	
and 34998, Klamath County)	

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 short-term instream lease applications.

Lessor

John von Schlegell / Sevenmile Creek Ranch
920 SW 6th Ave., Suite 1400
Portland, OR 97204-1241

Lessee

Shannon Peterson
Klamath Basin Rangeland Trust (KBRT)
340 A Street, Suite #302
Ashland, OR 97520
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Findings of Fact

1. John von Schlegell of Sevenmile Creek Ranch and the KBRT filed an application to all of Certificates 10895, 10907, 10910, 10918, 10920, 10921, 10923, 10924, 10926, 28201, 7899, 8261, 8262, 10036, 10896, and 34998 and a portion of Certificate 10926 to instream use. The Department assigned the application number L-682.
2. The lease application includes the information required under OAR 690-077-0077(3). On July 5, 2005, the Department provided notice of the lease application pursuant to OAR 690-077-0077(6). Timely comments were received from Richard Nicholson on July 26, 2005, asserting that this proposed lease, specifically the leasing of certificate 10926 to instream use, would result in injury to water rights held by Mr. Nicholson.
3. On September 12, 2005, the Lessor and the Lessee requested to amend the application to exclude Certificate 10926 and Certificate 7899.

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.

4. The rights to be leased are as follows:

Certificate: 10895
Use: Irrigation (primary) and stock purposes
Acres: 157.2 acres
Priority Date: 1890
Season of Use: April 1 to October 1
Quantity: Rate: 3.14 Cubic Foot per Second (CFS) from April 1 to July 20
 1.97 CFS from July 20 to October 1
 Duty: 786.0 Acre-Feet (AF)
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10895
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	25	NE SW	Loosley-Culbertson Ditch

Certificate: 10907
Use: Irrigation (primary)
Acres: 79.3 acres
Priority Date: 1890
Season of Use: April 1 to October 1
Quantity: Rate: 1.59 CFS from April 1 to July 20
 0.99 CFS from July 20 to October 1
 Duty: 396.5 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10907
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	25	NE SW	Loosley-Culbertson Ditch

Certificate: 10910
Use: Irrigation (primary)
Acres: 158.6 acres
Priority Date: 1890
Season of Use: April 1 to October 1
Quantity: Rate: 3.17 CFS from April 1 to July 20
 1.98 CFS from July 20 to October 1
 Duty: 793.0 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10910
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	25	NE SW	Loosley-Culbertson Ditch

Certificate: 10918
Use: Irrigation (primary) and stock use
Acres: 226.2 acres
Priority Date: 1891
Season of Use: April 1 to October 1
Quantity: Rate: 4.52 CFS from April 1 to July 20
 2.83 CFS from July 20 to October 1
Duty: 1131.0 AF
Source: Short Creek, tributary to Seven Mile Creek
Authorized Place of Use: As described in Certificate 10918
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	26	NE NE	Unnamed Ditch

Certificate: 10919
Use: Irrigation (primary) and stock use
Acres: 31.0 acres
Priority Date: 1891
Season of Use: April 1 to October 1
Quantity: Rate: 0.62 CFS from April 1 to July 20
 0.39 CFS from July 20 to October 1
Duty: 155.0 AF
Source: Unnamed Springs, tributary to Short Creek
Authorized Place of Use: As described in Certificate 10919
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	26	NW SE	Unnamed Ditch

Certificate: 10920
Use: Irrigation (primary) and stock use
Acres: 112.0 acres
Priority Date: 1891
Season of Use: April 1 to October 1
Quantity: Rate: 2.24 CFS from April 1 to July 20
 1.40 CFS from July 20 to October 1
Duty: 560.0 AF
Source: Blue Springs and Unnamed Springs, tributary to Seven Mile Creek
Authorized Place of Use: As described in Certificate 10920
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	23	SE SE	Ditch and overflow
33 S	6 E	WM	26	NE NE	Ditch and overflow – for 30 acres in Section 26

Certificate: 10921
Use: Irrigation (primary) and stock use
Acres: 150.0 acres
Priority Date: 1898
Season of Use: April 1 to October 1
Quantity: Rate: 3.00 CFS from April 1 to July 20
 1.88 CFS from July 20 to October 1
 Duty: 750.0 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10921
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	SW NW	Melhase-Kingdon Ditch

Certificate: 10923
Use: Irrigation (primary), domestic and stock use
Acres: 140.8 acres
Priority Date: 1890
Season of Use: April 1 to October 1
Quantity: Rate: 2.82 CFS from April 1 to July 20
 1.76 CFS from July 20 to October 1
 Duty: 704.0 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10923
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	25	NE SW	Loosley-Culbertson Ditch

Certificate: 10924
Use: Irrigation (primary), domestic and stock use
Acres: 377.0 acres
Priority Date: 1898
Season of Use: April 1 to October 1
Quantity: Rate: 7.54 CFS from April 1 to July 20
 4.71 CFS from July 20 to October 1
 Duty: 1885.0 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10924
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	SW NW	Melhase-Kingdon Ditch

Certificate: 28201
Use: Irrigation (primary)
Acres: 21.2 acres
Priority Date: February 1, 1954
Season of Use: April 1 to October 1
Quantity: Rate: 0.38 CFS, being 0.25 CFS from Seven Mile Creek & 0.13 CFS from Blue Springs
 Duty: 63.6 AF
Source: Seven Mile Creek, tributary to Agency Lake, and Blue Springs, tributary to Seven Mile Creek

Authorized Place of Use: As described in Certificate 28201

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	Blue Spring
33 S	6 E	WM	25	NE SW	Seven Mile Creek

Certificate: 8261
Use: Irrigation (supplemental to Certificate 10921), domestic and stock use
Acres: 150.0 acres
Priority Date: September 25, 1928
Season of Use: May 11 to October 1 (consistent with the stipulated agreement with the Oregon State Game Commission)
Quantity: Rate: 2.00 CFS
 Duty: 750.0 AF

Source: Blue Springs, tributary to Seven Mile Creek

Authorized Place of Use: As described in Certificate 8261

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	

Certificate: 8262
Use: Irrigation (supplemental to Certificate 10895)
Acres: 157.2 acres
Priority Date: October 24, 1928
Season of Use: May 11 to October 1 (consistent with the stipulated agreement with the Oregon State Game Commission)
Quantity: Rate: 2.00 CFS
 Duty: 786.0 AF

Source: Blue Springs, tributary to Seven Mile Creek

Authorized Place of Use: As described in Certificate 8262

Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	

Certificate: 10036
Use: Irrigation (supplemental to Certificate 10924)
Acres: 377.0 acres
Priority Date: August 31, 1928 and January 15, 1929
Season of Use: May 11 to October 1 (consistent with the stipulated agreement with the Oregon State Game Commission)
Quantity: Rate: 2.25 CFS for August 31, 1928
 2.49 CFS for January 15, 1929
 Duty: 1885.0 AF
Source: Blue Springs, tributary to Seven Mile Creek
Authorized Place of Use: As described in Certificate 10036
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	

Certificate: 10896
Use: Irrigation (supplemental to Certificate 10895) and stock purposes
Acres: 157.2 acres
Priority Date: 1898
Season of Use: April 1 to October 1
Quantity: Rate: 3.14 CFS from April 1 to July 20
 1.97 CFS from July 20 to October 1
 Duty: 786.0 AF
Source: Seven Mile Creek, tributary to Agency Lake
Authorized Place of Use: As described in Certificate 10896
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	SW NW	Melhase-Kingdon Ditch

Certificate: 34998
Use: Irrigation (supplemental to Certificates 10895 and 10910)
Acres: 126.3 acres, being 51.0 acres supplemental to Certificate 10910 and 75.3 acres supplemental to Certificate 10895
Priority Date: September 28, 1962
Season of Use: April 1 to October 1
Quantity: Rate: 2.53 CFS
 Duty: 631.5 AF
Source: Unnamed Drain, tributary to Seven Mile Creek
Authorized Place of Use: As described in Certificate 34998
Authorized Points of Diversion (POD) (approximate location):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	36	NE NE	10 feet South and 10 feet West from NE Corner, Section 36

5. The instream use has been modified from the lease application to prevent injury and enlargement or, in some cases, to provide for the protection of additional flows instream. The instream use is as follows:

Primary Instream

Reach	Certificate	Priority Date	Instream Rate April 1 – July 19	Instream Rate July 20 – Sept. 30
Blue Springs, tributary to Seven Mile Creek				
Blue Springs POD (as described in Finding of Fact #4) to confluence with Short Creek	10920	1891	1.89 CFS	1.02 CFS
Blue Springs POD (as described in Finding of Fact #4) to confluence with Short Creek	28201	2/1/1954	0.04 CFS	0.04 CFS
Total Instream in Blue Springs			1.93 CFS	1.06 CFS
Unnamed Springs, tributary to Short Creek				
POD (as described in Finding of Fact #4) to confluence with Short Creek	10919	1891	0.50 CFS	0.31 CFS
Total Instream in Unnamed Springs			0.50 CFS	0.31 CFS
Short Creek, tributary to Seven Mile Creek				
POD (as described in Finding of Fact #4) to mouth of Short Creek	10918	1891	3.85 CFS	2.02 CFS
Confluence of Unnamed Springs with Short Creek to mouth of Short Creek	10919	1891	0.50 CFS	0.31 CFS
Total Instream in Short Creek			4.35 CFS	2.33 CFS
Seven Mile Creek, tributary to Agency Lake, in the Klamath Basin				
Melhase-Kingdon Ditch POD on Sevenmile Creek to Agency Lake	10921	1898	2.46 CFS	1.48 CFS
	10924	1898	6.32 CFS	3.51 CFS
Sub Total			8.78 CFS	4.99 CFS
Mouth of Blue Springs to Agency Lake	10920	1891	1.89 CFS	1.02 CFS
	28201	2/1/1954	0.04 CFS	0.04 CFS
Sub Total			10.71 CFS	6.05 CFS
Loosley-Culbertson Ditch POD on Seven Mile Creek to Agency Lake	10895	1890	2.30 CFS	1.97 CFS
	10907	1890	1.16 CFS	0.99 CFS
	10910	1890	2.33 CFS	1.98 CFS
	10923	1890	2.38 CFS	1.28 CFS
	28201	2/1/1954	0.13 CFS	0.13 CFS
Sub Total			19.01 CFS	12.40 CFS
Mouth of Short Creek to Agency Lake	10918	1891	3.85 CFS	2.02 CFS
	10919	1891	0.50 CFS	0.31 CFS
Total Instream for Seven Mile Creek			23.36 CFS	14.73 CFS

Supplemental Instream

Reach	Certificate	Priority Date	Instream Rate April 1 – July 19	Instream Rate July 20 – Sept. 30
Blue Springs, tributary to Seven Mile Creek, in the Klamath Basin				
POD to mouth of Blue Springs	8261	9/25/1928	2.00 CFS*	2.00 CFS
	8262	10/24/1928	2.00 CFS*	2.00 CFS
	10036	8/31/1928	2.25 CFS*	2.25 CFS
		1/15/1929	2.49 CFS*	2.49 CFS
Total Instream in Blue Springs			8.74 CFS	8.74 CFS
Unnamed Drain, tributary to Seven Mile Creek, in the Klamath Basin				
POD (as described in Finding of Fact #4) to mouth of Unnamed Drain	34998	9/28/1962	1.74 CFS	1.74 CFS
Total Instream in Unnamed Drain			1.74 CFS	1.74 CFS
Seven Mile Creek, tributary to Agency Lake, in the Klamath Basin				
Melhase-Kingdon Ditch POD on Sevenmile Creek to Agency Lake	10896	1898	2.30 CFS	1.97 CFS
Sub Total			2.30 CFS	1.97 CFS
Mouth of Blue Springs to Agency Lake	8261	9/25/1928	2.00 CFS*	2.00 CFS
	8262	10/24/1928	2.00 CFS*	2.00 CFS
	10036	8/31/1928	2.25 CFS*	2.25 CFS
		1/15/1929	2.49 CFS*	2.49 CFS
Sub Total			11.04 CFS	10.71 CFS
Mouth of Unnamed Drain to Agency Lake	34998	9/28/1962	1.74 CFS	1.74 CFS
Total Instream for Seven Mile Creek			12.78 CFS	12.45 CFS

*Instream period begins on May 11

6. Certificate 8261 is supplemental to certificate 10921. The portion of certificate 8261 being leased instream shall only be protected instream if the full rate and duty under certificate 10921 are not available during the period for which water is being leased instream.

Certificates 10896 (1898 priority date), 8262 (October 24, 1928, priority date), and a portion of Certificate 34998 (1.04 CFS) (September 28, 1962, priority date) are supplemental to certificate 10895. The portion of certificates 10896, 8262, and 34998 being leased instream shall only be protected instream if the full rate and duty under certificate 10895 are not available during the period for which water is being leased instream.

Certificate 10036 is supplemental to certificate 10924. The portion of certificate 10036 being leased instream shall only be protected instream if the full rate and duty under certificate 10924 are not available during the period for which water is being leased instream.

A portion of Certificate 34998 (0.7 CFS) is supplemental to certificate 10910. The portion of certificate 34998 being leased instream that is supplemental to Certificate 10910 shall only be protected instream if the full rate and duty under certificate 10910 are not available during the period for which water is being leased instream.

7. 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.
8. 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.
9. The lease will terminate on September 30, 2005.

CONCLUSIONS OF LAW

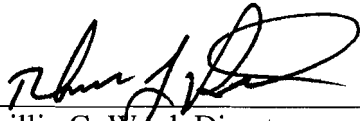
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on September 30, 2005.

Dated at Salem, Oregon this 14th day of September 2005.


Phillip C. Ward, Director

Mailing date: SEP 15 2005