

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-817, Certificates 10927 and 10928,) FINAL ORDER ON PROPOSED
Klamath County) INSTREAM LEASE

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

Sevenmile Creek Ranch / John von Schlegell
c/o Endeavour Capital
920 SW Sixth Avenue, Suite 1400
Portland, Oregon 97204

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 June 30, 2009, the KBRT and John von Schlegell of Sevenmile Creek Ranch filed an application to renew instream lease IL-817, involving lease all of Certificate 10927 and a portion of Certificate 10928. The Department assigned the application number IL-817.
2. The first right to be leased is as follows:

Certificate: 10927 in the name of LEONARD J. WOODRUFF (confirmed by Wood River decree)

Use: IRRIGATION of 80.0 ACRES

Priority Date: 1900

Rate: 1.60 CUBIC FEET PER SECOND (cfs) prior to July 20th and 1.00 cfs thereafter

Limit/Duty: ONE-FIFTIETH cfs per acre prior to July 20th and ONE-EIGHTIETH cfs per acre thereafter, not to exceed 5 acre-feet per acre per year

Source: SEVEN MILE CREEK, tributary to UPPER KLAMATH LAKE

Authorized Point of Diversion: Not described on certificate

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	36	NW NW	40.0
33 S	6 E	WM	36	SW NW	40.0

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

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: 10928 in the name of LEONARD J WOODRUFF (confirmed by Wood River decree)

Use: IRRIGATION of 140.0 ACRES

Priority Date: 1888 for 60.0 acres, 1890 for 20.0 acres, and 1900 for 60.0 acres

Rate: 2.80 CUBIC FEET PER SECOND (cfs) prior to July 20th and 1.75 cfs thereafter

Limit/Duty: ONE-FIFTIETH cfs per acre prior to July 20th and ONE-EIGHTIETH cfs per acre thereafter, not to exceed 5 acre-feet per acre per year

Source: Springs, Crane Creek, and Seven Mile Creek

Authorized Point of Diversion: Not described on certificate.

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority	Source
33 S	6 E	WM	35	NE NE	40.0	1900	Seven Mile Cr
33 S	6 E	WM	35	NW NE	25.0	1888	Springs and Crane Cr
33 S	6 E	WM	35	SW NE	35.0	1888	Springs and Crane Cr
33 S	6 E	WM	35	SE NE	20.0	1900	Seven Mile Cr
33 S	6 E	WM	35	SE NE	20.0	1890	Seven Mile Cr

4. For purposes of this lease the following PODs will be used:

Twp	Rng	Mer	Sec	Q-Q	Source	Certificate
33 S	6 E	WM	36	NW NW	Seven Mile Cr	10927
33 S	6 E	WM	35	NE NE	Seven Mile Cr	10928
33 S	6 E	WM	35	NW NE	Springs and Crane Cr	10928

5. 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.

6. The instream use is as follows:

Instream Reach: From POD (as described in Finding of Fact #4) to Agency Lake

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream	Instream Reach
10927	1900	1.00	May 13 through September 30	Seven Mile Cr POD to Agency Lake
10928	1888	0.75		Springs and Crane Cr POD to Agency Lake
	1890	0.25		Seven Mile Cr POD to Agency Lake
	1900	0.75		Seven Mile Cr POD to Agency Lake
Total		2.75		

7. Other conditions to prevent injury and enlargement are:

A 3.5 acre-foot per acre limitation has been applied to prevent injury and enlargement.

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 Lessor has requested that the lease terminate on September 30, 2009.

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 September 30, 2009.

Dated at Salem, Oregon this 30th day of July, 2009.



Phillip C. Ward, Director *PCW*

Mailing date: AUG 03 2009