

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

In the Matter of Instream Lease Application )  
IL-682, Certificates 10895, 10907, 10910, )  
10918, 10919, 10920, 10921, 10923, 10924, )  
28201, 8261, 8262, 10036, 10896, and )  
34998, Klamath County )

DETERMINATION and  
FINAL ORDER ON PROPOSED  
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**

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

**Lessee**

Shannon Peterson  
Klamath Basin Rangeland Trust (KBRT)  
700 Main Street, Suite 201 A  
Klamath Falls, OR 97601  
[shannon.peterson@kbrt.org](mailto: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 L-682, involving all of Certificates 10895, 10907, 10910, 10918, 10919, 10920, 10921, 10923, 10924, 28201, 8261, 8262, 10036, 10896, and 34998. The Department assigned the application number IL-682.
2. Certificate 34998 is misidentified on the instream lease renewal request as Certificate 34988. This order correctly identifies the certificate to be leased to instream use.
3. The first right to be leased is 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

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.

**Authorized Point of Diversion (POD) (approximate location):**

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

4. The second right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

5. The third right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

6. The fourth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

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

**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 Point of Diversion (POD) (approximate location):**

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

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

**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

9. The seventh right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

10. The eighth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

11. The ninth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

12. The tenth right to be leased is as follows:

**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

13. The eleventh right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	Not specified by Certificate or Decree

14. The twelfth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	Not specified by Certificate or Decree

15. The thirteenth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
33 S	6 E	WM	24	NW SW	Not specified by Certificate or Decree

16. The fourteenth right to be leased is as follows:

**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 Point of Diversion (POD) (approximate location):**

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

17. The fifteenth right to be leased is as follows:

**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 Point 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

18. 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.

19. The instream use is as follows:

**Primary Instream**

Reach	Certificate	Priority Date	Instream Rate April 1 – July 19	Instream Rate July 20 – Sept. 30
<b>Blue Springs, tributary to Seven Mile Creek</b>				
Blue Springs POD (as described in Finding of Fact #8) to confluence with Sevenmile Creek	10920	1891	1.89 CFS	1.02 CFS
Blue Springs POD (as described in Finding of Fact #12) to confluence with Sevenmile Creek	28201	2/1/1954	0.04 CFS	0.04 CFS
<b>Total Instream in Blue Springs</b>			<b>1.93 CFS</b>	<b>1.06 CFS</b>
<b>Unnamed Springs, tributary to Short Creek</b>				
POD (as described in Finding of Fact #5) to confluence with Short Creek	10919	1891	0.50 CFS	0.31 CFS
<b>Total Instream in Unnamed Springs</b>			<b>0.50 CFS</b>	<b>0.31 CFS</b>
<b>Short Creek, tributary to Seven Mile Creek</b>				
POD (as described in Finding of Fact #6) 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
<b>Total Instream in Short Creek</b>			<b>4.35 CFS</b>	<b>2.33 CFS</b>
<b>Seven Mile Creek, tributary to Agency Lake, in the Klamath Basin</b>				
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
<b>Sub Total</b>			<b>8.78 CFS</b>	<b>4.99 CFS</b>
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
<b>Sub Total</b>			<b>10.71 CFS</b>	<b>6.05 CFS</b>
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
<b>Sub Total</b>			<b>19.01 CFS</b>	<b>12.40 CFS</b>
Mouth of Short Creek to Agency Lake	10918	1891	3.85 CFS	2.02 CFS
	10919	1891	0.50 CFS	0.31 CFS
<b>Total Instream for Seven Mile Creek</b>			<b>23.36 CFS</b>	<b>14.73 CFS</b>

### Supplemental Instream

Reach	Certificate	Priority Date	Instream Rate April 1 – July 19	Instream Rate July 20 – Sept. 30
<b>Blue Springs, tributary to Seven Mile Creek, in the Klamath Basin</b>				
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
<b>Total Instream in Blue Springs</b>			<b>8.74 CFS</b>	<b>8.74 CFS</b>
<b>Unnamed Drain, tributary to Seven Mile Creek, in the Klamath Basin</b>				
POD (as described in Finding of Fact #17) to mouth of Unnamed Drain	34998	9/28/1962	1.74 CFS	1.74 CFS
<b>Total Instream in Unnamed Drain</b>			<b>1.74 CFS</b>	<b>1.74 CFS</b>
<b>Seven Mile Creek, tributary to Agency Lake, in the Klamath Basin</b>				
Melhase-Kingdon Ditch POD on Sevenmile Creek to Agency Lake	10896	1898	2.30 CFS	1.97 CFS
<b>Sub Total</b>			<b>2.30 CFS</b>	<b>1.97 CFS</b>
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
<b>Sub Total</b>			<b>11.04 CFS</b>	<b>10.71 CFS</b>
Mouth of Unnamed Drain to Agency Lake	34998	9/28/1962	1.74 CFS	1.74 CFS
<b>Total Instream for Seven Mile Creek</b>			<b>12.78 CFS</b>	<b>12.45 CFS</b>

\*Instream period begins on May 11

20. Other conditions to prevent injury and enlargement are:

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.

21. The lease application requests to protect water instream from several sources tributary to Sevenmile Creek into Sevenmile Creek. An instream reach is generally from the point of diversion to the mouth of the source stream but may be protected further if measurable in the receiving stream (Sevenmile Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from each of the streams tributary to Sevenmile Creek is measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.
22. 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.
23. 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.
24. 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.
25. 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 30<sup>th</sup> day of July, 2009.

  
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Phillip C. Ward, Director *PCW*

Mailing date: AUG 03 2009