

**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

Oregon Revised Statute (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. Oregon Administrative Rule (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
c/o John von Schlegell
760 SW Ninth Ave. Ste. 2300
Portland, OR. 97205

Co-Lessor

Trout Unlimited
700 Main St., Suite 201A
Klamath Falls, OR 97601

Findings of Fact

1. On June 22, 2017, Sevenmile Creek Ranch with Trout Unlimited filed an application to renew instream lease IL817, involving all of Certificate 10927 and a portion of Certificate 10928 for instream use.

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 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 of one cubic foot per second per acre irrigated prior to July 20th and ONE-EIGHTIETH of one cubic foot per second per acre irrigated thereafter, and shall not exceed 5 acre feet per acre during irrigation season from April 1st to October 1st of each year.

Source: SEVENMILE CREEK, tributary to the UPPER KLAMATH LAKE

Authorized Point of Diversion: Not described on the Certificate

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 Place of Use:

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 second right to be leased is as follows:

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 of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: Springs, Crane Creek and Sevenmile Creek

Authorized Point of Diversion: Not described on the 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	Sevenmile Creek
33 S	6 E	WM	35	NW NE	25.0	1888	Springs and Crane Creek
33 S	6 E	WM	35	SW NE	35.0	1888	Springs and Crane Creek
33 S	6 E	WM	35	SE NE	20.0	1900	Sevenmile Creek
33 S	6 E	WM	35	SE NE	20.0	1890	Sevenmile Creek

4. For the 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	Sevenmile Creek	10927
33 S	6 E	WM	35	NE NE	Sevenmile Creek	10928
33 S	6 E	WM	35	NW NE	Springs and Crane Creek	

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's (as described in Finding of Fact #4) to Agency Lake

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream	Instream Reach
10927	1900	1.00	279.67	May 13 through September 30	Seven Mile Cr POD to Agency Lake
10928	1888	0.75	209.75		Springs and Crane Cr POD to Agency Lake
	1890	0.25	69.92		Seven Mile Cr POD to Agency Lake
	1900	0.75	209.75		Seven Mile Cr POD to Agency Lake
Total		2.75	769.09		

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. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right(s).

9. The protection of flows at the authorized point of diversion is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.

10. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose.

11. The total monthly quantities of water to be protected instream under existing and proposed instream rights at the point do not exceed the estimated average natural flow. 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.

12. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream 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.

13. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For

example, instream 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 any future transactions.

14. The Lessor has requested that the lease terminate on October 1, 2022. The lease may commence on the date this final order is signed.
15. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

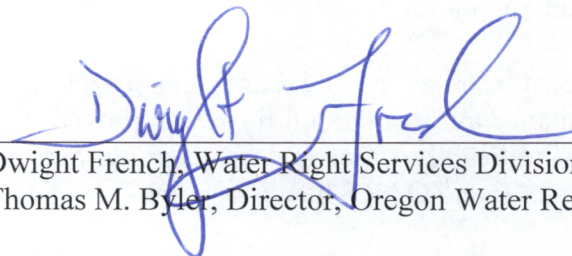
Conclusions of Law

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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence on April 1, 2018 and terminate on October 1, 2022. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 thru October 1) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 17 day of August, 2017.


Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: AUG 22 2017

*This document was prepared by Kerri
H. Cope and if you have any
questions, please call 503-986-0919.*