

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1258, Certificates 10920, 10918, 10919,) FINAL ORDER ON PROPOSED
10921, 10928, 10929, 28201, and 8261,) INSTREAM LEASE
Klamath 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 Ave., Suite 1400
Portland, OR 97204-1241
jevs@endeavourcapitol.com

Lessee

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

Findings of Fact

1. On August 31, 2012, the KBRT and John von Schlegell, Sevenmile Creek Ranch, filed an application to lease all of Certificates 10920, 10919, and a portion of Certificates 10918, 10921, 10928, 10929, 28201, and 8261 for instream use. The Department assigned the application number IL-1258.
2. In response to requests for additional information from the Department, information and revised application materials were provided by the KBRT on March 27, June 12, 2013, and August 5, 2013.
3. The first right to be leased is as follows:

Certificate: 10920 in the name of S. C. Miller (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 112 acres and stock use

Season of Use: April 1 to October 1

Priority Date: 1891

Quantity: Rate: 2.24 Cubic Foot per Second (CFS) prior to July 1 and 1.4 CFS thereafter

Duty: 560.0 Acre-Feet (AF)

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.

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

Source: Blue Springs and Unnamed Springs, tributary to Sevenmile Creek

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	23	SE SE	30.0
33 S	6 E	WM	25	NE NW	12.0
33 S	6 E	WM	25	NW NW	40.0
33 S	6 E	WM	26	NE NE	30.0

4. Certificate 10920 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Lessee, for purposes of this instream lease, the point of diversion may be more accurately located as follows (and is the same point of diversion as that used under Certificates 28201 and 8261):

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	24	NW SW	Latitude 42.69445419 Longitude - 122.074553918

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

Certificate: 10918 in the name of S. C. Miller (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 218.3 acres and stock use

Season of Use: April 1 to October 1

Priority Date: 1891

Quantity: **Rate:** 4.37 Cubic Foot per Second (CFS) prior to July 1 and 2.73 CFS thereafter

Duty: 1091.5 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

Source: Short Creek, tributary to Sevenmile Creek

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	25	SW NW	35.6
33 S	6 E	WM	25	SE NW	2.4
33 S	6 E	WM	25	NW SW	38.6
33 S	6 E	WM	25	SW SW	33.5
33 S	6 E	WM	26	SE NE	37.2
33 S	6 E	WM	26	NE SE	40.0
33 S	6 E	WM	26	SW SE	2.0
33 S	6 E	WM	26	SE SE	29.0

6. Certificate 10918 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Lessee, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	26	NE NE	Latitude 42.68899918 Longitude – 122.07790375

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

Certificate: 10919 in the name of S. C. Miller (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 31.0 acres and stock use

Season of Use: April 1 to October 1

Priority Date: 1891

Quantity: **Rate:** 0.62 Cubic Foot per Second (CFS) prior to July 1 and 0.39 CFS thereafter

Duty: 155.0 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

Source: Unnamed Springs, tributary to Short Creek, which is tributary to Sevenmile Creek

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	26	SW SE	20.0
33 S	6 E	WM	26	SE SE	11.0

8. Certificate 10919 does not provided a description of the location of the point of diversion. Based upon additional information provided by the Lessee, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	26	NW SE	Latitude 42.68108894 Longitude – 122.008045197

9. On March 27, 2013, the Lessor amended the lease application to add an additional 4.4 acres inadvertently left out of the original lease application. The portion of the fourth right to be leased has been modified from the lease application and is as follows:

Certificate: 10921 in the name of S. C. Miller (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 37.7 acres and stock use

Season of Use: April 1 to October 1

Priority Date: 1898

Quantity: **Rate:** 0.75 Cubic Foot per Second (CFS) prior to July 1 and 0.47 CFS thereafter

Duty: 188.5 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

Source: Sevenmile Creek, tributary to Agency Lake

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	25	NE NW	11.7
33 S	6 E	WM	25	SW NW	4.4
33 S	6 E	WM	25	SE NW	21.6

10. Certificate 10921 does not provided a description of the location of the point of diversion. The Decree identifies the point of diversion as Melhase-Kingdon Ditch. This diversion point is also associated with a certificate proposed for transfer under T-11375. Based upon additional information provided by the Lessee and information provided with T-11375, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	SW NW	Melhase-Kingdon Ditch - 1875 FEET SOUTH AND 390 FEET EAST FROM THE NW CORNER OF SECTION 24

11. The portion of the fifth right to be leased is as follows:

Certificate: 10928 in the name of Leonard J. Woodruff (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 28.6 acres

Season of Use: April 1 to October 1

Priority Date: 1888

Quantity: **Rate:** 0.57 Cubic Foot per Second (CFS) prior to July 1 and 0.36 CFS thereafter

Duty: 143.0 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

Source: Springs and Crane Creek, tributary to Agency Lake

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	35	NW SE	19.4
33 S	6 E	WM	35	SW SE	9.2

12. Certificate 10928 does not provided a description of the location of the point of diversion. The Decree identifies the point of diversion as associated with Woodruff Ditches. Based upon additional information provided by the Lessee, for purposes of this instream lease, the point of diversion may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	35	NW SE	Woodruff Ditches - Latitude 42.66734695 Longitude - 122.08183289

13. On April 28, 2013, the Lessor requested that the portion of the right originally proposed to be leased from Lots 17 and 24 be removed from the lease application. In addition, the Department identified that the full footprint of the right in Lots 4 and 5 in Section 2 did not appear to be irrigated and located on the Lessors property. There appears to be approximately 8.0 acres of irrigation in Lot 4 and 3.0 acres of irrigation in Lot 5. The portion of the sixth right to be leased has been modified from the original lease application and is as follows:

Certificate: 10929 in the name of Leonard J. Woodruff (confirmed by the Wood River Decree entered of record at Salem, in the Order Record of the State Engineer in Volume 12, at Page 269)

Use: Irrigation of 403.6 acres, domestic and stock use (during the irrigation season)

Season of Use: April 1 to October 1

Priority Date: 1889

Quantity: **Rate:** 8.07 Cubic Foot per Second (CFS) prior to July 1 and 5.05 CFS thereafter

Duty: 2018.0 Acre-Feet (AF)

Limit: One-fiftieth CFS per acre irrigated prior to July 20th, and one-eightieth CFS per acre thereafter, and shall not exceed 5.0 AF per acre during the irrigation season

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

Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Gov't Lot	Acres
34 S	6 E	WM	1	5	19.1
34 S	6 E	WM	1	6	2.5
34 S	6 E	WM	1	10	19.9
34 S	6 E	WM	1	11	38.0
34 S	6 E	WM	1	12	40.0
34 S	6 E	WM	1	13	36.1
34 S	6 E	WM	1	20	23.4
34 S	6 E	WM	2	1	0.6
34 S	6 E	WM	2	2	16.5
34 S	6 E	WM	2	3	25.6
34 S	6 E	WM	2	4	8.0
34 S	6 E	WM	2	5	3.0
34 S	6 E	WM	2	6	40.0
34 S	6 E	WM	2	7	40.0
34 S	6 E	WM	2	8	35.9

Twp	Rng	Mer	Sec	Gov't Lot	Acres
34 S	6 E	WM	2	9	35.0
34 S	6 E	WM	2	10	20.0

14. The Lessee has requested that water be leased instream under Certificate 10929 from Mares Egg Spring (142.1 ac) and Crane Creek (261.5 ac). Certificate 10929 does not provided a description of the location of the points of diversion. The Decree identifies the points of diversion as associated with Woodruff Irrigation System. Based upon additional information provided by the Lessee, it appears that the point of diversion for Mares Egg Spring, for the purposes of the instream lease, is the outlet for the spring and may be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
34 S	6 E	WM	2	NW NW	Latitude 42.66057587 Longitude - 122.08671570

In addition, it appears that the point of diversion for Crane Creek, for purposes of the instream lease, is the same point of diversion as that described above for Certificate 10928 and may be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	35	NW SE	Latitude 42.66734695 Longitude - 122.08183289

15. On June 12, 2013, the Lessor clarified the portion of the right to be leased from each source. The portion of the seventh right to be leased has been modified from the lease application and is as follows:

Certificate: 28201 in the name of Loren Miller Company (perfected under permit S-23668)

Use: Irrigation of 2.6 acres, being 1.06 acres from Blue Springs and 1.54 acres from Sevenmile Creek

Priority Date: February 1, 1954

Quantity: **Rate:** 0.027 CFS from Blue Springs and 0.024 CFS from Sevenmile Creek

Duty: 3.18 AF from Blue Springs and 4.62 AF from Sevenmile Creek

Limit: One-fortieth CFS per acre and further limited to a diversion of not to exceed 3.0 AF per acre for each acre irrigated during the irrigation season of each year

Source: Blue Springs and Sevenmile Creek, tributaries of Agency Lake

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	Blue Springs – measured distances not provided
33 S	6 E	WM	25	NE SW	Sevenmile Creek – measured distances not provided

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Source	Acres
33 S	6 E	WM	25	NE SW	Blue Springs	1.06
33 S	6 E	WM	25	NE SW	Sevenmile Cr.	1.54

16. Certificate 28201 does not provided measured distances for the point of diversion locations on Sevenmile Creek or Blue Springs. Based upon additional information provided by the Lessee, it appears that the points of diversion, for the purposes of the instream lease, may be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	24	NW SW	Blue Springs - Latitude 42.69445419 Longitude – 122.074553918
33 S	6 E	WM	25	NE SW	Sevenmile Creek – Latitude 42.68252182 Longitude – 122.06811523

17. Certificate 28201 does not identify the irrigation season. However, consistent with the other rights included in this instream lease and the Wood River Decree, the irrigation season is April 1 to October 1.

18. On March 27, 2013, the Lessor amended the lease application to add an additional 4.4 acres inadvertently left out of the original lease application. The portion of the eighth right to be leased has been modified from the original lease application and is as follows:

Certificate: 8261 in the name of S. C. Miller (perfected under permit S-9179)

Use: Irrigation of 37.7 acres, Domestic and Stock

Priority Date: September 25, 1928

Quantity: **Rate:** 0.5 CFS

Limit: the amount of water for irrigation, together with the amount secured under any other right existing for the same lands shall be limited to One-eighth CFS per acre

Source: Blue Springs, tributary to Sevenmile Creek

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
33 S	6 E	WM	24	NW SW	measured distances not provided

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	6 E	WM	25	NE NW	11.7
33 S	6 E	WM	25	SW NW	4.4
33 S	6 E	WM	25	SE NW	21.6

19. Certificate 8621 does not provided measured distances for the point of diversion location on Blue Springs. Based upon additional information provided by the Lessee, it appears that the point of diversion, for the purposes of the instream lease, may be located as follows:

Twp	Rng	Mer	Sec	Q-Q	Coordinates
33 S	6 E	WM	24	NW SW	Blue Springs - Latitude 42.69445419 Longitude – 122.074553918

20. Certificate 8621 does not identify the irrigation season. However, the right is subject to terms of a stipulation with the Oregon State Game Commission (currently the Oregon Department of Fish and Wildlife), which limits use to May 11 to October 1.

21. Certificate 8261 is supplemental to the portion of Certificate 10921 proposed to be leased instream.

22. Certificate 8261 does not specify an annual duty per acre. The duty of other rights involved in this transfer, based on the Wood River Decree, is limited to 5.0 acre-feet per acre. However, the season of use associated with Certificate 8261 limits the maximum volume of water that could be diverted over the course of the season to 141.8 AF given a rate limit of up to 0.5 CFS. This is equivalent to 3.76 acre-feet per acre. Given that this is a supplemental use, this is a reasonable amount considering beneficial use without waste.
23. 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) on September 11, 2012, and re-noticed on April 9 and 30, 2013, to include Certificate 8261 and additional acreage under Certificates 10921 and 8621. No comments were received.
24. Under Certificate 10920, 28201, and 8261 (supplemental only), the lease application requests to protect water instream from Blue Springs into Sevenmile Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Blue Springs) 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 Blue Springs is measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.
25. Under Certificate 10918, the lease application requests to protect water instream from Short Creek into Sevenmile Creek. Consistent with OAR 690-077-0015 (8), the Department has identified that the quantities to be leased are measurable in Sevenmile Creek and may be protected instream in Sevenmile Creek.
26. Under Certificate 10919, the lease application is requesting to protect water instream from Unnamed Springs, tributary to Short Creek and into Sevenmile Creek. Consistent with OAR 690-077-0015 (8), the Department has identified that the quantities to be leased are measurable into Short Creek and into Sevenmile Creek and may be protected instream in Short Creek and Sevenmile Creek.
27. Under Certificate 10928, the lease application is requesting to protect water instream from Crane Creek into Sevenmile Creek. Consistent with OAR 690-077-0015 (8), the Department has identified that the quantities to be leased are measurable into Sevenmile Creek and may be protected instream in Sevenmile Creek.
28. Under Certificate 10929, the lease application is requesting to protect water instream from Mares Egg Spring, tributary to Crane Creek and into Sevenmile Creek. Consistent with OAR 690-077-0015 (8), the Department has identified that the quantities to be leased are measurable into Crane Creek and into Sevenmile Creek and may be protected instream in Short Creek and Sevenmile Creek.
29. The applicant has requested to protect water instream from the PODs as described in Findings of Fact #4, #6, #8, #10, #12, #14, #16, and #19 to the mouth of Sevenmile Creek. A portion of the water diverted under Certificates 10920, 10918, 10919, 10928, and 10929 returns to Sevenmile Creek within the proposed reach and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows.

The place of use described below for Certificates 10920, 10918, 10919, 10928, and 10929 is located in close proximity to Sevenmile Creek and will have approximately 10.0% return flows along the creek.

- a) Certificate 10920: Return flows are associated with all 112.0 acres irrigated under this right. Return flows associated with Certificate 10920 should be accounted for in Sevenmile Creek at confluence with Blue Springs
- b) Certificate 10918: Return flows are associated with lands irrigated under this right west of Sevenmile Creek, which is approximately 204.8 acres. Return flows associated with Certificate 10918 should be accounted for in Sevenmile Creek at the confluence with Short Creek.
- c) Certificate 10919: Return flows are associated with all 31.0 acres irrigated under this right. Return flows associated with Certificate 10919 should be accounted for in Short Creek at the confluence with the Unnamed Springs.
- d) Certificate 10928: Return flows are associated with all 28.6 acres irrigated under this right. Return flows associated with Certificate 10928 should be accounted for in Crane Creek below the place of use where Crane Creek crosses from Section 35 and into Section 2, T34S, R6E, W.M.
- e) Certificate 10929: Return flows are associated with approximately 109.0 acres located on the north side of Crane Creek and for the 142.1 acres being leased from Mares Egg Springs should be accounted for at the confluence between Crane Creek and Mares Egg Spring. For the 261.5 acres being leased from Crane Creek, the return flows should be accounted for at the same point described for Certificate 10928.

30. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Blue Springs, tributary to Sevenmile Creek

Instream Reach: From the POD (as described in Finding of Fact #4) and through the natural channel of Blue Springs to the confluence with Sevenmile Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10920	1891	1.89	1.02	560.0
28201	2/1/1954	0.009	0.009	3.18
Totals		1.899	1.029	536.18

Unnamed Springs, tributary to Short Creek

Instream Reach: From the POD (as described in Finding of Fact #8) to the confluence with Short Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10919	1891	0.5	0.31	153.98

Short Creek, tributary to Sevenmile Creek

Instream Reach #1: From the POD for Certificate 10918 (as described in Finding of Fact #6 to the confluence with the Unnamed Springs

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10918	1891	3.54	2.21	1091.5

Instream Reach #2: From the confluence with the Unnamed Springs to the mouth of Short Creek at the confluence with Sevenmile Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10918	1891	3.54	2.21	1091.5
10919	1891	0.45	0.28	136.31
Totals		3.99	2.49	1227.81

Mares Egg Spring, tributary to Crane Creek

Instream Reach #1: From the outlet of Mares Egg Springs Certificate 10929 (as described in Finding of Fact #14) to the confluence with Crane Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10929	1889	2.30	1.44	710.32

Crane Creek, tributary to Sevenmile Creek

Instream Reach #1: From the POD for Certificate 10928 and 10929 (as described in Finding of Fact #12 and #14) to the Section line between Section 36 (T33S, R6E, W.M.) and Section 2 (T34S, R6E, W.M.)

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10928	1888	0.46	0.30	142.93
10929	1889	4.23	2.65	1306.61
Totals		4.69	2.95	1449.54

Instream Reach #2: From the Section line between Section 36 (T33S, R6E, W.M.) and Section 2 (T34S, R6E, W.M.) to the confluence with Mares Egg Spring

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10928	1888	0.41	0.27	126.35
10929	1889	4.17	2.61	1284.71
Totals		4.58	2.88	1411.06

Instream Reach #3: From the confluence with Mares Egg Spring to the confluence with Sevenmile Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10928	1888	0.41	0.27	126.35
10929	1889	6.36	3.98	1954.24
Totals		6.77	4.25	2080.59

Sevenmile Creek, tributary to Agency Lake

Instream Reach #1: From Melhase-Kingdon Ditch POD (as described in Finding of Fact #10) to the confluence with Blue Springs

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10921	1898	0.61	0.38	188.11

Instream Reach #2: From the confluence with Blue Springs to the Sevenmile Creek POD for Certificate 28201 (as described in Finding of Fact #16)

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10920	1891	1.70	0.92	496.51
10921	1898	0.61	0.38	188.11
28201	2/1/1954	0.009	0.009	3.18
Totals		2.319	1.309	687.80

Instream Reach #3: From the Sevenmile Creek POD for Certificate 28201 to the confluence with Short Creek

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10920	1891	1.70	0.92	496.51
10921	1898	0.61	0.38	188.11
28201	2/1/1954	0.022	0.022	7.8
Totals		2.332	1.322	692.42

Instream Reach #4: From the confluence with Short Creek to the confluence with Crane Creek.

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10920	1891	1.70	0.92	496.51
10918	1891	3.21	2.03	980.0
10919	1891	0.45	0.28	136.31
10921	1898	0.61	0.38	188.11
28201	2/1/1954	0.022	0.022	7.8
Totals		5.992	3.632	1808.73

Instream Reach #5: From the confluence with Crane Creek to Agency Lake

Certificate	Priority Date	April 1 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
10920	1891	1.70	0.92	496.51
10918	1891	3.21	2.03	980.0
10919	1891	0.45	0.28	136.31
10921	1898	0.61	0.38	188.11
10928	1888	0.41	0.27	126.35
10929	1889	6.36	3.98	1954.24
28201	2/1/1954	0.022	0.022	7.8
Totals		12.762	7.882	3889.32

Supplemental Instream Use - Blue Springs, tributary to Sevenmile Creek

Instream Reach #1: From the POD (as described in Finding of Fact #19) and through the natural channel of Blue Springs to the confluence with Sevenmile Creek

Certificate	Priority Date	May 11 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
8621	9/25/1928	0.5	0.5	141.8

Instream Reach #2: From the confluence with Sevenmile Creek to Agency Lake

Certificate	Priority Date	May 11 – July 19	July 20 – Sept 30	Instream Volume (AF)
		Instream Rate (CFS)	Instream Rate (CFS)	
8621	9/25/1928	0.5	0.5	141.8

31. 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.

32. 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.

33. 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. 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.

34. 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.

35. The Lessor has requested that the lease terminate in 2017. The lease application did not specify a date on which the lease would terminate during 2017. Instream leases generally terminate on the last day of the irrigation season. The lease may terminate on September 30, 2017. The lease may commence on the date this final order is signed.
36. The Lessor has 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.

ORDER

Therefore, it is ORDERED:

1. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on September 30, 2017. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (April 1 through September 30) or after the period of allowed use has begun for the water rights being leased, water shall not be used under the rights leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 15 day of August, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: AUG 15 2013