

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL -847, Deschutes County) PROPOSED 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

Michael and Andrea Larsen
1870 NE Monroe Ln.
Bend, OR 97702
mlarsen@bendbroadband.com

Co-Lessor

Arnold Irrigation District (AID)
19604 Buck Canyon Rd.
Bend, OR 97702
office@arnoldirrigationdistrict.com

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, OR 97703
gen@deschutesriver.org

Findings of Fact

1. On March 30, 2022, Michael and Andrea Larsen, AID and the DRC filed an application to renew instream lease IL-847, involving a portion of Certificate 74197 for instream use.
2. The portion of the right to be leased is as follows:

Certificate: 74197 in the name of Arnold Irrigation District (confirmed by Deschutes River Decree Volume 12, Page 282 and Volume 16, Pages 10 and 390)
Use: Irrigation of 4.5 acres
Season of Use: April 1 to November 1, further limited as follows:
April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1
May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2
May 15 to Sept. 15 described herein as Season 3
Priority Date: February 1, 1905 and April 25, 1905

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.

Quantity: **Rate:** Season 1 (limited to 1/51st Cubic Foot per Second (CFS) per acre)
 Season 2 (limited to 1/39th cfs per acre)
 Season 3 (limited to 1/20.8th cfs per acre)

Limit: limited to 15.42 acre-feet per acre
 The listed quantities reflect allowance of a 65% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Direct diversions are not allowed this transmission loss.

Source: Deschutes River, tributary to Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	27	NE SW	ARNOLD CANAL POD #1 – 2800 FEET SOUTH & 3740 FEET WEST FROM THE NE CORNER OF SECTION 27

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	12 E	WM	9	SW NW	1200	4.5

- Certificate 74197 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed the total rate and seasonal volume (based on the duty limit) for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact No. 2), the portion of the right involved in this instream lease would be limited as described in the tables below. These rates and duty are also the quantities by which the diversion at POD No. 1 (Arnold Canal) under Certificate 74197 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
February 1, 1905	0.026 CFS	0.026 CFS	0.026 CFS	69.39 AF
April 25, 1905	0.063 CFS	0.090 CFS	0.128 CFS	
Totals	0.088 CFS	0.115 CFS	0.154 CFS	

- There is a supplemental irrigation water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessors and Lessee have requested that this water right not be included as a part of this lease application. During the term of the lease, water use under this right will be suspended.
- 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.
- The instream use is as follows:
 DESCHUTES RIVER, tributary to COLUMBIA RIVER

Instream Reach: From the POD #1 (as described in Finding of Fact No. 2) to Lake Billy Chinook

Certificate	Priority Date	Season 1	Season 2	Season 3	Instream Volume (AF)	Instream Period
74197	February 1, 1905	0.009 CFS	0.009 CFS	0.009 CFS	3.81	April 1- October 31
	April 25, 1905	0.022 CFS	0.031 CFS	0.045 CFS	15.47	
Totals		0.031 CFS	0.040 CFS	0.054 CFS	19.29	

7. Other conditions to prevent injury and enlargement are:
- The amount of water to be leased instream under Certificate 74197 does not include a 65% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.
- Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based upon available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.
8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded point of diversion;
 - The location of confluences with other streams downstream of the point of diversion.
 - There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
10. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
11. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
12. 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.
13. 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.

14. 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.
15. The Lessor, Co-Lessor and Lessee have requested that the lease terminate on October 31, 2022. The lease may commence on the date this final order is signed.
16. The Lessor, Co-Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

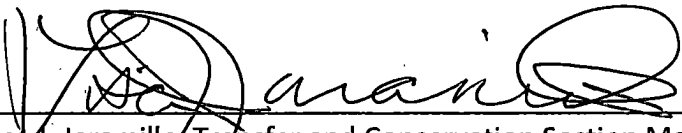
Conclusions of Law

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 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 upon approval of the instream lease and terminate on October 31, 2022

Dated at Salem, Oregon this day APR 29 2022.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAY 02 2022

This document was prepared by Stacy Phillips. If you have any questions, please call 503-986-0898.