

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1286, Certificates 72279 and 72283,) FINAL ORDER ON PROPOSED
Jefferson 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 #1

Pooled Instream Lease for several water right holders (described in Finding of Fact #3)

Lessor #2

North Unit Irrigation District (NUID)
2024 NW Beech Street
Madras, OR 97741
nuid@northunitid.com

Lessee

Deschutes River Conservancy (DRC)
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On April 2, 2013, the DRC and NUID, on behalf of several water right holders, filed an application to lease a portion of Certificates 72279 and 72283 for instream use. The Department assigned the application number IL-1286.
2. Certificate 72279 includes the diversion of water from two storage facilities, Haystack Reservoir and Wickiup Reservoir, owned by the Bureau of Reclamation (BOR). Pursuant to OAR 690-077-0077 (2)(b), the BOR would need to be a co-lessor on any lease that includes the use of stored water from either of these reservoirs for instream use. The BOR is not a co-lessor to this lease. In Section 2.2 of the lease application, the source of water for the proposed lease is described as the Deschutes River. As the BOR is not a co-lessor on this lease, the lease of water under certificate 72279 shall be limited to live flow from the Deschutes River.
3. Certificates 72279 and 72283 describe the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which a portion of the rights to be leased have changed since these certificates were issued. Some tax lot configurations no

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.

longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water rights to be leased described in Findings of Fact #5 and #9 is consistent with the water right of record in so far as possible.

4. The original lease application identifies that the number of acres of irrigation to be leased under Certificate 72279 is 112.9 acres. Based upon review and consultation with NUID, the correct number of acres is 112.3 acres.
5. The portion of the right to be leased has been modified from the lease application and is as follows:

Certificate: 72279
Use: Irrigation of 112.3 acres
Season of Use: April 1 to November 1 (by Decree)
Priority Date: February 28, 1913
Quantity: Maximum Rate: 1/40th Cubic Foot per Second (CFS) per acre
Maximum Duty: 5.25 Acre-Feet (AF) per acre
Source: Deschutes River, Wickiup Reservoir, constructed under Permit R-1677, and Haystack Reservoir, constructed under Permit R-1754, tributaries of the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	DESCHUTES RIVER: 1,700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
13S	13E	WM	20	NE SE	600	33.7	James and Doralynne Peterson
13S	13E	WM	20	NW SE	600	34.7	
13S	13E	WM	20	SW SE	600	0.4	
13S	13E	WM	20	SE SE	600	0.7	
13S	13E	WM	29	NE SW	1000	5.6	Drummond Family Partnership LP
11S	13E	WM	22	SW SW	1400	3.2	Scott Teeny
11S	13E	WM	10	NW SE	701	0.6	Loren and Patricia Copher
10S	14E	WM	8	NE SW	700	0.4	Leroy and Janice Fessler
11S	13E	WM	23	SE NW	2300 B	2.5	Janet Mendez
12S	12E	WM	12	NW SE	1300	2.0	Gary and Nancy Popp
10S	14E	WM	31	SW SE	2400	1.0	Marvin J. and Tammie D. McCoy
11S	13E	WM	26	NE NW	500	2.6	Suzanne H Green
11S	13E	WM	26	NW NW	500	1.6	
11S	13E	WM	26	NE SW	700	3.6	
11S	13E	WM	26	NW SW	700	18.0	
11S	13E	WM	27	NE SE	1000	1.7	
TOTAL:						112.3	

6. Since Certificate 72279 was issued in 1996, mapping techniques have advanced and improved. Certificate 72279 and its associated water right map identifies that there is a total of 10.4 acres in tax lot 2400 in the SW SE of Section 31, Township 10 South, Range 14 East. The map submitted with the lease application identifies that these 10.4 acres have been

divided into several smaller lots with 1.0 acre within lot 900 (formerly part of lot 2400). The lease map identifies that a small portion of this 1.0 acre may not be fully contained within Lot 900. This may be due to more accurate representation of survey lines such as tax lot boundaries and quarter quarter lines. The footprint (size and the shape) of the water right shown in the SW SE as shown on the lease application map appears to be the same as that shown on the Department's map for the water right of record. The portion of the right to be leased, as described in Finding of Fact #5, is consistent with the water right of record. While the footprint of the water right has been divided into several smaller lots, the Department may not re-describe a water right under OAR 690, Division 77, within the instream leasing process. However, the Department has determined that the portion of the right described in the lease application may be leased instream at this time consistent with how the water right is described in the water right of record. Should NUID pursue future modifications to this portion of the right, the District may need to file a transfer application, such as a District Transfer, to change and/or re-describe the water right to reflect the correct configuration.

7. Certificate 72279 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 (described in Finding of Fact #5), the total rate and duty 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 #5), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at the Deschutes River POD under Certificate 72279 shall be reduced, if this instream lease is approved.

Rate	Duty
2.47 CFS	589.58 AF

8. Under Certificate 72279, the District limits the quantity of water delivered to lands within the district to 2.0 acre-feet per acre (out of the 5.25 acre-feet per acre that may be diverted), which is reflected in the maximum volume of water that may be protected instream.
9. The portion of the second right to be leased is as follows:

Certificate: 72283

Use: Irrigation of 1.2 acres

Season of Use: February 1 to December 1 (by Decree)

Priority Date: September 18, 1968

Maximum Quantity (Rate) that can be applied to an acre:

Limited to 1/40th cubic foot per second (CFS) per acre

Maximum Duty that can be applied to an acre:

Not to exceed 4.0 acre-feet (AF) per acre per year

Source: Crooked River, tributary of the Deschutes River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE W ¼ CORNER OF SECTION 13

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
13S	13E	WM	20	SW SE	600	0.1	James and Doralynne Peterson
11S	13E	WM	26	NW SW	700	0.5	Suzanne H Green
12S	13E	WM	14	NE SW	702	0.6	Aaron and Judith Harris
TOTAL:						1.2	

10. Certificate 72283 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 (described in Finding of Fact #9), the total rate and duty 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 #9), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at the POD under Certificate 72283 shall be reduced, if this instream lease is approved.

Rate	Duty
0.027 CFS	4.80

11. Under Certificate 72283, the District limits the quantity of water delivered to lands within the district to 1.0 acre-foot per acre (out of 4.0 acre-feet per acre that may be diverted) from the Crooked River, which is reflected in the maximum volume of water that may be protected instream.
12. 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.
13. The Lessors and Lessee have requested to protect water instream under Certificate 72279 from the POD described in Finding of Fact #5 to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders or enlargement of the right, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.
14. The instream use requested under Certificate 72279 requires modification. At the rate and volume requested, water may be protected instream for a period of 137 days. The Lessor and Lessee have requested to protect water instream over a 138 day period, being May 1 through September 15. To protect the full amount requested, the instream period must be reduced by one day.

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

Deschutes River, tributary to the Columbia River

Instream Reach #1: From the Deschutes River POD (as described in Finding of Fact #5) to the Madras Gage.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	0.825	224.6	May 2 through September 15

Instream Reach #2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	0.744	202.14	May 2 through September 15

Crooked River, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #9) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72283	9/18/1968	0.005	1.2	May 1 through September 1

16. Other conditions to prevent injury and enlargement are:

Water leased instream under Certificate 72279 shall be limited to live flow from the Deschutes River.

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 on 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 points of diversion within the specified stream reach.

17. 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.
18. 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.
19. 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.

20. The Lessor has requested that the lease terminate on October 31, 2013.

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 October 31, 2013.

Dated at Salem, Oregon this 16 day of July, 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: JUL 17 2013