

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificate 83571, Deschutes 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

City of Redmond
Public Works Department
875 SE Veterans Way
Redmond, OR 97756

Lessor #2

Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
lauraw@coid.org

Lessee

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

Findings of Fact

1. May 1, 2008, the DRC, COID, and City of Redmond (Public Works) filed an application to lease a portion of Certificate 83571 to instream use. The Department assigned the application number IL-921.
2. Interest in the portion of the water right to be leased instream has been quit claimed from the original land owners. The materials submitted with the lease application identify COID as an interest holder in a portion of the water right to be leased. The remaining portion of the right to be leased is on roadways owned and maintained by the City of Redmond.
3. The portion of the first right to be leased has been clarified from the lease application and is as follows:

Certificate: 83571 in the name of Central Oregon Irrigation District

Use: Irrigation of 17.28 acres

Priority Date: October 31, 1900 and December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31

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.

May 1 through May 14 & September 16 through September 30
 May 15 through September 15

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

Season 1: limited to 1/80th cubic foot per second (CFS) per acre
 Season 2: limited to 1/60th CFS per acre
 Season 3: limited to 1/32.4th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	12	E	W.M.	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29

Authorized Places of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot
15 S	13 E	WM	16	NW SE	8.98	Lot 100 – 0.02 acre
						Lot 300 – 0.15 acre
						Lot 900 – 0.09 acre
						Lot 901 – 1.43 acres
						Lot 902 – 0.13 acre
						Lot 903 – 0.44 acre
						Lot 904 – 0.39 acre
						Lot 905 – 0.17 acre
						Lot 906 – 0.18 acre
						Lot 907 – 1.14 acres
						Lot 908 – 0.37 acre
						Lot 909 – 0.02 acre
						Lot 1800 – 0.06 acre
						Lot 1900 – 2.17 acres
Lot 2000 – 0.13 acre						
Roadway – 2.09 acres						
15 S	13 E	WM	16	SW SE	8.3	Lot 300, 301, 302 – 6.39 acres
						Roadway – 1.91 acres

4. The Department has information that the season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 15 through September 30 described herein as Season 2

May 15 through September 14 described herein as Season 3

5. The Department has information to suggest that the portion of the right (0.06 acre) described as being located in Township 15 South, Range 13 East, Section 16, NW SE, tax lot 1800, may actually be located within Veterans Way and within the right-of-way for a sidewalk along Veterans Way. It appears that changes in mapping techniques have caused a shift in the location of the mapped water right. However, based upon information provided by COID, the original and correct location of this portion of the right appears to have been tax lot 900, which became part of Veterans Way and the sidewalk right-of-way.
6. All or a portion of the lands involved in this application may have not had water applied to them in the last five years, specifically those located within roadways. However, these lands are not subject to forfeiture for the reasons described below:

The predecessor to Certificate 83571 was Certificate 76358. Certificate 76358 was signed on December 6, 1999 and confirmed the place of use of the lands described in Finding of Fact #3. On June 17, 2002 Transfer T-9150 was filed stopping the five-year forfeiture clock. Transfer T-9150 was amended to exclude the lands described in Finding of Fact #3, including those now located within roadways, on April 28, 2008. Consequently, although the lands involved in this lease may have gone five years without use, the forfeiture clock has not been running during the entire time period.

7. Certificate 83571 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 #3), 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 #3), 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 #11 under Certificate 83571 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.215 CFS	0.278 CFS	0.380 CFS	170.82 AF
December 2, 1907			0.152 CFS	

6. 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.
7. The Lessor and Lessee have requested to protect water instream from the POD described in Finding of Fact #3 to the mouth of the Deschutes River. A portion of the water diverted at each 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, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.
8. 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 POD #11 (as described in Finding of Fact #3) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	Season 1: 0.119 Season 2: 0.158 Season 3: 0.293	94.18	April 1 – Oct. 26

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
83571	10/31/1900	0.075	31.1	April 1 – Oct. 26

4. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 does not include a 45% 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 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.

9. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
10. 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.
11. 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.
12. 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.
13. The lease will terminate on October 31, 2008.

CONCLUSIONS OF LAW

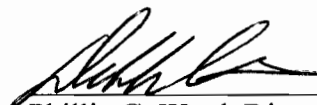
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, 2008.

Dated at Salem, Oregon this 30th day of May 2008.



Phillip C. Ward, Director

Mailing date: JUN 05 2008