

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1323, Certificates 86828, 86826, and) FINAL ORDER ON PROPOSED
85392, 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 Sisters
PO Box 39
Sisters, OR 97759
pbertagna@ci.sisters.or.us

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759
office@tsidweb.org

Lessee

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

Findings of Fact

1. On June 24, 2013, the DRC, TSID and City of Sisters filed an application to lease all of Certificate 86826 and a portion of Certificates 86828 and 85392 for instream use. The Department assigned the application number IL-1323.
2. The portion of the first right to be leased is as follows:

Certificate: 86828 in the name of City of Sisters and Lazy Z Meadows LLC (confirmed by Whychus Creek Decree, recorded at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 120)

Use: Irrigation of 10.8 acres

Priority Date: 1880

Rate: 0.342 Cubic Foot per Second (CFS) (proportioned rate)

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

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 Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH: 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	15	NE NE	10.8

3. There is no duty associated with Certificate 86828 defined in the certificate, decree or basin program. However, TSID (Lessor #2) has requested to lease the equivalent of 3.02 acre-feet per acre to instream use. There is also no rate limit per acre specified in the Certificate. The Squaw Creek Decree allows the diversion of up to 1/50th cubic foot per second per acre. However, this Certificate allows a higher proportion. The rate specified in Finding of Fact #2 has been proportioned between the acres that may be irrigated under the right.
4. The second right to be leased is as follows:

Certificate: 86826 in the name of City of Sisters and Lazy Z Meadows LLC (confirmed by Whychus Creek Decree, recorded at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 120

Use: Irrigation of 35.5 acres

Priority Date: 1881

Rate: 0.71 CFS

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH: 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	15	NE NE	6.6
15 S	10 E	WM	15	NW NE	28.9

5. There is no duty associated with Certificate 86826 defined in the certificate, decree or basin program. However, TSID (Lessor #2) has requested to lease the equivalent of 2.98 acre-feet per acre to instream use.

6. The portion of the third right to be leased is as follows:

Certificate: 85392 in the name of City of Sisters and Hawk's Haven Reserve LLC (confirmed by Whychus Creek Decree, recorded at Salem, in the Order Record of the Water Resources Director in Volume 1, at Page 120

Use: Irrigation of 7.0 acres

Priority Date: 1886

Rate: 0.14 CFS

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH: 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	15	NW NE	7.0

7. There is no duty associated with Certificate 85392 defined in the certificate, decree or basin program. However, TSID (Lessor #2) has requested to lease the equivalent of 2.98 acre-feet per acre to instream use. There is also no rate limit per acre specified in the Certificate. The Squaw Creek Decree allows the diversion of up to 1/50th cubic foot per second per acre. The rate specified in Finding of Fact #2 is the full 1/50th cubic foot per second per acre.
8. Certificates 86828, 86826, and 85392 do not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
9. 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.
10. The lease application requests to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Whychus Creek is measurable into the Deschutes River and may be protected instream in the Deschutes River.
11. The instream use is as follows:
Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #2) to the mouth of Whychus Creek and then into the Deschutes River to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
86828	1880	0.342	32.59	August 15 through October 1
86826	1881	0.710	105.62	July 19 through October 1
85392	1886	0.140	20.83	July 19 through October 1

12. There is a supplemental water right, Certificate 87345, appurtenant to all or a portion of the lands described in Finding of Fact #2. 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.

13. 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.
14. 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.
15. 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.
16. The Lessor has requested that the lease terminate on October 31, 2013. The lease may commence on the date this final order is signed.

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 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 October 31, 2013.

Dated at Salem, Oregon this 24 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 24 2013