

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

In the Matter of Instream Lease Application ) DETERMINATION and  
 IL-846, Certificate 81663, Deschutes ) FINAL ORDER ON PROPOSED  
 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**

City of Sisters  
 PO Box 39  
 Sisters, OR 97759  
[estein@ci.sisters.or.us](mailto:estein@ci.sisters.or.us)

**Lessee**

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

**Findings of Fact**

1. On May 7, 2012, the DRC and City of Sisters filed an application to renew instream lease IL-846, involving lease a portion of Certificate 81663 for instream use.

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

**Certificate:** 81663  
**Priority Date:** 1883  
**Season of Use:** unspecified by certificate or decree  
**Use:** Irrigation of 4.0 acres  
**Quantity:** 0.08 Cubic Foot per Second (CFS)  
**Source:** Whychus Creek (formerly Squaw Creek), tributary to the Deschutes River  
**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	4	SE SE	101	4.0

**Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	9	SE NW	BUCHANAN DITCH – 2050 FEET SOUTH AND 1250 FEET WEST OF THE N ¼ CORNER OF SECTION 9

3. There is no duty associated with the water right proposed to be leased instream.

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.

4. The right proposed to be leased instream also does not have a specified season of use (irrigation season). For purposes of this lease, a season of March 1 through October 31 shall be used.
5. 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.
6. As identified in Finding of Fact #3, this right does not have a duty limitation. In the original lease application, the Lessor and Lessee had requested to protect water instream at the full rate (0.08 CFS) during the period April 1 through October 31, a period of 214 days. The instream volume over this period would be 33.96 AF, which would equate to approximately 8.5 Acre-Feet (AF) per acre. This is more water than could be beneficially used without waste. To prevent enlargement of the right, the volume protected instream will be limited to 5.5 AF per acre.
7. Based upon Finding of Fact #6 and concurrence by the Lessor and Lessee, the instream use has been modified from the original lease application and is as follows:  
Whychus Creek (formerly Squaw Creek), tributary to the Deschutes River

**Instream Reach:** From POD (as described in Finding of Fact #2) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81663	1883	0.08 CFS	22.0	June 1 through October 16

8. Other conditions to prevent injury and enlargement are:

The instream reach has been modified to extend only as far as the mouth of Whychus Creek. The applicant originally requested that the reach extend beyond Whychus Creek and into the Deschutes River down to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being the Deschutes River (OAR 690-077-0015 (7)).

9. There is a supplemental water right, Certificate 81664, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have not requested that this water right 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 Lessor has requested that the lease terminate on October 31, 2016. The lease will commence the date the final order is signed and on March 1 of each succeeding calendar year that the lease is in place.
14. 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. 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, 2016. For multiyear leases, the lease shall commence on approval of the instream lease and on March 1 of each succeeding calendar year of the instream lease. 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 (June 1 through October 16) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 19<sup>th</sup> day of July, 2012.

  
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 19 2012