

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1658, Deschutes County ) FINAL ORDER ON 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**

Pooled Instream Lease for several water user holders (described in Finding of Fact No.2)

**Co-Lessor**

Central Oregon Irrigation District (COID)  
1055 SW Lake Ct.  
Redmond, OR 97756  
[abby@coid.org](mailto:abby@coid.org)

**Lessee**

Deschutes River Conservancy (DRC)  
700 NW Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On March 27, 2018, the DRC and COID, on behalf of several water right users, filed an application to lease a portion of Certificate 83571 for instream use. The Department assigned the application number IL-1658.

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

**Certificate:** 83571 in the name of Central Oregon Irrigation District (confirmed by the Deschutes River Decree, of record in Salem, in the Order of Record of the Water Resources Director, in Volume 16 at Pages 1 and 390)

**Use:** Irrigation of 50.045 acres from POD No. 1

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

**Season of Use:** April 1 through October 31, further limited as follows:  
Season 1: April 1 through April 30 & October 1 through October 31  
Season 2: May 1 through May 14 & September 16 through September 30  
Season 3: May 15 through September 15

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.

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

Season 1: limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre

Season 2: limited to 1/60<sup>th</sup> CFS per acre

Season 3: limited to 1/32.4<sup>th</sup> 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 on the main canals 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 Points of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	13	SW NE	POD NO. 1 (CENTRAL OREGON CANAL) – 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application – Tax Lot	Water Right Holder (Lessor)
15 S	14 E	WM	26	NE SE	0.20	800	Anthony & Kelly Newbill
17 S	12 E	WM	13	SW NW	0.28	309	Brad & Rachel Shultz
17 S	12 E	WM	23	NE NE	0.40	112	Bena Lechner
17 S	12 E	WM	23	SW NE	3.70	400	David & Carol Suchy
17 S	12 E	WM	24	NE NW	1.00	300	Robert & Esther Monson
17 S	12 E	WM	28	NE SW	0.30	400	Wahoo Orchard, LLC
17 S	12 E	WM	28	NE SW	0.60	500	
17 S	12 E	WM	28	NW SE	0.34	500	
17 S	12 E	WM	28	NW SE	0.47	501	ENIC, LLC
17 S	12 E	WM	35	NE SE	1.00	1401	Glenn & Cecilia Dulin
17 S	13 E	WM	29	SW SW	5.40	501	James & Twila Merrill
17 S	13 E	WM	31	SE NW	7.50	800	Orin & Jennifer Kidd
17 S	14 E	WM	13	SW SW	14.3	400	Robert C. Littleton
17 S	14 E	WM	24	NW NW	11.5		
17 S	14 E	WM	24	NW NE	0.13	201	Jennifer & Shawn Chesley
18 S	12 E	WM	2	SW SE	0.17	1202	Thomas & Elizabeth Lomax
18 S	12 E	WM	3	SE NW	0.125	3900	Mark Palmer, Donna Angel and Austin Palmer
18 S	13 E	WM	3	SW NE	0.25	101	LL Gardner, LLC
18 S	13 E	WM	5	NE NW	0.19	600	Charles Cornish & Kristin Ohberg
18 S	13 E	WM	5	SE NW	0.18		
18 S	13 E	WM	5	SW NW	1.68	900	Arland & Ima Keeton
18 S	13 E	WM	5	NE NW	0.33	601	Wendy & Michael Pearson
TOTAL					50.045		



- 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 to November 1, further limited as follows:

- April 1 to May 1 and October 1 to November 1 described herein as Season 1
- May 1 to May 15 and September 15 to October 1 described herein as Season 2
- May 15 to September 15 described herein as Season 3

- Certificate 83571 is a deficient water right. If water were diverted simultaneously to allow authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 2), 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 No. 2), the portion of the right involved in this instream lease would be limited as described in the table below. The rates and duty are also the quantities by which the diversion at POD No. 1 under Certificate 83571 shall be reduced, if this instream lease is approved.

POD No. 1

Priority Date	Season 1	Season 2	Season 3	Total Volume
October 31, 1900	0.619	0.825	1.092	490.63
December 2, 1907			0.437	
	TOTAL		1.529	

- 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 Lessor, Co-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.
- 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 Lessors, Co-Lessor and Lessee have requested to protect water instream from POD No. 1 described in Finding of Fact No. 2 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 generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water 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 No. 1:** From the Central Oregon Canal POD No. 1 (as described in Finding of Fact No. 2) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)			Instream Volume (af)	Instream Period
		Season 1	Season 2	Season 3		
83571	10/31/1900	0.344	0.459	0.850	272.77	April 1 - October 26

**Instream Reach No. 2:** From the Madras Gage to the mouth of the Deschutes River

IRRIGATION				
Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	0.39	160.14	April 1 – October 26

9. 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.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
11. The protection of flows within the proposed reach is appropriate, considering:
- The instream water use begins at the recorded points of diversion;
  - The location of confluences with other streams downstream of the points of diversion;
  - There are no known areas of natural loss of streamflow to the river bed downstream from the points of diversion; and
  - Return flows resulting from the exercise of the existing water right would re-enter the river downstream from the POD within the reach of the instream water right. As such, the rate and volume of water protected instream has been reduced in Instream Reach No. 2 to prevent injury and enlargement (Finding of Fact No. 8).
12. 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.



13. 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.
14. 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.
15. 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.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
17. The Lessor and Lessee have requested that the lease terminate on October 31, 2018. The lease may commence on the date this final order is signed.
18. The Lessors and Lessee have requested that there not be an option to terminate the lease.

### **Conclusions of Law**

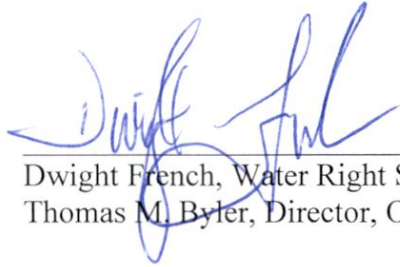
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### **Now, therefore it is ORDERED:**

1. The Lease as described herein is APPROVED.
2. During each year of 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, 2018. The lease may not be terminated by any party to the lease prior to specified termination date.

Dated at Salem, Oregon this day           **MAY 07 2018**          .



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Dwight French, Water Right Services Division Administrator, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date:           **MAY 07 2018**          

*This document was prepared by  
Jessica Joye and if you have any  
questions, please call 503-986-0814.*