

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1702, 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 two water right holders
(described in Findings of Fact No. 3 and 5)

Co-Lessor

Three Sisters Irrigation District (TSID)
P.O. Box 2230
Sisters, Oregon 97759
manager@tsidweb.org

Lessee

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

Findings of Fact

1. On June 28, 2018, TSID and DRC, on behalf of two water right holders, filed an application to lease a portion of Certificates 74135 and 73680 for instream use. The Department assigned the application number IL-1702.
2. During the review of the application, the Department has found that the 32.0 acres located in the NW NW of Section 24, T15S, R10E, WM, under Certificate 74135, are being omitted from the application having been leased earlier in the 2018 season.
3. The portion of the first right to be leased has been modified from the lease application and is as follows:

Certificate: 74135 Squaw Creek Irrigation District (now known as Three Sisters Irrigation District (perfected under the Squaw Creek Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at Pages 121, 122, 123, 124, 435, 438, 445, 472, and 473)

Priority Date: 1895

Use: Irrigation of 16.43

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.

Quantity: **Limit:** One-fiftieth of one cubic foot per second (CFS) per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

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	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Lessor
15 S	10 E	WM	24	SW NW	200	16.43	Kerith Springs Lodge, Inc.

- Certificate 74135 describes the rate limit per acre as 1/50th cubic foot per second per (cfs) acre. Certificate 74135 has been modified by transfers, cancellations, and allocation of conserved water projects. The rate available per acre or rate per acre equivalent has been reduced as a result of previous transactions.
- The portion of the second right to be leased is as follows:

Certificate: 93680 in the name of City of Sisters (confirmed by decree of the Circuit Court of the State of Oregon for Crook County, at Volume 1 at Page 120)

Use: Irrigation of 33.9 acres

Priority Date: 1880

Quantity: **Rate:** 0.61 Cubic Foot per Second (CFS)

Volume: 101.7 Acre-Feet (AF) if available at the original point of diversion located at T15S, R10E, WM, Section 21, SWSW, 140 Feet North and 1190 Feet East from the SW corner of Section 21

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

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Lessor
15 S	10 E	WM	10	NE SW	704	18.0	City of Sisters
15 S	10 E	WM	10	NW SW		0.3	
15 S	10 E	WM	10	SW SW		1.0	
15 S	10 E	WM	10	SE SW		8.0	
15 S	10 E	WM	10	NW SE		2.4	
15 S	10 E	WM	10	SE SE		4.2	
Total Acres						33.9	

6. Certificate 93680 does not specify a rate limit per acre. However, the Whychus Creek Decree (formerly known as Squaw Creek) specifies the rate limit as 1/50 and the rate available per acre or rate per acre equivalent has been reduced as a result of previous transactions. The rate per acre for this instream lease will be 0.018 cfs per acre.
7. Certificates 74135 and 93680 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.
8. There may be supplemental irrigation water rights appurtenant to all or a portion of the lands described in Findings of Fact Nos. 3 and 5. During the term of the lease, water use under any supplemental or layered irrigation water right will also be suspended.
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 will be conditioned to allow less water to be protected instream below TSID's point of diversion based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly. The instream quantity may not exceed the instream quantity identified at the point of diversion.
12. The applicant has requested the instream use begin at the authorized point of diversion. The point of diversion is located within a known losing reach on Whychus Creek. The losing reach extends from the point of diversion located at approximately River Mile (RM) 24.5 to the OWRD gaging station 14076050 located in Sisters, at approximately RM 20.7. The Department's study on seepage loss monitoring water would be problematic. Therefore, to prevent enlargement of the water right, the instream use will be conditioned as set forth in Finding of Fact No. 11.

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

Whychus Creek, tributary to the Deschutes River

Instream Reach No. 1: At the POD (as described in Finding of Fact Nos. 3 and 5), located approximately at RM 24.5 to the confluence of Whychus Creek with the Deschutes River (RM 0.0) and into the Deschutes River to Lake Billy Chinook

Certificate	Priority Dates	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
74135	1895	0.296	49.29	July 6 through October 1
93680	1880	0.608	101.70	
Totals:		0.904	150.99	

14. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

15. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.

16. 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.

17. Instream water rights, with a senior priority date, created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights.

18. On Whychus Creek, during the period April 1 through September 30, the total quantities of water to be protected instream under the existing and proposed instream rights within a portion of the reach from approximately T15S, R10E, Section 21 (approximately River Mile (RM) 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20) will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73224, which was created under ORS 537.341, an application process for state agencies to establish new instream water rights.

19. During the period July 10 through October 15, the total quantities of water to be protected instream under the existing and proposed instream rights within another portion of the reach from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73223, which was also created under ORS 537.341.

20. The Department has identified this instream lease will provide an additional beneficial purpose. The Oregon Department of Fish and Wildlife has identified that Whychus Creek is a high priority for flow restoration. In addition, the original instream flows established under Certificates 73224 and 73223 were based on flow needs for resident redband trout and did not account for flows necessary to support reintroduction of Mid-Columbia summer steelhead trout and spring Chinook salmon.
21. The Department has identified that during the term of this lease, the quantities protected instream may be additive to other existing instream water rights established within the same reach under ORS 537.341, 537.346, 537.348 or 537.470 during the months of April through October for the portion of the reach extending from approximately T15S, R10E, Section 21 (approximately RM 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20) and during the period July 10 through October 15 for the portion of the reach extending from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek. In other portions of the identified reach, the quantities protected instream may be additive to other existing water rights established under ORS 537.348 and 537.470 and may replace a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes.
22. 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.
23. 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.
24. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under 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.
25. The Lessors and Lessee have requested that the lease terminate on October 31, 2018. 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.

Now, therefore it is ORDERED:

1. 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 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.

Dated at Salem, Oregon this day **AUG 21 2018** .



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

*This document was prepared by Sarah
Henderson and if you have any
questions, please call 503-986-0890.*

Mailing date: **AUG 22 2018**