

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

In the Matter of Instream Lease Application) DENIAL OF PROPOSED INSTREAM
IL-1022, Certificate 74145, Deschutes) LEASE
County)

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 #2

Swalley Irrigation District (SID)
64672 Cook Ave., Suite 1
Bend, OR 97701
Kathy@swalley.com

Lessee

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

Findings of Fact

1. On June 22, 2009, the DRC and SID, on behalf of several landowners (Lessor #1), filed an application to lease a portion of Certificate 74145 for instream use. The Department assigned the application number Il-1013.
2. On July 2, 2009, the Department requested additional information needed to complete the instream lease application and verify that the water right has been used under the terms and conditions of the right within the last five years.
3. On July 29, 2009, SID provided evidence of beneficial use to support that the water right had been used in the last five years. The Department evaluated the evidence of beneficial use and identified that the evidence was sufficient for a portion of the right but not the entire portion requested to be leased instream under IL-1013.
4. On August 17, 2009, the DRC requested to amend the application and move a portion of the right originally included in lease application IL-1013 to a separate lease application. Additional time was also provided to the Lessor and Lessee to submit the information requested by the Department. The Department assigned the application number IL-1022. The place of use, as described in the lease application, included in IL-1022 is as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	4	NE NW	220	2.0
16 S	12 E	WM	29	NE SW	3500	0.5
17 S	12 E	WM	9	SW NW	2200	3.0

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.

5. On October 6 and 20, 2009, the Department sent the applicant a reminder that evidence of beneficial use still needed to be provided. On October 20, 2009, the Department also notified SID and the DRC that the requested evidence of beneficial use must be received by October 23, 2009, or Instream Lease Application IL-1022 would be denied.
6. The additional information requested by the Department to provide evidence that water had been used on the lands described in Finding of Fact #4 in the last five years has not been received.

CONCLUSIONS OF LAW

The Department concludes the lease application is incomplete and not consistent with OAR 690-077-0076.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is DENIED.

Dated at Salem, Oregon this 30th day of October, 2009.



Phillip C. Ward, Director *PCW*

Mailing date: NOV 04 2009