

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1249, Certificate 265, Deschutes County) FINAL ORDER ON PROPOSED
) 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

Rimrock Ranch / RRSO Cattle Co, LLC
PO Box 1715
Sisters, OR 97759

Lessee

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

Findings of Fact

1. On June 19, 2012, the DRC and Rimrock Ranch / RRSO Cattle Co., LLC filed an application to lease a portion of Certificate 265 for instream use. The Department assigned the application number IL-1249.

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

Certificate: 265 in the name of William E. Claypool (confirmed by Decree)
Use: Irrigation of 18.4 acres
Priority Date: 1897
Quantity: **Rate:** 0.42 Cubic Foot per Second (CFS)
Limit: One-fiftieth CFS per acre
Source: Whychus Creek (formerly Squaw Creek), tributary to the Deschutes River
Authorized Point of Diversion (POD): Not described by Certificate

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	3	SW NW	6.2
14 S	11 E	WM	3	SE NW	2.1
14 S	11 E	WM	3	NW SW	4.8
14 S	11 E	WM	3	SW SW	3.3
14 S	11 E	WM	10	NW NW	2.0

3. Certificate 265 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes of instream leasing, an irrigation season of

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.

March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

4. There is no duty associated with the water right proposed to be leased instream. The Lessor and Lessee have requested to lease 101.1 Acre-Feet (AF) to instream use, the equivalent of 5.49 AF per acre. The Department has determined that this quantity may be leased instream without injury or enlargement.
5. Certificate 265 does not describe the location of the point of diversion. However, additional information provided with the lease application identifies that the point of diversion is located at River Mile 9.5. The Squaw Creek (now known as Whychus Creek) Decree identifies the name of the ditch as W.E. Claypool Ditch. Based upon additional information also provided by the Department's Watermaster, it appears that the point of diversion is located approximately as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11E	WM	9	SE NE	W.E. CLAYPOOL DITCH – 800 FEET WEST AND 130 FEET NORTH OF THE EAST ¼ CORNER OF SECTION 9, RIVER MILE 9.5, 44.37284 NORTH AND - 12141525 WEST

6. Since Certificate 265 was issued in 1911, mapping techniques have advanced and improved. The map provided by the Lessor and Lessee was prepared with assistance from the Department's Watermaster's office. The map submitted with the lease application identifies the place of use somewhat differently than shown on the original water right map showing the location of decreed water rights for the Squaw Creek (now known as Whychus Creek) Decree. This is likely due to more accurate representation of survey lines such section and quarter quarter lines. The footprint (size and the shape) of the right described in Certificate 265 appears to be the same as that shown on the Department's map for the water right of record. The portion of the right to be leased, as described in Finding of Fact #2, is consistent with the water right of record.
7. 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.
8. 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 not measurable into the Deschutes River and may not be protected instream in the Deschutes River.

9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
 Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #5) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
265	1897	0.24	101.1	April 1 through October 31

10. Other conditions to prevent injury and enlargement are:

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.

11. 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.
12. 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.
13. 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.
14. The Lessor has requested that the lease terminate on October 31, 2016. The lease may commence the date the final order is signed and on (March 1) of each succeeding calendar year that the lease is in place.
15. 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 (April 1 through October 31) 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 20th 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 20 2012**