

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

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificates 74197 and 76714, Jefferson)
County, Oregon)

DETERMINATION and
FINAL ORDER ON
PROPOSED INSTREAM
LEASE

FINDINGS OF FACT

1. A Pooled Short-Term Lease Application, which proposed to lease a portion of certificates 74197, primary from the Deschutes River, tributary to the Columbia River, and 76714, supplemental from Crane Prairie Reservoir, tributary to the Deschutes River, for instream purposes was submitted to the Department on April 16, 2004, by:

Lessor	Lessee
Arnold Irrigation District (AID)	Deschutes Resources Conservancy (DRC)
PO Box 9220	P.O. Box 1560
Bend, OR 97708	Bend, OR 97709

2. The Department assigned this lease agreement number L-519.
3. The lease application includes the required information under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
4. The rights to be leased, as requested by the applicant, are as follows:

Certificate: 74197
Use: Irrigation
Acres: 20.39 acres
Priority Date: February 1, 1905 and April 25, 1905
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
Quantity: Season 1 (limited to 1/51th Cubic Foot per Second (CFS) per acre): 0.4 CFS
Season 2 (limited to 1/39th CFS per acre): 0.52 CFS
Season 3 (limited to 1/20.8th CFS per acre): 0.98 CFS

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Duty (limited to 15.42 acre-feet per acre): 15.42 Acre-Feet (AF)
 The quantities listed reflect allowance of a 65% transmission loss as determined by decree of the Circuit Court of Deschutes County, Volume 12, Page 282, and Volume 16, Pages 10 and 390.

Source: Deschutes River, tributary to the Columbia River

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
18	S	11	E	W.M.	13	NE	SW	POD #6 - 2710 feet South & 2830 feet West from the NE Corner of Section 13
18	S	11	E	W.M.	27	NE	SW	Arnold Canal - 2800 feet South & 3740 feet West from the NE Corner of Section 27

Authorized Place of Use for Arnold Irrigation District:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	11	E	W.M.	25	NW	NW	4700	2/1/1905 4/25/1905	0.2
									Total acres	0.2

Authorized Place of Use for Deschutes County Dept. of Solid Waste:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	9	SW	NW	1300	2/1/1905 4/25/1905	2.0
18	S	12	E	W.M.	9	NW	NW	1300	2/1/1905 4/25/1905	1.14
									Total acres	3.14

Authorized Place of Use for Brookwood Group, LLC:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	11	E	W.M.	13	SW	SE	2402	2/1/1905 4/25/1905	6.95
									Total acres	6.95

Authorized Place of Use for Avion Water Company:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	7	SE	SE	2600	2/1/1905 4/25/1905	3.0
									Total acres	3.0

Authorized Place of Use for Bend Metro Parks and Recreation Dept.:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	3	SW	SW	5600	2/1/1905 4/25/1905	0.9

18	S	12	E	W.M.	3	SW	SW	5700	2/1/1905 4/25/1905	1.33
18	S	12	E	W.M.	3	SW	SW	5800	2/1/1905 4/25/1905	1.9
18	S	12	E	W.M.	3	SW	SW	5900	2/1/1905 4/25/1905	1.62
18	S	12	E	W.M.	3	SW	SW	6000	2/1/1905 4/25/1905	1.35
									Total acres	7.1

Certificate: 76714
Use: Supplemental Irrigation
Acres: 20.39 acres
Priority Date: February 28, 1913
Season of Use: April 1 to November 1
Quantity: Not identified in the lease application. This right does not have a rate limitation.
Source: Deschutes River, tributary to the Columbia River

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
18	S	11	E	W.M.	13	NE	SW	POD #6 - 2710 feet South & 2830 feet West from the NE Corner of Section 13
18	S	11	E	W.M.	27	NE	SW	Arnold Canal - 2800 feet South & 3740 feet West from the NE Corner of Section 27
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir Dam

Authorized Place of Use: Same place of use as certificate 74197.

5. The Department finds that the lease application requires modification to clarify the following:
 - a. The quantity of water that may be leased instream under each priority date for certificate 74197 as well as the portion of that certificate needs clarification. During Season 3, this water right allows the diversion of 1/20.8th CFS for each acre to which water is applied. Water under this right, may be used on 4384.05 acres, including equivalent acres for uses other than irrigation. If water were being applied to all acres allowed by the certificate, the amount that could be diverted in Season 3, 210.77 CFS, would exceed the rate limitation on the certificate, 150.0 CFS, being 25.0 CFS under February 1, 1905 and 125.0 CFS under April 25, 1905. To identify the portion of this certificate that may be leased in Season 3, the Department has proportioned the 150.0 CFS allowed by the certificate to each acre on which water may be applied, which amounts to 1/29.2nd CFS per acre.
 - b. The source of water and portion of the supplemental right, certificate 76714, which may be leased instream.

- c. The correct duty for irrigation of 20.39 acres. The lease application incorrectly described the duty limit as 15.42 AF for certificate 74197.
 - d. The portion of each right to be leased instream from each POD, being POD #6 and POD #1 (Arnold Canal).
6. Therefore, based on Finding 5, these rights are clarified as follows (modifications shown in bold text):

Certificate: 74197
Use: Irrigation
Acres: 20.39 acres, being 13.44 acres from POD #1 (Arnold Canal) and 6.95 acres from POD #6

Priority Date: February 1, 1905 and April 25, 1905

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

Quantity: **POD #1 (Arnold Canal):**

Season 1 (limited to 1/51th CFS per acre): **0.264 CFS, being 0.077 CFS under February 1, 1905 and 0.187 CFS under April 25, 1905**

Season 2 (limited to 1/39th CFS per acre): **0.345 CFS, being 0.077 CFS under February 1, 1905 and 0.268 CFS under April 25, 1905**

Season 3 (limited to 1/20.8th CFS per acre): **0.46 CFS, being 0.077 CFS under February 1, 1905 and 0.383 CFS under April 25, 1905**

Duty (limited to 15.42 acre-feet per acre): **207.24 AF**

The quantities listed reflect allowance of a 65% transmission loss as determined by decree of the Circuit Court of Deschutes County, Volume 12, Page 282, and Volume 16, Pages 10 and 390.

POD #6:

Season 1 (limited to 1/51th CFS per acre): **0.14 CFS, being 0.04 CFS under February 1, 1905 and 0.1 CFS under April 25, 1905**

Season 2 (limited to 1/39th CFS per acre): **0.18 CFS, being 0.04 CFS under February 1, 1905 and 0.14 CFS under April 25, 1905**

Season 3 (limited to 1/20.8th CFS per acre): **0.24 CFS, being 0.04 CFS under February 1, 1905 and 0.2 CFS under April 25, 1905**

Duty (limited to 15.42 acre-feet per acre): **107.17 AF**

The quantities listed reflect allowance of a 65% transmission loss as determined by decree of the Circuit Court of Deschutes County, Volume 12, Page 282, and Volume 16, Pages 10 and 390.

Source: Deschutes River, tributary to the Columbia River

Authorized Points of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location		
18	S	11	E	W.M.	27	NE	SW	Arnold Canal - 2800 feet South & 3740 feet West from the NE Corner of Section 27		

Authorized Place of Use for Arnold Irrigation District:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	11	E	W.M.	25	NW	NW	4700	2/1/1905 4/25/1905	0.2
									Total acres	0.2

Authorized Place of Use for Deschutes County Dept. of Solid Waste:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	9	SW	NW	1300	2/1/1905 4/25/1905	2.0
18	S	12	E	W.M.	9	NW	NW	1300	2/1/1905 4/25/1905	1.14
									Total acres	3.14

Authorized Place of Use for Avion Water Company:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	7	SE	SE	2600	2/1/1905 4/25/1905	3.0
									Total acres	3.0

Authorized Place of Use for Bend Metro Parks and Recreation Dept.:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	12	E	W.M.	3	SW	SW	5600	2/1/1905 4/25/1905	0.9
18	S	12	E	W.M.	3	SW	SW	5700	2/1/1905 4/25/1905	1.33
18	S	12	E	W.M.	3	SW	SW	5800	2/1/1905 4/25/1905	1.9
18	S	12	E	W.M.	3	SW	SW	5900	2/1/1905 4/25/1905	1.62
18	S	12	E	W.M.	3	SW	SW	6000	2/1/1905 4/25/1905	1.35
									Total acres	7.1

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
18	S	11	E	W.M.	13	NE	SW	POD #6 - 2710 feet South & 2830 feet West from the NE Corner of Section 13

Authorized Place of Use for Brookwood Group, LLC:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
18	S	11	E	W.M.	13	SW	SE	2402	2/1/1905 4/25/1905	6.95
									Total acres	6.95

Certificate: 76714

Use: Supplemental Irrigation

Acres: 20.39 acres, being 13.44 acres from POD #1 (Arnold Canal) and 6.95 acres from POD #6

Priority Date: February 28, 1913

Season of Use: April 1 to November 1

Quantity: 19.78 AF, being 13.04 AF from POD #1 and 6.74 AF from POD #6. This right does not have a rate limitation. This volume is based upon evenly distributing each acre-foot stored in Crane Prairie Reservoir, 50,000 af, under this certificate between the 51,536.847 acres to which water may be applied. The distribution per acre is 0.97 af per acre.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

7. The application proposes to lease water for instream as follows:

Reach: From the canal diversion at River Mile 174.5 to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74197	2/1/1905 4/25/1905	Season 1: 0.14 CFS Season 2: 0.18 CFS Season 3: 0.34 CFS	April 1 to November 1	214	111.52 AF
76714	2/28/1913	Season 1: 0.14 CFS Season 2: 0.18 CFS Season 3: 0.34 CFS	April 1 to November 1	214	Not identified

8. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified considering the findings made in Finding 5 above. Specifically, the rate at which water is to be leased instream under the primary right has been broken down by priority date and the rate in Season 3 has been modified to reflect a proportioned rate. The volume of water to be leased instream under the primary right has also been modified. At the rates identified below, only 29.79 AF from POD #1 and 57.6 AF from POD #3 may be leased during the full period requested. The quantity of water that may be leased instream under the supplemental right has also been modified to reflect a proportioned volume. Finally, the

reach has been modified to separate the amount of water that may be protected instream from each point of diversion.

9. Therefore, based on Finding 8, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From POD #1 (Arnold Canal) (T18S, R11E, Section 27, W.M.; 2800 feet South & 3740 feet West from the NE Corner of Section 27) to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74197	2/1/1905 4/25/1905	Season 1: 0.1 CFS, being 0.03 CFS under February 1, 1905 and 0.07 CFS under April 25, 1905 Season 2: 0.12 CFS, being 0.03 CFS under February 1, 1905 and 0.09 CFS under April 25, 1905 Season 3: 0.16 CFS, being 0.03 CFS under February 1, 1905 and 0.13 CFS under April 25, 1905	April 1 to November 1	214	57.6 AF
76714	2/28/1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 to November 1	214	13.04 AF

Reach: From POD #6 (T18S, R11E, Section 13, W.M.; 2710 feet South & 2830 feet West from the NE Corner of Section 13) to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74197	2/1/1905 4/25/1905	Season 1: 0.05 CFS, being 0.01 CFS under February 1, 1905 and 0.04 CFS under April 25, 1905 Season 2: 0.06 CFS, being 0.01 CFS under February 1, 1905 and 0.05 CFS under April 25, 1905 Season 3: 0.08 CFS, being 0.01 CFS under February 1, 1905 and 0.07 CFS under April 25, 1905	April 1 to November 1	214	29.79 AF

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76714	2/28/1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 to November 1	214	6.74 AF

10. To prevent injury an enlargement, the amount of water to be leased instream under certificate 74197 accounts for a 65% transmission loss that may not be leased and protected instream.
11. Certificate 76714 is supplemental to certificate 74197. The portion of certificate 76714 being leased instream shall only be protected instream if the full rate and duty under certificate 74197 are not available during the period for which water is being leased instream.
12. Based upon review of the application and information provided by the Department's Watermaster and other available information, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
13. The lease will terminate on October 31, 2008. 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, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.

3. Water is leased instream as follows:

Reach: From POD #1 (Arnold Canal) (T18S, R11E, Section 27, W.M.; 2800 feet South & 3740 feet West from the NE Corner of Section 27) to Lake Billy Chinook.

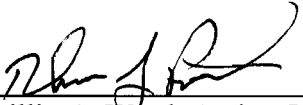
Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74197	2/1/1905 4/25/1905	Season 1: 0.1 CFS, being 0.03 CFS under February 1, 1905 and 0.07 CFS under April 25, 1905 Season 2: 0.12 CFS, being 0.03 CFS under February 1, 1905 and 0.09 CFS under April 25, 1905 Season 3: 0.16 CFS, being 0.03 CFS under February 1, 1905 and 0.13 CFS under April 25, 1905	April 1 to November 1	214	57.6 AF
76714	2/28/1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 to November 1	214	13.04 AF

Reach: From POD #6 (T18S, R11E, Section 13, W.M.; 2710 feet South & 2830 feet West from the NE Corner of Section 13) to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74197	2/1/1905 4/25/1905	Season 1: 0.05 CFS, being 0.01 CFS under February 1, 1905 and 0.04 CFS under April 25, 1905 Season 2: 0.06 CFS, being 0.01 CFS under February 1, 1905 and 0.05 CFS under April 25, 1905 Season 3: 0.08 CFS, being 0.01 CFS under February 1, 1905 and 0.07 CFS under April 25, 1905	April 1 to November 1	214	29.79 AF
76714	2/28/1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 to November 1	214	6.74 AF

4. Certificate 76714 is supplemental to certificate 74197. The portion of certificate 76714 being leased instream shall only be protected instream if the full rate and duty under certificate 74197 are not available during the period for which water is being leased instream.
5. The lease will terminate on October 31, 2008. The lessor shall have the option of terminating the lease each year, prior to the lease being exercised (April 1), with 30 days written notice to the Department.

Dated at Salem, Oregon this 11th day of August, 2004.


for Phillip C. Ward, Acting Director