

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

In the Matter of the Proposed Short-Term )	DETERMINATION and
Lease of Existing Water Rights for Instream )	FINAL ORDER ON PROPOSED
Use, Water Rights described in Special )	INSTREAM LEASE
Order Volume 69, Page 170, Crook County )	

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 short-term instream lease applications.

**Lessor #1**

Pooled Instream Lease for several landowners  
(described in Finding of Fact #6)

**Lessor #2**

Ochoco Irrigation District (OID)  
1001 NW Deer St.  
Prineville, OR 97754  
[ochocoid@crestviewcable.com](mailto:ochocoid@crestviewcable.com)

**Lessee**

Deschutes River Conservancy (DRC)  
700 NW Hill St.  
Bend, OR 97701  
[gen@deschutesrc.org](mailto:gen@deschutesrc.org)

**Findings of Fact**

1. On June 30, 2006, OID and the DRC filed an application to lease a portion of Certificates 68394 and 68395, and the water right described in Special Order Volume 48, Page 281 to instream use. The Department assigned the application number L-775.
2. Special Order Volume 48, Page 281, is an order approving a transfer of a portion of the water right described in Certificate 68394. Certificate 68394, Certificate 76576 and the water right described in Special Order Volume 48, Page 281, have been cancelled and the HB 3111 petition filed by OID has been approved by Special Order Volume 69, Page 170. New certificates have not yet been issued but the water rights are subject to transfer and may be leased instream.
3. The instream lease application was amended by the DRC on August 1, 2006, and has also been modified to describe the portion of the right to be leased consistent with the HB 3111 petition approved by the Department. The description of the water rights to be leased have also been modified from the lease application to further clarify the portion of the rights to be leased instream.

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.

4. On September 6, 2006, the DRC requested that the lease be separated and two final orders be issued. Specifically, the DRC requested that one order be issued to address the leasing of the irrigation water right to instream use and that a second order be issued to address the leasing of the industrial water rights to instream use. A final order was issued approving the lease of the irrigation water right to instream use on September 11, 2006, as evidenced by Special Order Volume 70, Page 149.
5. Based upon the above Finding of Fact, this final order addresses the leasing of the industrial water right, being Special Order Volume 69, Page 170 (superseding certificate 76576 and the water right described in Special Order Volume 48, Page 281), to instream use.
6. Based upon Findings of Fact #2, #3, #4, and #5, the first right to be leased is as follows:

**Water Right:** Special Order Volume 69, Page 170 (superseding the water right described in Special Order Volume 48, Page 281)  
**Use:** 21.2 equivalent acres of Industrial Use  
**Season of Use:** February 1 to December 1, as specified by the Crooked River Decree  
**Priority Date:** August 10, 1917  
**Quantity:** Rate (1/80<sup>th</sup> Cubic Foot per Second (CFS)/acre): 0.27 CFS (Industrial)  
 Duty (4.0 Acre-Foot(AF)/acre): 84.8 AF (Industrial)  
**Source:** Ochoco Creek and Ochoco Reservoir, tributary to the Crooked River

**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Landowner (Lessor #1)
14 S	15 E	WM	23	SW NE	500	21.2	Hooker Creek Sand & Gravel
14 S	15 E	WM	23	NW SE	500		
14 S	15 E	WM	23	SW SE	500		

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	17 E	WM	5	SW NW	Ochoco Feed Canal – 500 feet North & 250 feet East from W ¼ Corner of Section 5

**Water Right:** Special Order Volume 69, Page 170 (superseding certificate 76576)  
**Use:** Industrial Use (86.67 acres equivalent)  
**Season of Use:** Year Round  
**Priority Date:** September 2, 1986  
**Quantity:** Rate: 1.24 CFS (proportioned based on acres equivalent)  
 Volume: 360.0 AF (limited to 4.0 AF per equivalent acre)  
**Source:** Ochoco Creek and Ochoco Reservoir, tributary to the Crooked River

**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Landowner (Lessor #1)
15 S	16 E	WM	4	NE NW	7200	90.0	Ochoco Lumber Company
15 S	16 E	WM	4	NW NW	7200		
15 S	16 E	WM	4	SW NW	7200		
15 S	16 E	WM	4	SE NW	7200		
15 S	16 E	WM	4	NW SW	7200		
15 S	16 E	WM	4	SE SW	7200		

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	17 E	WM	5	SW NW	Ochoco Feed Canal – 500 feet North & 250 feet East from W ¼ Corner of Section 5

7. The place of use, under the September 2, 1986 priority date, will continue to receive a portion of water during the term of the lease. The water right to be leased allows the diversion of up to 1.24 CFS for 90.0 equivalent acres. The applicant has requested to lease 86.67 equivalent acres and leave some water at the place of use for dust control. The quantity of water diverted at the POD, upon approval of this instream lease, will be limited to 0.046 CFS for dust control.
8. The lease application includes the information required 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.
9. The instream use has been modified from the lease application to maximize the period during which water may be protected instream. The lease application requested to protect water instream for a period 112 days. However, at the rate and volume that may be protected instream, water may be protected instream for a period of 141 days. The instream use in reach #2 has also been modified to prevent injury and enlargement. The instream use is as follows:

Ochoco Creek and Ochoco Reservoir, tributary to the Crooked River

**Reach #1:** From the POD (as described in Finding of Fact #6) to the mouth of Ochoco Creek

Water Right	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
Special Order Volume 69, Page 170	August 10, 1917	0.265 CFS	74.2 AF	June 2 through October 20
Special Order Volume 69, Page 170	September 2, 1986	1.083 CFS	303.35 AF	June 2 through October 20

**Reach #2:** In the Crooked River from the confluence of Ochoco Creek and the Crooked River to Lake Billy Chinook

Water Right	Priority Date	Instream Rate	Instream Volume	Period Protected Instream
Special Order Volume 69, Page 170	August 10, 1917	0.24 CFS	67.0 AF	June 2 through October 20
Special Order Volume 69, Page 170	September 2, 1986	0.98 CFS	273.6 AF	June 2 through October 20

10. Other conditions to prevent injury and enlargement are:

The portion of water protected under this lease shall be based upon the same percentage of diversion and delivery rate that OID is diverting to water users within the District. In times of short supply, where general allocation in the District has been reduced, the instream use created by this lease will be reduced by the same amount. At the time this instream lease application was submitted, the District had limited delivery to 3.5 acre-feet per acre (out of the 4.0 acre-feet per acre that may be diverted), which is reflected in the maximum volume of water that may be protected instream. If OID further reduces the amount of water diverted to

water users, the Watermaster shall be notified and the quantity of water protected instream shall be reduced by the same percentage.

To account for return flows and prevent injury, the quantity of water that may be protected instream in the portion of the reach extending from the confluence of Ochoco Creek and the Crooked River to Lake Billy Chinook as been reduced by 10 percent.

The maximum volume protected instream over the entire length of the reach, being from the point of diversion to Lake Billy Chinook, during the period June 2 through October 20, shall not exceed 340.6 AF.

11. 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.
12. 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.
13. The lessor and the lessee have requested this instream lease to terminate on November 30, 2006. However, the industrial water right with the September 2, 1986, priority date is a year round water right. Therefore, the lease may terminate on December 31, 2006.

### **CONCLUSIONS OF LAW**

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

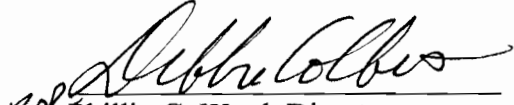
### **ORDER**

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use, under the August 19, 1917 priority date, shall no longer receive water as part of these rights during the term of the lease. However, during the term of this lease, the quantity of water used at the existing place of use, under the September 2, 1986 priority date, shall be limited to a maximum diversion of 0.046 CFS for Dust Control.

3. The lease shall terminate on December 31, 2006.

Dated at Salem, Oregon this 14<sup>th</sup> day of September 2006.

  
Phillip C. Ward, Director

Mailing date: SEP 18 2006