

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-924, Certificate 74197, Deschutes ) FINAL ORDER ON PROPOSED  
County ) 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 #1**

Daniel & Elizabeth McCool  
60359 Arnold Market Road  
Bend, OR 97702

**Lessor #2**

Arnold Irrigation District (AID)  
19604 Buck Canyon Road  
Bend, OR 97702

**Lessee**

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

**Findings of Fact**

1. On April 8, 2009, Daniel and Elizabeth McCool, AID and the DRC filed an application to renew instream lease L-924, involving a portion of Certificate 74197. The Department assigned the application number IL-924.
2. The Department originally approved instream lease application IL-924 along with mitigation credit project MP-119 on July 28, 2008 (Special Order Volume 75, Page 421). The Lessor and Lessee have chosen not to renew the mitigation project at this time.
3. The portion of the right to be leased is as follows:  
**Certificate:** 74197  
**Season of Use:** April 1 to November 1, further limited as follows:  
April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1  
May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2  
May 15 to Sept. 15 described herein as Season 3

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.

**Priority Date:** February 1, 1905 and April 25, 1905  
**Use:** Irrigation of 1.11 acres  
**Quantity:** Rate: Season 1 (limited to 1/51<sup>st</sup> Cubic Foot per Second (CFS) per acre)  
Season 2 (limited to 1/39<sup>th</sup> cfs per acre)  
Season 3 (limited to 1/20.8<sup>th</sup> cfs per acre)  
Duty: limited to 15.42 acre-feet per acre

The listed quantities reflect allowance of a 65% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Direct diversions are not allowed this transmission loss.

**Source:** Deschutes River, tributary to the Columbia River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	27	NE SW	ARNOLD CANAL POD #1 – 2800 FEET SOUTH AND 3740 FEET WEST FROM THE NE CORNER OF SECTION 27

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	13 E	WM	30	NW NW	101	0.37
18 S	13 E	WM	30	SW NW	500	0.44
18 S	13 E	WM	30	SW NW	600	0.30

4. Certificate 74197 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #3), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #3), the portion of the right involved in this instream lease would be limited as described in the tables below. These rates and duty are also the quantities by which the diversion at POD #1 (Arnold Canal) under Certificate 74197 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
February 1, 1905	0.006 CFS	0.006CFS	0.006 CFS	17.12 AF
April 25, 1905	0.015 CFS	0.022 CFS	0.032 CFS	
Totals:	0.022 CFS	0.028 CFS	0.038 CFS	

5. 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.

6. The instream use is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach:** From POD #1 (as described in Finding of Fact #3) to Lake Billy Chinook

<b>Certificate</b>	<b>Priority Date</b>	<b>Season 1</b>	<b>Season 2</b>	<b>Season 3</b>	<b>Total Instream Volume</b>
74197	February 1, 1905	0.002 CFS	0.002 CFS	0.002 CFS	0.94 AF
	April 25, 1905	0.005 CFS	0.008 CFS	0.011 CFS	3.82 AF
	<b>Totals:</b>	<b>0.008 CFS</b>	<b>0.010 CFS</b>	<b>0.013 CFS</b>	<b>4.76 AF</b>

7. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 74197 does not include a 65% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

8. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #3. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.

9. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Div. 30 and 31, and OAR Chapter 690, Div. 5.

10. 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.

11. 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.

12. The Lessor has requested that the lease terminate on October 31, 2009.

### 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 (including Certificate 76714), 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, 2009.

Dated at Salem, Oregon this 8<sup>th</sup> day of June, 2009.

  
Phillip C. Ward, Director *per*

Mailing date: JUN 11 2009