

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1076, Certificates 83656 and 83657, ) FINAL ORDER ON PROPOSED  
Crook 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**

Mill Creek Land, LLC  
Mark Copeland  
7900 NE Mill Creek Rd.  
Prineville, OR 97754

**Lessee**

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

**Findings of Fact**

1. On May 19, 2010, the DRC and Mill Creek Land, LLC, filed an application to lease a portion of Certificates 83656 and 83657 for instream use. The Department assigned the application number IL-1076.
2. The Lessor and Lessee have requested to lease the irrigation portion of Certificates 83656 and 83657. Each of these certificates also includes the use of water for domestic and stock. During the irrigation season, pursuant to the Crooked River Decree, the use of water for domestic and stock is included in the quantity of water diverted for irrigation.
3. The portion of the first right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 83656  
**Use:** Irrigation, Domestic and Stock Use  
**Acres:** 32.3 acres  
**Priority Date:** 1868  
**Season of Use:** Unspecified by certificate  
**Quantity:** Rate: 0.404 Cubic Foot per Second (CFS)  
Duty: 129.2 Acre-Feet (AF)  
If available at the original authorized point of diversion: Johnson Lawson Freeland Ditches  
**Source:** Mill Creek, tributary to Ochoco Creek

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.

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

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	22	SE SE	1122 FEET NORTH AND 346 FEET WEST FROM THE NW CORNER OF SECTION 26

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	NW NW	15.1
14 S	17 E	WM	26	SW NW	17.2

4. The portion of the second right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 83657

**Use:** Irrigation, Domestic and Stock Use

**Acres:** 93.6 acres

**Priority Date:** 1868

**Season of Use:** Unspecified by certificate

**Quantity:** Rate: 1.18 CFS

Duty: 374.4 AF

If available at the original authorized point of diversion: No Name Ditch

**Source:** Mill Creek, tributary to Ochoco Creek

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

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	22	SE SE	1122 FEET NORTH AND 346 FEET WEST FROM THE NW CORNER OF SECTION 26

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	SW NE	1.7
14 S	17 E	WM	26	NW NW	5.2
14 S	17 E	WM	26	SE NW	11.5
14 S	17 E	WM	26	NE SW	9.7
14 S	17 E	WM	26	NW SW	19.4
14 S	17 E	WM	26	SW SW	17.7
14 S	17 E	WM	26	SE SW	24.3
14 S	17 E	WM	26	SW SE	4.1

5. The irrigation season for each of the above water rights is not specified in the certificates. However, the decreed irrigation season for the Crook River Basin is February 1 to December 1.
6. 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.

7. The instream use has been modified from the lease application, to correctly describe the instream volume, and is as follows  
 Mill Creek, tributary to Ochoco Creek

**Instream Reach:** From the POD (as described in Findings of Fact #3 and #4) to the mouth of Mill Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83656	1868	0.404 CFS	129.2 AF	May 1 through October 8
83657	1868	1.17 CFS	374.4 AF	
<b>Totals:</b>		<b>1.574 CFS</b>	<b>503.6 AF</b>	

8. Other conditions to prevent injury and enlargement are:

For the purposes of this lease, Certificates 83656 and 83657 (Mill Creek) shall be subordinate to all out of stream surface water rights on Mill Creek.

Within the specified stream reach, the amount of water to which this instream use is entitled shall not exceed the quantity of water legally available at the original point of diversion (as described in Findings of Fact #3 and #4).

9. 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.
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 November 30, 2010.

### 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 November 30, 2010.

Dated at Salem, Oregon this 29<sup>th</sup> day of June, 2010.

  
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: JUN 30 2010