

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1185, Certificate 74135, 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**

Pooled Instream Lease for several water right holders (described in Findings of Fact #3)

**Lessor #2**

Three Sisters Irrigation District (TSID)  
PO Box 2230  
Sisters, OR 97759

**Lessee**

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

**Findings of Fact**

1. On June 21, 2011, the DRC and TSID, on behalf of several water right holders, filed an application to lease a portion of Certificate 74135 for instream use. The Department assigned the application number IL-1185.
2. Certificate 74135 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. Some tax lot configurations have changed and some tax lots have been partitioned or subdivided since this certificate was issued and no longer match those shown on the map of the water right of record. The portion of the water right to be leased as described in Finding of Fact #3 consistent with the water right of record in so far as possible.
3. The portion of the right to be leased has been clarified and modified from the lease application consistent with Findings of Fact #2 and is as follows:

**Certificate:** 74135

**Priority Date:** 1895, 1899, 1901, and 1904

**Use:** 152.53 acres, being 142.73 acres of Irrigation under the 1895 priority date,  
6.8 acres of Irrigation under the 1899 priority date 2.5 acres of Irrigation

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.

under 1901 priority date and 0.5 acres of Irrigation under the 1904 priority date

**Quantity:** 3.051 Cubic Foot per Second (CFS), being 2.855 CFS under the 1895 priority date, 0.136 CFS under the 1899 priority date, 0.05 CFS under the 1901 priority date and 0.01 CFS under the 1904 priority date

**Source:** Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
14S	10E	WM	36	NWSE	2400	2.50	1895	Phillip Krohn
14S	10E	WM	36	SWNE	2400	1.50	1895	
14S	11E	WM	13	SWSW	700	20.50	1895	Kenneth Tisher
14S	11E	WM	13	SWSW	700	0.5	1904	
14S	11E	WM	14	SESE	700	2.50	1895	
14S	11E	WM	23	SWSW	1400	6.80	1899	William St.Clair
15S	11E	WM	3	NWNW	1101	30.00	1895	Joseph Angel
15S	11E	WM	4	NWNE	100	25.00	1895	Karen Swaner
15S	11E	WM	4	SWNE	100	40.00	1895	
15S	11E	WM	4	SESW	402	16.93	1895	
15S	11E	WM	6	NENW	800	2.00	1895	Marcene Burns
15S	11E	WM	18	NENW	400	1.80	1895	Leonard & Kay Knott
15S	11E	WM	18	NWSW	1800	2.50	1901	Karl Nulton

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

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH & 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

4. Additional information submitted with the lease application, being the application materials for the lands owned by Karen Swaner identified in Finding of Fact #3, indicates that a portion of the right to be as described in finding of fact #3 leased may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
15S	11E	WM	4	NWNE	101	25.00	1895	Karen Swaner
15S	11E	WM	4	SWNE	101	40.00	1895	
15S	11E	WM	4	NESW	402	0.33	1895	
15S	11E	WM	4	SESW	402	16.60	1895	

The above differences in the description of the place of use for tax lot 101 are primarily due to tax lot partitions.

Since Certificate 74135 was issued in 1997, mapping techniques have advanced and improved. Certificate 74135 and its associated water right map identifies that there are a total of 40.0 acres in tax lot 402 in the SE SW of Section 4, Township 15 South, Range 11 East. The map submitted with the lease application identifies that tax lot 402 may not be fully contained within the SE SW and that a small portion of this 40.0 acres may be located in the NE SW of Section 4. This may be due to more accurate representation of survey lines such as tax lot boundaries and quarter quarter lines. The footprint (size and the shape) of tax lot 402 as shown on the lease application map 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 #4, is consistent with the water right of record. While the location of tax lot 402 appears to have shifted slightly based on current mapping, the Department may not re-describe a water right under OAR 690, Division 77, within the instream leasing process. However, the Department has determined that the portion of the right described in the lease application may be leased instream at this time consistent with how the water right is described in the water right of record. Should TSID pursue future modifications to this portion of the right, the District may need to file a transfer application, such as a District Transfer, to change and/or re-describe the water right to reflect the correct configuration.

5. Certificate 74135 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
6. There is no duty associated with the water right proposed to be leased instream.
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 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 #3) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
74135	1895	2.855	441.64	July 16 through October 1
	1899	0.136	21.04	
	1901	0.05	7.74	
	1904	0.01	1.55	
	<b>Totals</b>	<b>3.051</b>	<b>471.96</b>	

9. Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that Three Sisters Irrigation District (TSID) is diverting to rights of the same priority within the district. Each Monday morning during the period of the instream period of this lease, TSID shall report to the District 11 Watermaster's office the percentage diverted under the 1895, 1899, 1901, and 1904 priority dates. This information only needs to be reported to the Watermaster's office once TSID is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once TSID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.

During the irrigation season, the amount of water diverted at the point of diversion under Certificate 74135 shall not exceed 145.309 CFS, or as further limited in a previous or subsequent order affecting Certificate 74135.

10. 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.
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 has requested that the lease terminate on October 31, 2011.

### 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, 2011.

Dated at Salem, Oregon this 29 day of August, 2011.

  
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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: AUG 29 2011