

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

In the Matter of Instream Lease Application) DETERMINATION and
 IL-992, Certificate 85385, 85384, and) FINAL ORDER ON PROPOSED
 85390, Deschutes 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 and Lessee

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

Findings of Fact

1. On April 21, 2009, the DRC filed an application to lease a portion of Certificates 85385, 85384, and 85390 for instream use. The Department assigned the application number IL-992.
2. Interest in a portion of the water right to be leased instream has been conveyed from the original land owners. The lease application identifies the DRC as the interest holder in the portion of the water right to be leased. Individual conveyance agreements, along with supporting documentation, identify that interest in a portion of the right to be leased is held by the DRC. The Department has determined that the DRC is an interest holder in the right and is authorized to lease the pertinent portion of the water right instream.

3. The portion of the first right to be leased is as follows:

Certificate: 85385 in the name of City of Sisters and Lazy Z Meadows LLC
Use: Irrigation of 25.5 acres
Priority Date: 1881
Quantity: **Rate:** 0.51 Cubic Foot per Second (CFS)
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH: 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

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 Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	10	NE SW	705	4.4
15 S	10 E	WM	10	NW SW	705	21.1

4. The portion of the second right to be leased is as follows:

Certificate: 85384 in the name of City of Sisters and Lazy Z Meadows LLC
Use: Irrigation of 7.5 acres
Priority Date: 1880
Quantity: **Rate:** 0.154 CFS
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	600 FEET NORTH AND 1100 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	10	NW SW	705	0.3
15 S	10 E	WM	10	SW SW	705	7.2

5. The portion of the third right to be leased is as follows:

Certificate: 85390 in the name of City of Sisters and Lazy Z Meadows LLC
Use: Irrigation of 30.0 acres
Priority Date: 1880
Quantity: **Rate:** 0.95 CFS
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	UNCLE JOHN DITCH: 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	10	SW SW	705	28.4
15 S	10 E	WM	10	SE SW	705	1.6

6. Certificates 85385, 85384, and 85390 do not specify an 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.
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 Lessor has requested to protect volumes instream ranging from an equivalent of 8.49 acre-feet per acre to 13.44 acre-feet per acre under each portion of the certificates proposed to be leased to instream use. The Department has identified that this is more water that can be used beneficially without waste and would result in return flows around river mile 19.2 on Whychus Creek. To prevent injury and enlargement, the Department has identified that the instream use for each certificate should be limited to the equivalent of 5.5 acre-feet per acre.
9. The lease application requests to protect water instream from Uncle John Ditch (as described in Findings of Fact #3 and #5) to the mouth of Whychus Creek. However, Certificate 85384 appears to have a different point of diversion located just downstream from the Uncle John Ditch POD. Water may be protected instream beginning at the authorized POD for each certificate.
10. 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 #1: From the Uncle John Ditch POD (as described in Findings of Fact #3 and #5) to the POD for Certificate 85384 (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
85385	1881	0.33	140.25	April 1 through October 31
85390	1880	0.389	165.0	
Total		0.719	305.25	

Instream Reach #2: From the POD for Certificate 85384 (as described in Finding of Fact #4) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
85385	1881	0.33	140.25	April 1 through October 31
85384	1880	0.097	41.25	
85390	1880	0.389	165.0	
Total		0.816	346.5	

11. 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.
12. 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.
13. 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.

14. The Lessor has requested that the lease terminate on October 31, 2013.
15. 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 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, 2013. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (April 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 13th day of July, 2009.


Phillip C. Ward, Director *rw*

Mailing date: JUL 16 2009