

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

In the Matter of the Proposed Short-Term ) Lease of Existing Water Rights for Instream ) Use, Certificate 74197, Deschutes County )	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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 Findings of Fact #5)

**Lessor #2**

Arnold Irrigation District (AID)  
PO Box 9220  
Bend, OR 97708  
[aidist@bendbroadband.com](mailto:aidist@bendbroadband.com)

**Lessee**

Deschutes River Conservancy (DRC)  
PO Box 1560  
Bend, OR 97709  
[ghubert@deschutesrc.org](mailto:ghubert@deschutesrc.org)

**Findings of Fact**

1. On June 26, 2006, AID and the DRC filed a pooled instream lease application to lease a portion of Certificates 74197 and 76714 to instream use. The Department assigned the application number L-774.
2. On July 13, 2006, the DRC clarified that certificate 76714 is not to be included as part of the lease application.
3. Interest in a portion of the water right to be leased instream has been conveyed from the original land owners. The lease application identifies Avion Water Company and J.L. Ward Company as interest holders in a portion of the water right to be leased. Individual conveyance agreements, along with supporting documentation, submitted on September 27, 2006, and October 5, 2006, identify that interest in a portion of the right to be leased is held by Avion Water Company and J.L. Ward Company. The Department has determined that Avion Water Company and J.L. Ward Company are interest holders in the right and are authorized to lease the pertinent portion of the water right 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. The right to be leased has been modified and clarified from the instream lease application to prevent injury and enlargement and 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

**Priority Date:** February 1, 1905 and April 25, 1905

**Use:** Irrigation of 58.08 acres from Point of Diversion (POD) #1 and 47.41 acres from POD #6

**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)

Priority Date	Season 1	Season 2	Season 3	Duty
<b>POD #1</b>				
February 1, 1905	0.331 CFS	0.331 CFS	0.331 CFS	895.59 AF
April 25, 1905	0.808 CFS	1.158 CFS	1.656 CFS	
Totals	1.139 CFS	1.489 CFS	1.987 CFS	
<b>POD #6</b>				
February 1, 1905	0.095 CFS	0.095 CFS	0.095 CFS	255.87 AF
April 25, 1905	0.231 CFS	0.331 CFS	0.473 CFS	
Totals	0.325 CFS	0.425 CFS	0.568 CFS	

The listed quantities for POD #1 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, including POD #6, by certificate, are not allowed this transmission loss.

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

**POD's:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	27	NE SW	Arnold Canal POD #1 – 2800 feet South & 3740 feet West from the NE corner of Section 27
18 S	11 E	WM	13	NE SW	POD #6 – 2710 feet South and 2830 feet West from the NE Corner of Section 13

**Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	POD #	Landowner (Lessor #1)
18 S	11 E	WM	13	NE SW	1300	0.23	6	J.L. Ward Company (interest holder)
18 S	11 E	WM	13	NE SE	2402	7.96	6	J.L. Ward Company (interest holder)
18 S	11 E	WM	13	NW SE	2402	15.34	6	J.L. Ward Company (interest holder)
18 S	11 E	WM	13	SW SE	2402	2.61	6	J.L. Ward Company (interest holder)
18 S	11 E	WM	13	SE SE	2402	21.27	6	J.L. Ward Company (interest holder)
18 S	11 E	WM	23	SE SE	4900	1.5	1	Avion Water Co. (interest holder)
18 S	12 E	WM	8	NE NE	400	1.75	1	Avion Water Co. (interest holder)
18 S	12 E	WM	8	SE NW	2500	1.0	1	J.L. Ward Company (interest holder)
18 S	12 E	WM	8	SW SE	1404	1.1	1	J.L. Ward Company (interest holder)
18 S	12 E	WM	8	SW SE	1600	1.0	1	Avion Water Co. (interest holder)

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	POD #	Landowner (Lessor #1)
18 S	12 E	WM	9	NE NE	300	4.0	1	Avion Water Co. (interest holder)
18 S	12 E	WM	9	NE NE	400	2.2	1	Avion Water Co. (interest holder)
18 S	12 E	WM	9	NE NE	500	2.0	1	Avion Water Co. (interest holder)
18 S	12 E	WM	9	NW NW	400	0.25	1	Avion Water Co. (interest holder)
18 S	12 E	WM	9	SW NW	900	0.5	1	J.L. Ward Company (interest holder)
18 S	12 E	WM	9	SW NW	1100	3.5	1	J.L. Ward Company (interest holder)
18 S	12 E	WM	16	SE NW	700	3.0	1	Avion Water Co. (interest holder)
18 S	12 E	WM	23	NW NW	500	30.6	1	Dale Hukari
18 S	13 E	WM	19	NE NW	200	1.32	1	J.L. Ward Company (interest holder)
18 S	13 E	WM	20	SW NE	300	2.9	1	J.L. Ward Company (interest holder)
18 S	13 E	WM	20	SW NE	600	0.35	1	J.L. Ward Company (interest holder)
18 S	13 E	WM	30	NW NW	100	0.37	1	Daniel & Elizabeth McCool
18 S	13 E	WM	30	SW NW	500	0.44	1	Daniel & Elizabeth McCool
18 S	13 E	WM	30	SW NW	600	0.3	1	Daniel & Elizabeth McCool

- There is a supplemental water right, certificate 76714, appurtenant to the lands described above. The Lessor and Lessee have requested that this water right not be included as part of this lease application. However, during the term of the lease, water use under this right will also be suspended.
- 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.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Deschutes River, tributary to the Columbia River

**Instream Reach #1:** From the POD #1 (as described in Finding of Fact #4) to Lake Billy Chinook

Certificate	Priority Date	Season 1	Season 2	Season 3	Total Instream Volume
		<b>Instream Rate</b>			
74197	February 1, 1905	0.116 CFS	0.116 CFS	0.116 CFS	49.2 AF
	April 25, 1905	0.283 CFS	0.405 CFS	0.580 CFS	199.72 AF
	<b>Totals</b>	<b>0.399 CFS</b>	<b>0.521 CFS</b>	<b>0.696 CFS</b>	<b>248.93 AF</b>

**Instream Reach #2:** From the POD #6 (as described in Finding of Fact #4) to Lake Billy Chinook

Certificate	Priority Date	Season 1	Season 2	Season 3	Total Instream Volume
		<b>Instream Rate</b>			
74197	February 1, 1905	0.211 CFS	0.211 CFS	0.211 CFS	89.37 AF
	April 25, 1905	0.513 CFS	0.736 CFS	1.053 CFS	362.75 AF
	<b>Totals</b>	<b>0.724 CFS</b>	<b>0.947 CFS</b>	<b>1.263 CFS</b>	<b>452.12 AF</b>

- 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.

The maximum volume protected instream over the entire length of the reach, being from POD #1 to Lake Billy Chinook, during the period April 1 through October 31, shall not exceed 452.12 AF.

9. 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.
10. 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.
11. The lessor and the lessee have requested this instream lease terminate on October 31, 2006.

#### CONCLUSIONS OF LAW

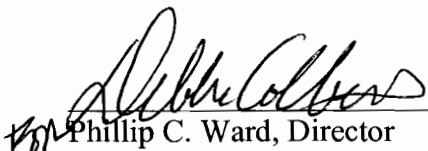
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

#### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of Certificate 74197 and any supplemental rights during the term of the lease.
3. The lease shall terminate on October 31, 2006.

Dated at Salem, Oregon this 10th day of October 2006.

  
Phillip C. Ward, Director

Mailing date: OCT 16 2006