

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificate 74197, 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 #1

Bend Metro Parks & Recreation
200 NW Pacific Park LN
Bend, OR 97701

Lessor #2

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

Lessee

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

Findings of Fact

1. On May 15, 2008 Bend Metro Parks & Recreation, AID and DRC filed an application to lease a portion of Certificate 74197 to instream use. The Department assigned the application number IL-926.
2. 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

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

Use: Irrigation of 4.5 acres

Quantity: Rate: Season 1 (limited to 1/51st cubic foot per second (CFS) per acre)

Season 2 (limited to 1/39th cfs per acre)

Season 3 (limited to 1/20.8th cfs per acre)

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.

Duty: limited to 15.42 acre-feet per acre

Priority Date	Season 1	Season 2	Season 3	Duty
February 1, 1905	0.012 CFS	0.012 CFS	0.012 CFS	33.00 AF
April 25, 1905	0.030 CFS	0.043 CFS	0.061 CFS	
Totals	0.042 CFS	0.055 CFS	0.073 CFS	

The listed quantities reflect the 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	13	NE SW	AID POD #6 – 2710 FEET SOUTH AND 2830 FEET WEST FROM THE NE CORNER OF SECTION 13

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	11 E	WM	13	NW SE	1200	2.14*

*Note: Instream lease application IL-926 requested that 2.51 acres were to be leased instream from Tax Lot 1200; however, the Deschutes County tax lot map shows the correct size for Tax Lot 1200 is 2.14 acres.

- 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.
- The instream use has been modified as follows to prevent injury and enlargement:
Deschutes River, tributary to the Columbia River

Instream Reach #1: From the POD #6 (as described in Finding of Fact #2) to Lake Billy Chinook

INSTREAM RATE					
Certificate	Priority Date	Season 1	Season 2	Season 3	Total Instream Volume
74197	February 1, 1905	0.004 CFS	0.004 CFS	0.004 CFS	1.81 AF
	April 25, 1905	0.010 CFS	0.015 CFS	0.021 CFS	7.36 AF
Totals		0.014 CFS	0.019 CFS	0.025 CFS	9.17 AF

The period protected instream is April 1 through October 31.

Instream Reach #2: From Lake Billy Chinook to the mouth of the Deschutes River

INSTREAM RATE					
Certificate	Priority Date	Season 1	Season 2	Season 3	Total Instream Volume
74197	February 1, 1905	0.002 CFS	0.002 CFS	0.002 CFS	0.76 AF
	April 25, 1905	0.007 CFS	0.007 CFS	0.007 CFS	3.09 AF
Totals		0.009 CFS	0.009 CFS	0.009 CFS	3.85 AF

The period protected instream is April 1 through October 31.

5. 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.

6. Supplemental water right Certificate 76714 is appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have not requested that this water right be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
7. 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.
8. 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.
9. 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.
10. The Lessor has requested the option of terminating the lease early with written notice to the Department.
11. The lease will terminate on October 31, 2008.

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 but not limited to those under 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, 2008. The Lessor has the option of terminating the lease each year, with notification to the Department prior to March 1 of each year and before any use has occurred on the property.

Dated at Salem, Oregon this 3rd day of July 2008.


Phillip C. Ward, Director *PCW*

Mailing date: JUL 08 2008