

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1372, Deschutes and Crook County ) FINAL ORDER ON PROPOSED  
) 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**

Bend Park & Recreation District  
Attn: Lindsey Lombard  
799 SW Columbia Street  
Bend, OR 97702

**Co-Lessor**

Central Oregon Irrigation District (COID)  
1055 SW Lake Ct.  
Redmond, OR 97756  
[lauraw@coid.org](mailto:lauraw@coid.org)

**Lessee**

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

**Findings of Fact**

1. On April 2, 2014, Bend Park & Recreation District, the DRC and COID, filed an application to lease a portion of Certificate 83571 for instream use. The Department assigned the application number IL-1372.
2. The portion of the right to be leased is as follows:

**Certificate:** 83571 in the name of Central Oregon Irrigation District  
**Use:** Central Oregon Canal POD No. 1: Irrigation of 11.55 acre  
Columbia Park POD No. 3: Irrigation of 2.1 acres  
**Priority Date:** October 31, 1900 and December 2, 1907  
**Season of Use:** April 1 through October 31, further limited as follows:  
April 1 through April 30 & October 1 through October 31  
May 1 through May 14 & September 16 through September 30  
May 15 through September 15

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.

**Maximum Quantity (Rate) that can be applied to an acre:**

Season 1: limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre

Season 2: limited to 1/60<sup>th</sup> CFS per acre

Season 3: limited to 1/32.4<sup>th</sup> CFS per acre

**Maximum Duty that can be applied to an acre:**

Not to exceed 9.91 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals (POD No. 1) as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping (POD No. 3) from the Deschutes River, are not allowed the 45% transmission loss.

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

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

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11 E	WM	13	SW NE	POD No. 1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17 S	12 E	WM	31	SE SE	POD No. 3 (COLUMBIA PARK) 740 FEET NORTH AND 490 FEET WEST FROM THE SE CORNER OF SECTION 31

**Authorized Places of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot	POD #
17 S	12 E	WM	26	NE SW	3.87	Lot 2900 – 0.03 acre	1
						Lot 3000 – 3.84 acres	1
17 S	12 E	WM	28	NE SE	7.68	Lot 4900 – 0.9 acre	1
						Lot 4901 – 1.68 acres	1
						Lot 4902 – 5.1 acres	1
17 S	12 E	WM	31	SE SE	2.10	Lot 600 – 1.1 acres	3
						Lot 700 – 0.4 acre	3
						Lot 5600 – 0.6 acre	3
Total					13.65		

- The season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

**Season of Use:** April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 15 through September 30 described herein as Season 2

May 15 through September 14 described herein as Season 3

- Upon review, the Department identified that the rates allowed under POD No. 3 listed in the Part 4 of 4 in Table 2 on the application are incorrect. Those lands not served from the district main canal systems, but by direct pumping (POD No. 3) from the Deschutes River, are not allowed the 45% transmission loss. The accurate rate allowed under POD No. 3 is listed in Finding of Fact No. 5.

5. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact No. 2), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Finding of Fact No. 2), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at POD No. 1 and POD No. 3 under Certificate 83571 shall be reduced, if this instream lease is approved.

POD No. 1

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.144	0.192	0.253	113.83
December 2, 1907			0.102	

POD No. 3

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.014	0.019	0.036	11.45

6. There is a supplemental irrigation water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
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 and Lessee have requested to protect water instream from the PODs described in Finding of Fact No. 2 to the mouth of the Deschutes River. A portion of the water diverted at the PODs returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.
9. 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 No. 1:** From CO Canal POD No. 1 to Columbia Park POD No. 3 (both as described in Finding of Fact No. 2).

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	Season 1: 0.079 Season 2: 0.106 Season 3: 0.196	62.95	April 1 – October 26

**Instream Reach No. 2: From Columbia Park POD No. 3 to the Madras Gage.**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	Season 1: 0.094 Season 2: 0.125 Season 3: 0.232	74.40	April 1 – October 26

**Instream Reach No. 3: From the Madras Gage to the mouth of the Deschutes River**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	0.059	24.57	April 1 – Oct. 26

10. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 from POD No. 1 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
12. The protection of flows within the proposed reach is appropriate, considering:
  - a. The instream water use begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river downstream from the PODs within the reach of the instream water right. As such, the rate and volume of water protected instream within specified reach has been reduced in Reach No. 3 to prevent injury and enlargement (Finding of Fact No. 9).
13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
14. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
15. 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.

16. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream 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.
17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
18. The Lessor and Lessee have requested that the lease terminate on October 31, 2016. The lease may commence on the date this final order is signed.
19. The Lessor, Co-Lessor, and Lessee have requested the option of terminating the lease early but only with consent of all parties to the lease.

### 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.

### Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2016. For multiyear leases, the lessor, co-lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. The Lessor, Co-Lessor, and Lessee may only terminate the lease early with the consent of all parties to the lease. However, if the termination request is received less than 30-days prior to the instream use period (April 1 to October 26) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this   1   day of May, 2014.

  
 Dwight French, Water Right Services Administrator, for  
 PHILLIP C. WARD, DIRECTOR

This document was prepared by Sarah Henderson and if you have any questions, please call 503-986-0890.

Mailing date:   MAY 02 2014