

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1619, Deschutes County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Ed Barnes
18460 Pinehurst Road
Bend, OR 97703

Co-Lessor

Lone Pine Irrigation District
Terry Smith, Board Chair
PO box 564
Terrebonne, OR 97760

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703
gen@deschutesriver.org

Findings of Fact

1. On May 8, 2017, Ed Barnes, Lone Pine Irrigation District and DRC filed an application involving a portion of Certificate 72197 for instream use. The Department assigned the application number IL-1619.

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

Certificate: 72197 (confirmed by Decree at Volume 12, at Pages 146 and 396)

Use: Irrigation of 16.6 acres

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: October 31, 1900

Quantity: Season 1 (1 cfs to 137.0 acres): 0.121 CFS

Season 2 (1 cfs to 109.0 acres): 0.152 CFS

Season 3 (1 cfs to 86.6 acres): 0.192 CFS

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 4.2 acre-feet/acre): 69.72 Acre-Feet (AF)
 As measured at the Lone Pine Weir

Source: Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	29	SE NE	POD: NORTH 36 DEGREES 45 MINUTES WEST, 1056.8 FEET FROM THE E1/4 CORNER OF SECTION 29
14 S	13 E	WM	13	SW SE	LONE PINE WEIR

Authorized Place of Use:

Twp	Rng	Mer	Sec	Tax lot	Q-Q	Acres
14 S	14 E	WM	7	201	SW SW	1.6
14 S	14 E	WM	7	201	SE SW	9.2
14 S	14 E	WM	18	200	NW NW	0.3
14 S	14 E	WM	18	200	NE NW	5.5
Total						16.6

3. 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.
4. 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.
5. The Lessor and Lessee have requested to protect water instream from the POD described in Finding of Fact No. 2 to the mouth of the Deschutes River. A portion of the water diverted at the POD 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.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
 Deschutes River, tributary to Columbia River

Instream Reach No. 1: From the POD (as described in Finding of Fact No. 2) to the Madras Gage

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72197	October 31, 1900	Season 1: 0.121 Season 2: 0.152 Season 3: 0.192	69.72	April 1 through October 27

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72197	October 31, 1900	0.072	29.88	April 1 through October 27

7. Other conditions to prevent injury and enlargement are:

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.

8. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
9. 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 within the reach of the instream water right below the POD. The quantity of water to be protected instream in Reach No. 2 has been reduced to account for return flows
10. 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.
11. 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.
12. 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.
13. 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.
14. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under 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.

15. The Lessor and Lessee have requested that the lease terminate on October 31, 2017. The lease may commence on the date this final order is signed.

16. The Lessor and Lessee have requested that there not be an option to terminate the lease.

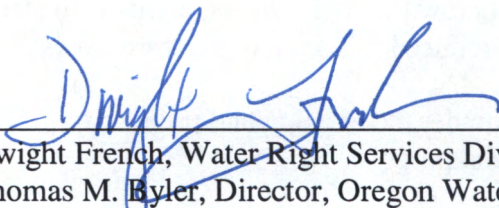
Conclusions of Law

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 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, 2017.

Dated at Salem, Oregon this 7 day of June, 2017.


Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

JUN 12 2017

Mailing date: _____

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