

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

In the Matter of the Lease of Existing Water	)	FINAL ORDER
Rights for Instream Use and Mitigation	)	TERMINATING INSTREAM LEASE
Credit Project, Certificates 83656, 83657,	)	
and 83658, Crook County	)	

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**

Mill Creek Land, LLC (Mark Copeland)  
7900 NE Mill Creek Rd.  
Prineville, OR 97754  
[analysisllc@aol.com](mailto:analysisllc@aol.com)

**Lessee**

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

**Findings of Fact**

1. On March 10, 2008, the DRC and Mill Creek Land, LLC, filed an application to lease all of Certificates 83656 and 83657 and a portion of Certificate 83658 to instream use and to establish mitigation credits. The Department assigned the instream lease application number IL-892.
2. The lease application requested to protect water instream for five years, terminating on November 30, 2012. A Final Order approving this lease was issued by the Department on April 18, 2008, as evidenced by Special Order Volume 74, Page 619.
3. The final order contained a condition allowing the Lessor to terminate the lease in any year of the lease with written notification to the Department by January 1 of each year.
4. On March 31, 2009, the Department received a request from the DRC and Mill Creek Land, LLC, to terminate the lease. Flows were protected instream under this lease during the period May 1 through October 8. This request to terminate IL-892 was received after the deadline specified in the final order approving the lease but before any water has been protected instream for 2009.
5. The lease was exercised during the 2008 water use period ending on November 20, 2008.

**CONCLUSIONS OF LAW**

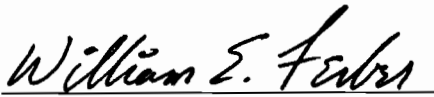
<p>This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial 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.</p>
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The Department concludes that terminating the lease in advance of water being protected instream in 2009 is consistent with OAR 690-077.

**ORDER**

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED and no longer in effect.

Dated at Salem, Oregon this 10<sup>th</sup> day of April, 2009.

  
for Phillip C. Ward, Director

Mailing date: APR 17 2009