

**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
Certificates 72279 and 72283, Jefferson)	INSTREAM LEASE
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 #1

Pooled Instream Lease for several water right holders (described in Findings of Fact #2)

Lessor #2

North Unit Irrigation District (NUID)
2024 NW Beech Street
Madras, OR 97741
nuid@palmain.com

Lessee

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

Findings of Fact

1. On May 21, 2007, the DRC and NUID, on behalf of several water right holders, filed an application to lease a portion of Certificates 72279 and 72283 to instream use. The Department assigned the application number IL-836.
2. The portion of the first right to be leased is as follows:

Certificate: 72279

Season of Use: April 1 to November 1 (by Decree)

Priority Date: February 28, 1913

Quantity: Rate: 5.19 Cubic Foot per Second (CFS) (proportioned rate)

Duty: 1238.48 Acre-Feet (AF)

Source: Deschutes River, Wickiup Reservoir, constructed under Permit R-1677, and Haystack Reservoir, constructed under Permit R-1754, tributaries of the Columbia River

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.

Place of Use:

IRRIGATION OF 235.9 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
10 S	13 E	WM	35 DB	NW SE	101	0.8	Keith Investment, LLC
12 S	13 E	WM	18	NW NW	400	3.5	Macy Farms, LLC
10 S	13 E	WM	33	NE NW	200	39.3	Ernest & Kathryn Poncil
12 S	12 E	WM	12	NW SE	1300	16.8	Gary & Nancy Popp
11 S	13 E	WM	3	SW NE	112	2.9	Shatterlee Family Trust
11 S	13 E	WM	3	SE NE	112	3.1	Shatterlee Family Trust
11 S	13 E	WM	3	SE NE	300	0.9	Shatterlee Family Trust
11 S	13 E	WM	26	NW NW	600	2.1	6T Living Trust
11 S	13 E	WM	27	NW NE	100	24.4	6T Living Trust
11 S	13 E	WM	27	NE NE	100	37.3	6T Living Trust
11 S	13 E	WM	27	SW NE	100	39.1	6T Living Trust
11 S	13 E	WM	27	SE NE	100	15.2	6T Living Trust
11 S	13 E	WM	27	NW NE	101	6.4	6T Living Trust
11 S	13 E	WM	22	NW SE	1100	23.6	Waldorf Trust
11 S	13 E	WM	22	NE SE	1100	20.5	Waldorf Trust

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	Deschutes River - 1700 feet South & 730 feet West from the NE Corner of Section 29
22 S	9 E	WM	7	SW NE	Wickiup Reservoir
12 S	13 E	WM	27	SW NE	Haystack Reservoir

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

Certificate: 72283

Season of Use: February 1 to December 1 (by Decree)

Priority Date: September 18, 1968

Quantity: Rate: 0.78 CFS (proportioned rate)

Duty: 137.2 AF

Source: Crooked River, tributary of the Deschutes River

Place of Use:

IRRIGATION OF 34.3 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
12 S	12 E	WM	27	NE NE	100	0.3	Bureau of Land Management
12 S	12 E	WM	27	SE NE	100	0.6	Bureau of Land Management
12 S	12 E	WM	27	SW NE	100	1.8	Bureau of Land Management
11 S	13 E	WM	3	SW NE	112	8.5	Shatterlee Family Trust
11 S	13 E	WM	27	NE SE	100	1.2	6T Living Trust
11 S	13 E	WM	27	NW SE	100	3.4	6T Living Trust
11 S	13 E	WM	22	SW SE	1600	11.0	6T Living Trust
11 S	13 E	WM	26	NW NW	600	2.5	6T Living Trust
11 S	13 E	WM	23 CB	NW SW	200	5.0	Waldorf Trust

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	13 E	WM	13	SW NE	590 feet North & 2790 feet East from the W ¼ Corner of Section 13

4. 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.
5. Certificate 72279 includes the diversion of water from two storage facilities, Haystack Reservoir and Wickiup Reservoir, owned by the Bureau of Reclamation (BOR). Pursuant to OAR 690-077-0077 (2)(b), the BOR would need to be a co-lessor on any lease that includes the use of stored water from either of these reservoirs for instream use. The BOR is not a co-lessor to this lease. In Section 2.2 of the lease application, the source of water for the proposed lease is described as the Deschutes River. As the BOR is not a co-lessor on this lease, the lease of water under certificate 72279 shall be limited to live flow from the Deschutes River.
6. The lease application requests to protect water instream from May 21 through September 30. The lease application was received by the Department on May 21, 2007, and the earliest that the lease could be approved and any water protected instream is the later part of June. On June 21, 2007, Lessor #2 and the Lessee agreed to modify the lease application to adjust when water is to be protected instream. The instream use is as follows:

Deschutes River, tributary to the Columbia River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	1.79	471.8	June 2 through Oct. 12

Crooked River, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #3) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72283	9/16/1968	0.13	34.3	June 22 through Oct. 12

7. Other conditions to prevent injury and enlargement are:

Water leased instream under Certificate 72279 shall be limited to live flow from the Deschutes River.

8. 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.
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 lease will terminate on November 30, 2007.

CONCLUSIONS OF LAW

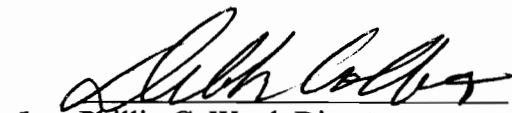
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, 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 November 30, 2007.

Dated at Salem, Oregon this 20th day of June 2007.


Phillip C. Ward, Director

Mailing date: JUN 25 2007