

**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 and)	FINAL ORDER ON PROPOSED
Mitigation Credit Project, Certificate 74135,)	INSTREAM LEASE &
Deschutes County)	WITHDRAWAL OF MITIGATION
)	CREDIT PROJECT

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.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Lessor #1

Karen Swaner
Unit 3470 Box 531
APO AA 34-4-0531

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759
tsid@uci.net

Lessee

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

Findings of Fact

1. On June 12, 2008, Karen Swaner, TSID, and the DWE Mitigation Bank filed an application to lease a portion of Certificate 74135 to instream use. The Department assigned the application number IL-932.
2. The DWE Mitigation Bank (a mitigation bank chartered by the Water Resources Commission) also requested to use this instream lease application be used to establish mitigation credits in the Deschutes Ground Water Study Area. The Department assigned the mitigation project number MP-122.

<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>

3. On July 15, 2008, the DWE Mitigation Bank (a program of the Deschutes River Conservancy) requested that mitigation project aspect of this instream lease be withdrawn. They also requested that the name of the lessee be modified to the Deschutes River Conservancy.

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

Certificate: 74135
Season of Use: unspecified by certificate or decree
Priority Date: 1895
Use: 65.0 acres of Irrigation
Quantity: 1.3 Cubic Foot per Second (CFS)
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	11 E	WM	4	NW NE	101	25.0
15 S	11 E	WM	4	SW NE	101	40.0

Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH & 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

5. There is no duty associated with the water right proposed to be leased instream.
6. The portion of the right described in Finding of Fact #4 has been leased instream since 2002. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of time during which the right was not exercised on approximately 3.0 acres in the SW NE of Section 4. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
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 during the period July 1 through October 1. Certificate 74135 does not have an irrigation season specified by certificate or decree. Flows could potentially be protected instream over a longer period without injury or enlargement.

9. The instream use is as follows:
 Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #4) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
74135	1895	1.3	239.8	July 1 through October 1

10. Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that Three Sisters Irrigation District (TSID) is diverting to rights of the same priority within the district. Each Monday morning during the period of the instream period of this lease, TSID shall report to the District 11 Watermaster's office the percentage diverted under the 1895 priority date. This information only needs to be reported to the Watermaster's office once TSID is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once TSID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.

During the irrigation season, the amount of water diverted at the point of diversion under Certificate 74135 shall not exceed 145.448 CFS.

11. 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.
12. 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.
13. 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.
14. The Lessor and Lessee have requested that the lease 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.

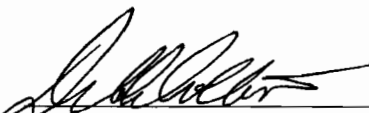
ORDER

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, 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.

Dated at Salem, Oregon this 31ST day of July 2008.


Phillip C. Ward, Director

Mailing date: AUG 01 2008