

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

In the Matter of the Proposed Short-Term) DETERMINATION and
Lease of Existing Water Rights for Instream) FINAL ORDER ON PROPOSED
Use, Certificate 76714, Deschutes,) INSTREAM LEASE
Jefferson, Crook County)

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 short-term instream lease applications.

Lessor #1

Central Oregon Irrigation District (COID)
1055 SW Lake Ct.
Redmond, Oregon 97756
stevej@coid.org

Lessor #2

Crook County Improvement District #1
P.O. Box 564
Terrebonne, Oregon 97760

Lessor #3

Bureau of Reclamation
1150 North Curtis Road, Suite 100
Boise, ID 83706-1234
rpage@pn.usbr.gov

Lessee

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

Findings of Fact

1. On September 19, 2007, COID, Crook County Improvement District #1, and the DRC filed an application to lease a portion of Certificates 76714 to instream use. On September 20, 2007, the appropriate application fee was received. On September 28, 2007, the Bureau of Reclamation gave their consent to the application. The Department assigned the application number IL-878.

2. The right to be leased is as follows:

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT
(perfected under Permit S-23256)

Use: SUPPLEMENTAL IRRIGATION

Priority Date: FEBRUARY 28, 1913

Rate: 3,000.00 ACRE FEET

Source: CRANE PRAIRIE RESERVOIR, tributary to DESCHUTES 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.

Authorized Place of Use:

The lands which are served by Crook County Improvement District #1 as described on pages 108 – 110 of Certificate 76714.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
21 S	8 E	WM	17	NE NE	CRANE PRAIRIE RESERVOIR DAM

3. OAR 690-077-0077 (9) allows the use of supplemental stored water to be leased instream without restricting the use of the primary source.
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 instream reach was requested to go from “River Mile 227 to the mouth of the Columbia” River. OAR 690-077-0015(8) describes the reach for instream rights, including leases as “Normally, a new instream water right shall be maintained downstream to the mouth of the affected stream; however, it may be maintained farther downstream if the amount of the instream water right is a measurable portion of the flow in the receiving stream or for a point or shorter distance if needed to account for return flow or to prevent injury.” This lease would not be measurable in the receiving stream, being the Columbia River.
6. The lessee has requested the ability to reduce the amount of stored water being leased instream, by written notice to the District 11 Watermaster on or prior to “October 31, 2006.” Since the application was filed in September 2007, the lessee must mean prior to “October 31, 2007.” Such notification needs to be received by both the District 11 Watermaster and to the Salem Office of the Department on or before October 31, 2007. Notification may be made in writing, by fax, or by e-mail.
7. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

WICKIUP RESERVOIR tributary to DESCHUTES RIVER

Instream Reach: From OWRD Gage 14056500 located approximately at River Mile 226.7, to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
76714	FEBRUARY 28, 1913	As described in Finding of Facts 8 and 9	November 1 through April 1

8. Other conditions to prevent injury and enlargement are:
 - Channel loss is known to occur in the Deschutes River. During November to March there is:
 - a 12.5 percent loss from Wickiup Reservoir to Benham Falls, and
 - a 10 percent loss from Benham Falls to the City of Bend.

From the confluence of Warm Springs River at Deschutes River Mile (RM) 84 to the mouth of the Deschutes River there are no known losses. Within this specified reach (RM 84 – 0), the amount of water to which the right is entitled shall not exceed the quantity of water legally available at the beginning of the reach (RM 84). 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 RM 84.

9. The applicant has proposed the following conditions to call for the leased water:
 - a. The DRC will contact the District 11 Watermaster via e-mail seven days before the first of each month (starting October 23rd), and the Watermaster will respond via e-mail with the anticipated outflow below Wickiup Reservoir that month.
 - b. The DRC will notify the Watermaster via e-mail within two business days of the rate of leased water to be operationally bypassed that month.
 - c. If the Watermaster makes any significant changes in outflow (greater than 20 percent of the anticipated outflow) during the month, the Watermaster will notify the DRC, and the DRC will have an opportunity to change the rate of bypass.
 - d. The District 11 Watermaster's office will account for the leased storage as part of its regular storage accounting.
10. 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.
11. Based upon review of the application, comments received, information provided by the Department's District 3 and 11 Watermasters, 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.
12. 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.
13. The lease will terminate on April 2, 2008.

CONCLUSIONS OF LAW


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

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The lease shall terminate on April 2, 2008.

Dated at Salem, Oregon this 17th day of October 2007.



Phillip C. Ward, Director

Mailing date: OCT 19 2007