

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

In the Matter of the Short-Term Lease of) FINAL ORDER TO
Existing Water Right for Instream Use,) TERMINATE
Certificates 76358 and 76714, Deschutes) INSTREAM LEASE
County, Oregon)

FINDINGS OF FACT

1. On April 20, 2004, a Short-Term Lease Application, which proposed to lease a portion of certificates 76358 (primary) and 76714 (supplemental) for instream purposes was submitted to the Department by:

Lessor #1
Jim Stroup
3106 NW Canal Blvd.
Redmond, OR 97756

Lessor #2
Central Oregon Irrigation District (COID)
2598 N Hwy 97
Redmond, OR 97756

Lessee
Deschutes Resources Conservancy
PO Box 1560
Bend, OR 97709

2. The Department assigned this lease agreement number L-549.
3. The lease application requested to protect water instream for five years, terminating on October 31, 2008. A Final Order approving this lease was issued by the Department on July 15, 2004, as evidenced by Special Order Volume 60, Page 626. The final order contains a condition allowing the Lessor (Lessor #1 or Lessor #2) to terminate the lease prior to water being protected instream in any year that the lease is in effect.
4. During the period in which water was being leased instream in 2005, Central Oregon Irrigation District conducted a site visit to the property and identified that Lessor #1 was using water for irrigation purposes on all of the lands to which the water rights leased instream are appurtenant.
5. Central Oregon Irrigation District advised Lessor #1 of the requirement to suspend water use during the term of the lease in a letter to Lessor #1 dated October 20, 2005. In succeeding letter, dated November 14, 2005, Central Oregon Irrigation District advised Lessor #1 that they would be requesting that the Water Resources Department terminate lease L-549.
6. Based upon information provided by Central Oregon Irrigation District and other available information, the Department finds that the instream lease, as exercised, does not meet the requirements of OAR 690-077-0077 (3)(e) to suspend the original use.

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.

CONCLUSIONS OF LAW

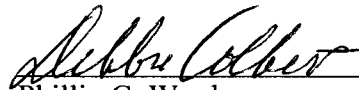
Because the original use of water has not been suspended, the instream lease, as executed, results in injury and enlargement. Consistent with OAR 690-077-0077(8), if the Department determines that a proposed lease results in injury or enlargement after the lease has been executed, the Department shall terminate the lease unless the lease may be modified to prevent injury or enlargement. The existing lease cannot be modified to prevent injury and enlargement.

The Department concludes that terminating the lease in advance of the 2006 irrigation season, as requested by Lessor #2, is consistent with OAR 690-077 and is necessary in order to prevent injury and enlargement consistent with OAR 690-077-0077(8).

ORDER

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

Dated at Salem, Oregon this 21ST day of November, 2005.

FOR 
Phillip C. Ward,
Director

Date Sent - NOV 22 2005