

**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, Certificates 74197 and 76714,)	INSTREAM LEASE
Deschutes 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 short-term instream lease applications.

Lessor #1

Deschutes County Dept. of Solid Waste
Attn: Timm Schimke
61000 SE 27th St.
Bend, OR 97702

Lessor #2

Arnold Irrigation District (AID)
PO Box 9220
Bend, OR 97708

Lessee

Deschutes River Conservancy (DRC)
PO Box 1560
Bend, OR 97709
Danielle@deschutesrc.org

Findings of Fact

1. Deschutes County Dept. of Solid Waste, AID, and the DRC filed an application to lease a portion of Certificates 74197 and 76714 to instream use. The Department assigned the application number L-678.

2. The rights to be leased are as follows:

Certificate: 74197

Priority Date: February 1, 1905 and April 25, 1905

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1

May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2

May 15 to Sept. 15 described herein as Season 3

Rate/Duty: Season 1 (limited to 1/51th Cubic Foot per Second (CFS) per acre): 0.392 CFS, being 0.114 CFS under the February, 1905 priority date and 0.278 CFS under the April, 1905 priority date

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.

Season 2 (limited to 1/39th CFS per acre): 0.513 CFS, being 0.114 CFS under the February, 1905 priority date and 0.399 CFS under the April, 1905 priority date

Season 3 (limited to 1/20.8th CFS per acre): 0.684 CFS, being 0.114 CFS under the February, 1905 priority date and 0.57 CFS under the April, 1905 priority date

Duty (limited to 15.42 acre-feet per acre): 308.4 Acre-Feet (AF)

The quantities listed reflect allowance of a 65% transmission loss as determined by decree of the Circuit Court of Deschutes County, Volume 12, Page 282, and Volume 16, Pages 10 and 390.

Source: Deschutes River, tributary to the Columbia River

Authorized Place of Use:

IRRIGATION OF 20.0 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	12 E	WM	23	NE NW	400	20.0

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	27	NE SW	Arnold Canal POD #1 – 2800 feet South and 3740 feet West from the NE corner of Section 27

Certificate: 76714

Priority Date: February 28, 1913

Season of Use: April 1 to November 1

Rate/Duty: 308.4 AF. This right does not have a rate limitation.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION OF 20.0 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Same as described for Certificate 74197						

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	27	NE SW	Arnold Canal POD #1 – 2800 feet South and 3740 feet West from the NE corner of Section 27
21 S	8 E	WM	17	NE NE	Crane Prairie Reservoir Dam

- 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.

4. The instream use is as follows:
Deschutes River
Tributary to the Columbia River in the Deschutes Basin

Instream Reach: From Arnold Canal POD #1 (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
74197 primary	Deschutes R	2/1/1905	Season 1: 0.04 CFS Season 2: 0.04 CFS Season 3: 0.04 CFS	April 1 – Oct. 31
		4/25/1905	Season 1: 0.097 CFS Season 2: 0.140 CFS Season 3: 0.200 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 61.57 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 31

5. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 74197 does not include a 65% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

6. Certificate 76714 is supplemental to certificate 74197. The portion of certificate 76714 being leased instream shall only be protected instream if the full rate and duty under certificate 74197 are not available during the period for which water is being leased instream.
7. 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.
8. 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.
9. The lease will terminate on October 31, 2009.
10. The lessor has requested the option of terminating the lease early with written notice to the Department.

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 former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on October 31, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any irrigation has occurred on the property.

Dated at Salem, Oregon this 28th day of July 2005.


Phillip C. Ward, Director

Mailing date: JUL 29 2005