

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

In the Matter of Split-Season Instream)
Lease Application SL-13, Certificate 74135,) DETERMINATION and
Deschutes County) FINAL ORDER ON PROPOSED
INSTREAM LEASE

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.

Lessor #1

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

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759

Lessee

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

Findings of Fact

1. On June 1, 2010, the DRC and TSID, on behalf of two landowners, filed a split-season instream lease application to lease a portion of Certificate 74135 for instream use. The Department assigned the application number SL-13.
2. The portion of the right to be leased is as follows:

Certificate: 74135

Priority Date: 1895 and 1904

Use: 266.5 acres, being 265.0 acres of Irrigation under the 1895 priority date and 1.5 acres of irrigation under the 1904 priority date

Quantity: 5.33 Cubic Foot per Second (CFS), being 5.3 CFS under the 1895 priority date and 0.03 CFS under the 1904 priority date

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	Priority Date	Water Right Holder
14 S	12 E	WM	17	SW NW	1401	32.5	1895	Marc & Pamela Thalacker
14 S	12 E	WM	18	NE NE	1401	40.5	1895	Marc & Pamela Thalacker

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.

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
14 S	12 E	WM	18	NW NE	1401	27.0	1895	Marc & Pamela Thalacker
14 S	12 E	WM	18	SW NE	1401	37.0	1895	Marc & Pamela Thalacker
14 S	12 E	WM	18	SE NE	1401	32.5	1895	Marc & Pamela Thalacker
14 S	12 E	WM	18	NE NW	1102	27.5	1895	Stephen & Elizabeth Sparks
14 S	12 E	WM	18	NW NW	1102	32.0	1895	Stephen & Elizabeth Sparks
14 S	12 E	WM	18	SW NW	1102	22.5	1895	Stephen & Elizabeth Sparks
14 S	12 E	WM	18	SE NW	1102	11.0	1895	Stephen & Elizabeth Sparks
14 S	12 E	WM	18	NW SE	1401	2.5	1895	Marc & Pamela Thalacker
14 S	12 E	WM	18	NW SE	1401	1.5	1904	Marc & Pamela Thalacker

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

- Certificate 74135 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
- There is no duty associated with the water right proposed to be leased instream.
- 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.
- The instream lease application, as proposed, is a split season lease. Water may be used for its existing use up to a maximum rate of 5.33 CFS, being 5.3 CFS under the 1895 priority date (3.44 CFS for the property owned by Marc and Pamela Thalacker and 1.86 CFS for the property owned by Stephen and Elizabeth Sparks) and 0.03 CFS under the 1904 priority date (for the property owned by Marc and Pamela Thalacker. The lease application requests different existing use period (out of stream) for each property. The existing use period for the property owned by Marc and Pamela Thalacker will be August 2 through October 15, a period of 75 days. The existing use period for the property owned by Stephen and Elizabeth Sparks will be September 2 through October 15, a period of 44 days.
- The instream use is as follows:
Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #2) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Period June 15 – August 1		Instream Period August 2 – Sept 1	
		Instream Rate (cfs)	Instream Volume (AF)	Instream Rate (cfs)	Instream Volume (AF)
74135	1895	5.3	504.59	1.86	114.37
	1904	0.03	2.86		
Totals		5.33	507.45	1.86	1174.37

8. Other conditions to prevent injury and enlargement are:

The Lessor shall make daily measurements of use during the existing use period. The measuring device for the property owned by Marc and Pamela Thalacker shall be a four foot Cipolletti weir, which serves the Thalacker property only, or another acceptable device to the Director. The measuring device for the property owned by Stephen and Elizabeth Sparks shall be a two foot Cipolletti weir, which serves the Sparks property only, or another acceptable device to the Director. The daily measurements shall be submitted on a monthly basis to the District 11 Watermaster.

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 and 1904 priority dates. 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 142.081 CFS (except when water is being diverted for the existing use as specified in this Final Order), or as further limited in a previous or subsequent order affecting Certificate 74135.

9. 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.
10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on October 31, 2010.

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, 2010.

Dated at Salem, Oregon this 26 day of July, 2010.


Philip C. Ward, Director

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUL 26 2010