

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

In the Matter of Instream Lease Application    )    FINAL ORDER  
IL-799, Certificate 74145, Deschutes         )    TERMINATING INSTREAM LEASE  
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 instream lease applications.

**Lessor #1**  
Shari Biggs  
64610 Old Bend Redmond Highway  
Bend, OR 97701

**Lessor #2**  
Swalley Irrigation District (SID)  
64672 Cook Ave., Suite 1  
Bend, OR 97701  
[kathy@swalley.com](mailto:kathy@swalley.com)

**Lessee**  
Deschutes River Conservancy (DRC)  
P.O. Box 1560  
Bend, Oregon 97709  
[gen@deschutesrc.org](mailto:gen@deschutesrc.org)

**Findings of Fact**

1. On January 24, 2007, the DRC, SID and Shari Biggs filed an application to lease a portion of Certificate 74145 for instream use. The Department assigned the application number IL-799.
2. The lease application requested to protect water instream for five years, terminating on October 31, 2011. A Final Order approving this lease was issued by the Department on February 27, 2007, as evidenced by Special Order Volume 72, Page 216. A correcting final order was issued by the Department on July 16, 2007, as evidenced by Special Order Volume 72, Page 495.
3. The final order contained a condition allowing the Lessor to terminate the lease in any year of the lease with notification to the Department by March 1 of each year and before any water use has occurred on the property.
4. On March 17, 2010, the Department received a request from SID (Lessor #2) to terminate the lease prior to water being protected instream in 2010. The request was received after the March 1 deadline but the Department has identified that there is still sufficient time to terminate the lease before the beginning of the irrigation season, which starts April 1, without resulting in any injury or enlargement.

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.

5. The lease was exercised during the 2007, 2008, and 2009 water use periods ending on October 31, 2009.

### CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2010 instream season is consistent with OAR 690-077.

### ORDER

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED and no longer in effect.

Dated at Salem, Oregon this 17<sup>th</sup> day of March 2010.



~~By~~ Phillip C. Ward, Director

Mailing date: 3-18-10