

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

In the Matter of Instream Lease Application) CORRECTING ORDER ON
IL-926, Certificate 74197, Deschutes) INSTREAM LEASE IL-926
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 instream lease applications.

Lessor #1

Bend Metro Parks & Recreation
200 NW Pacific Park LN
Bend, OR 97701

Lessor #2

Arnold Irrigation District (AID)
PO Box 9220
Bend, OR 97708
aidist@bendbroadband.com

Lessee

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

Findings of Fact

1. On June 21, 2010, Bend Metro Parks & Recreation, AID and DRC filed an application to renew instream lease IL-926 involving a portion of Certificate 74197. The Department assigned the application number IL-926.
2. On July 27, 2010, the Department issued an order approving instream lease IL-926, as evidenced by Special Order Volume 81, Page 521. Following issuance of this order it was identified that a condition requested by the Watermaster for District 3 was left out of the order. This order is being issued to incorporate that condition (see Finding of Fact #7) and supersedes Special Order Volume 81, Page 521.
3. This lease application was originally approved by the Department on July 3, 2008, as evidenced by Special Order Volume 75, Page 336. Evaluation of the renewal request revealed that the original order approving the lease application incorrectly described the rates and duty associated with the portion of the right to be leased instream.

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.

4. The portion of the right to be leased is as follows (corrections shown in bold and italic):

Certificate: 74197 in the name of Arnold Irrigation District
Use: Irrigation of 2.14 acres
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
Priority Date: February 1, 1905 and April 25, 1905
Quantity: Rate: Season 1 (limited to 1/51st cubic foot per second (CFS) per acre)
 Season 2 (limited to 1/39th cfs per acre)
 Season 3 (limited to 1/20.8th cfs per acre)
 Duty: Limited to 15.42 acre-feet per acre

Priority Date	Season 1	Season 2	Season 3	Duty
February 1, 1905	0.004 CFS	0.004 CFS	0.004 CFS	11.55 AF
April 25, 1905	0.010 CFS	0.015 CFS	0.021 CFS	
Totals	0.014 CFS	0.019 CFS	0.026 CFS	

The listed quantities **do not** reflect the allowance of a 65% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933, **which is allowed at the Arnold main canal**. Direct diversions are not allowed this transmission loss.

Source: Deschutes River, tributary to the Columbia River.

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
18 S	11E	WM	13	NE SW	AID POD #6 – 2710 FEET SOUTH AND 2830 FEET WEST FROM THE NE CORNER OF SECTION 13

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	11 E	WM	13	NW SE	1200	2.14*

*Note: Instream lease application IL-926 requested that 2.51 acres were to be leased instream from Tax Lot 1200; however, the Deschutes County tax lot map shows the correct size for Tax Lot 1200 is 2.14 acres.

5. 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.
6. The instream has been modified from the lease application to prevent injury and enlargement and is as follows:
 Deschutes River, tributary to the Columbia River

Instream Reach #1: From the POD #6 (as described in Finding of Fact #4) to Lake Billy Chinook

Certificate	Priority Date	Instream Rates			Total Instream Volume
		Season 1	Season 2	Season 3	
74197	February 1, 1905	0.004 CFS	0.004 CFS	0.004 CFS	1.81 AF
	April 25, 1905	0.010 CFS	0.015 CFS	0.021 CFS	7.36 AF
Totals		0.014 CFS	0.019 CFS	0.025 CFS	9.17 AF

Instream Reach #2: From Lake Billy Chinook to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rates			Total Instream Volume
		Season 1	Season 2	Season 3	
74197	February 1, 1905	0.002 CFS	0.002 CFS	0.002 CFS	0.76 AF
	April 25, 1905	0.007 CFS	0.007 CFS	0.007 CFS	3.09 AF
Totals		0.009 CFS	0.009 CFS	0.009 CFS	3.85 AF

7. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. 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 the original points of diversion within the specified stream reach.

8. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #4. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
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.
13. 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 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. This correcting order supersedes Special Order Volume 81, Page 521.
3. The former place of use will no longer receive water as part of these rights, any supplemental rights, including but not limited to those under Certificate 76714, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
4. The lease will terminate on October 31, 2010.

Dated at Salem, Oregon this 30 day of July, 2010.


Phillip C. Ward, Director

Mailing date: AUG 02 2010

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