

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

In the Matter of the Proposed Short-Term)
Lease of Existing Water Rights for Instream)
Use, Certificates 76358 and 76714,)
Deschutes County

DETERMINATION and
FINAL ORDER ON PROPOSED
INSTREAM LEASE

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

Robert Trumbull Brown
22855 Bear Creek Rd
Bend, OR 97701

Lessor #2

Central Oregon Irrigation District (COID)
2598 N Hwy 97
Redmond, OR 97756
transfers@coid.org

Lessee

Deschutes River Conservancy
700 NW Hill
Bend, OR 97701
laura@deschutesrc.org

Findings of Fact

1. Robert Brown and COID filed an application to lease a portion of Certificates 76358 and 76714 to instream use. The Department assigned the application number L-639.

2. The rights to be leased are as follows:

Certificate: 76358

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: October 31, 1900 and December 2, 1907

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.

Quantity: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre): 0.095 CFS under the 10/31/1900 priority date
 Season 2 (limited to 1/60th cfs per acre): 0.127 CFS under the 10/31/1900 priority date
 Season 3 (limited to 1/32.4th cfs per acre): 0.235 CFS, being 0.168 CFS under the 10/31/1900 priority date and 0.067 CFS under the 12/2/1907 priority date
 Duty (limited to 9.91 acre-feet per acre): 75.32 Acre-Feet (AF)
 The quantities listed reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933

Source: Deschutes River, tributary to the Columbia River

Place of Use:

IRRIGATION OF 7.6 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	13 E	WM	5	NE NE	100	7.6

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11E	WM	13	SW NE	Central Oregon Canal – 1520 feet South & 1535 feet West from the NE corner of Section 13

Certificate: 76714
Season of Use: April 1 to November 1
Priority Date: February 28, 1913
Quantity: 75.32 AF This right does not have a rate limitation.
Source: Crane Prairie Reservoir, tributary to the Deschutes River

Place of Use: Same as described for certificate 76358

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11E	WM	13	SW NE	Central Oregon Canal – 1520 feet South & 1535 feet West from the NE corner of Section 13
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.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
 Deschutes River
 Tributary to the Columbia River in the Deschutes Basin

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

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
76358 primary	Deschutes R	10/31/1900	Season 1: 0.052 CFS Season 2: 0.070 CFS Season 3: 0.092 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.037 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 7.37 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

5. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 76358 does not include a 45% 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 76358. The portion of certificate 76714 being leased instream shall only be protected instream if the full rate and duty under certificate 76358 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 31st day of May 2005.



For Phillip C. Ward, Director

Mailing date: JUN 0 8 2005