

**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, Certificate 74145, Deschutes County)	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE
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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

Jeffrey M. Heath
20620 Bemis Lane
Bend, OR 97701

Lessor #2

Swalley Irrigation District (SID)
64672 Cook Ave, Suite #1
Bend, OR 97701

Lessee

Deschutes Water Exchange (DWE) Mitigation Bank
PO Box 1560
Bend, OR 97709
ghubert@deschutesrc.org

Findings of Fact

1. On April 24, 2006, SID, DWE Mitigation Bank and Jeffrey Heath filed an application to lease a portion of Certificate 74145 to instream use. The Department assigned the application number L-722.
2. The right to be leased is clarified from the application and is as follows:

Certificate: 74145

Priority Date: September 1, 1899

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

Quantity: Season 1 (limited to 1/83rd Cubic Foot per Second (CFS)/acre): 0.12 CFS

Season 2 (limited to 1/62nd CFS/acre): 0.161 CFS

Season 3 (limited to 1/33.45 CFS/acre): 0.274 CFS

Duty (limited to 9.91 acre-feet per acre): 95.8 Acre-Feet (AF)

The quantities listed reflect allowance of a 43% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933

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.

Source: Deschutes River, tributary to the Columbia River

Place of Use:

IRRIGATION OF 10.0 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
16 S	12 E	WM	16	SE SW	1702	10.0

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	Swalley Main Canal – 985 feet North & 617 feet West from the East ¼ corner, of Section 29

- 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 is clarified from the lease application to prevent injury and enlargement and is as follows:
Deschutes River, tributary to the Columbia River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	September 1, 1899	Season 1: 0.069 cfs Season 2: 0.092 cfs Season 3: 0.156 cfs	51.89	April 1 through October 31

- Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 74145 does not include a 43% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

- 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.
- 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.
- The lease will terminate on October 31, 2006.

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, 2006.

Dated at Salem, Oregon this 5th day of June 2006.



Pot Phillip C. Ward, Director

Mailing date: JUN 0 8 2006