

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use, Certificate(s) 76358 & 76714, Deschutes)	PROPOSED INSTREAM
County, Oregon)	LEASE

FINDINGS OF FACT

1. A Short-Term Lease Application, which proposed to lease all or a portion of certificates 76358 & 76714 for instream purposes was submitted to the Department by:

Lessor #1

MDK Investments

Marcus Walker, Dale Walker, Karne Moss,
& Marianne Walker

65895 W Hwy 20

Bend, OR 97701

Lessor #2

Central Oregon Irrigation District

2598 N Hwy 97

Redmond, OR 97756

Lessee

Deschutes Resources Conservancy

PO Box 1560

Bend, OR 97709

2. The instream lease application included the required fees. The Department assigned this lease agreement number L-535.
3. 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.
4. The rights to be leased, as requested by the applicant, are as follows:

Certificate: 76358

Use: Irrigation

Acres: 7.35 acres

Priority Date: October 31, 1900 & December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as
Season 1

May 1 to May 15 and September 15 to October 1 described herein as
Season 2

May 15 to September 15 described herein as Season 3

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Quantity: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre): 0.09 CFS
 Season 2 (limited to 1/60th cfs per acre): 0.12 CFS
 Season 3 (limited to 1/32.4th cfs per acre): 0.23 CFS
 Duty (limited to 9.91 acre-feet per acre): 72.8 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

Authorized Point of Diversion (POD) - COID North Canal POD #11:

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	29	SE	NE	850 Feet North and 630 Feet West from the E 1/4 Corner, Section 29

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
15	S	13	E	W.M.	4	NE	NE	100	10/31/1900 12/2/1907	7.35
									Total acres	7.35

Certificate: 76714

Use: Irrigation

Acres: 7.35 acres

Priority Date: February 28, 1913

Season of Use: April 1 through October 31

Quantity: 72.8 AF. This right does not have a rate limitation.

Source: Crane Prairie Reservoir, tributary to the Columbia River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
17	S	12	E	W.M.	29	SE	NE	COID North Canal POD (11) - 850 Feet North and 630 Feet West from the E 1/4 Corner, Section 29
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir Dam

Authorized Place of Use: Same as described for certificate 76358.

5. The Department finds that the lease application requires modification in order to clarify the amount of water allowed under each priority date associated with the primary right, certificate 76358. In addition, the supplemental right requires clarification to identify the amount of water that may be leased and to clarify the source of water. The rights are clarified as follows (changes are shown in bold text):

Certificate: 76358

Use: Irrigation

Acres: 7.35 acres

Priority Date: October 31, 1900 & December 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as Season 1

May 1 to May 15 and September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

Quantity: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre): 0.09 CFS
Season 2 (limited to 1/60th cfs per acre): 0.12 CFS
Season 3 (limited to 1/32.4th cfs per acre): **0.23 CFS, being 0.16 CFS under the 1900 priority date and 0.07 CFS under the 1907 priority date**
Duty (limited to 9.91 acre-feet per acre): 72.8 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

Certificate: 76714

Use: Irrigation

Acres: 7.35 acres

Priority Date: February 28, 1913

Season of Use: April 1 through October 31

Quantity: **7.13 AF.** This right does not have a rate limitation. This volume is based upon evenly distributing each acre-foot stored in Crane Prairie Reservoir, 50,000 af, under this certificate between the 51,536.847 acres to which water may be applied. The distribution per acre is 0.97 af per acre.

Source: Crane Prairie Reservoir, tributary to the **Deschutes** River

6. The application proposes to lease water for instream as follows:

Reach: From the COID North Canal POD (11) (SE NE, Section 29, T17S, R12E, W.M., 850 Feet North and 630 Feet West from the E 1/4 Corner, Section 29) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76358 (primary)	October 31, 1900 & December 2, 1907	Season 1: 0.05 CFS Season 2: 0.07 CFS Season 3: 0.12 CFS	April 1 through Oct. 31	214	40.56 AF
76714 (supplemental)	February 28, 1913	Season 1: 0.05 CFS Season 2: 0.07 CFS Season 3: 0.12 CFS	April 1 through Oct. 31	214	40.56 AF

7. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified. Clarification of the rate at which water is to be leased instream by priority date as well as the total volume for the primary right is necessary. In addition, the amount of water that may be leased instream under the supplemental right needs some clarification. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the COID North Canal POD (11) (SE NE, Section 29, T17S, R12E, W.M., 850 Feet North and 630 Feet West from the E 1/4 Corner, Section 29) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76358 (primary)	October 31, 1900 & December 2, 1907	Season 1: 0.05 CFS under the 1900 priority date Season 2: 0.07 CFS under the 1900 priority date Season 3: 0.125 CFS, being 0.089 CFS under the 1900 priority date and 0.036 CFS under the 1907 priority date	April 1 through Oct. 31	214	40.56 AF
76714 (supplemental)	February 28, 1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 through Oct. 31	214	7.13 AF

8. To prevent injury an enlargement, the amount of water to be leased instream under certificate 76358 accounts for a 45% transmission loss that may not be leased and protected instream.
9. 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.
10. Based upon review of the application and information provided by the Department's Watermaster, the Department finds that the lease, as modified, will not result in injury or enlargement.
11. The lease will terminate on October 31, 2008. The Lessors and Lessee have requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.

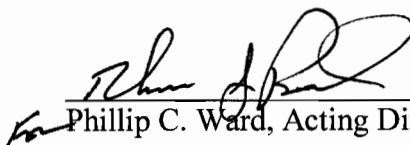
3. Water is leased instream as follows:

Reach: From the COID North Canal POD (11) (SE NE, Section 29, T17S, R12E, W.M., 850 Feet North and 630 Feet West from the E 1/4 Corner, Section 29) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
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76714 (supplemental)	February 28, 1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 through Oct. 31	214	7.13 AF

4. 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.
5. The lease will terminate on October 31, 2008. The Lessor shall have the option of terminating the lease each year, prior to the lease being exercised (April 1), with 30 day written notice to the Department.

Dated at Salem, Oregon this 15th day of July 2004.


Phillip C. Ward, Acting Director