

**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

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

Ansel N. Marshall Living Trust
Ansel N. Marshall Trustee
63480 OB Riley Road
Bend, Oregon 97701
qhorse@teleport.com

Lessor #2

Swalley Irrigation District
64672 Cook Avenue
Bend, Oregon 97701

Lessee

Deschutes River Conservancy
P.O. Box 1560
Bend, Oregon 97701
laura@deschutesrc.org

Findings of Fact

1. Ansel N. Marshall Living Trust, Swalley Irrigation District, and the Deschutes River Conservancy filed an application to lease a portion of Certificate 74145 to instream use. The Department assigned the application number L-642.
2. The rights to be leased are as follows:

Certificate 74145:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	17	NW NE	1.30
15 S	12 E	WM	14	SW NE	0.7

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 E ¼ CORNER, SECTION 29

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.

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 instream use is clarified from the lease application to prevent injury and enlargement and is as follows:
Deschutes River
Tributary to Columbia River in the Deschutes Basin

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

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
74145	September 1, 1899	0.014	April 1 to May 1 and October 1 to November 1
		0.018	May 1 to May 15 and September 15 to October 1
		0.031	May 15 to September 15

5. 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.
6. 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.
7. The lease will terminate on November 1, 2009.
8. 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 November 1, 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