

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use,) FINAL ORDER ON PROPOSED
Certificate 74135, County) INSTREAM LEASE

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

Pooled Instream Lease for several water right holders (described in Findings of Fact #2)

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759
tsid@uci.net

Lessee

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

Findings of Fact

1. On June 25, 2008, the DRC and TSID, on behalf of several water right holders, filed an application to lease a portion of Certificates 74135, 303, 291, and 24167 to instream use. The Department assigned the application number IL-943.
2. A portion of the lease application includes a request to lease a portion of Certificates 303, 291, and 24167 to instream use. A portion of the place of use for these certificates was transferred as part of T-8900 and T-8902. An order approving these transfers was issued on October 12, 2005, as evidenced by Special Order Volume 67, Page 271. A Claim of Beneficial Use (CBU) report and Final Proof maps have been submitted to the Department for review. Review of the CBU report and maps has not yet been completed. Pursuant to OAR 690-077-0076 (1) (b), anyone may submit a request to lease a water right where a transfer order has been issued and approved and for which proper proof of completion of the change has been filed. At this time, it is not clear whether proper proof has been filed and the portion of these rights described in the lease application may not yet be leased instream.
3. Based upon Finding of Fact #2, this lease application only considers Certificate 74135.

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. On July 25, 2008, TSID and the DRC requested that 2.0 acres in the NW SE of Section 24, Township 15 South, Range 10 East, be removed from the lease application.

5. The portion of the right to be leased is as follows:

Certificate: 74135 in the name of Squaw Creek Irrigation District (now known as Three Sisters Irrigation District)

Season of Use: unspecified by certificate or decree

Priority Date: 1895 and 1904

Use: 165.6 acres of Irrigation under the 1895 priority date and 15.6 acres of Irrigation under the 1904 priority date

Quantity: 3.624 Cubic Foot per Second (CFS), being 3.312 CFS for Irrigation use under the 1895 priority date and 0.312 CFS for Irrigation use under the 1904 priority date

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
14 S	11 E	WM	13	SW SW	700	20.5	1895	Kenneth Tisher & Tim and Wendy DiPaolo
14 S	11 E	WM	13	SW SW	700	0.5	1904	
14 S	11 E	WM	13	SW SW	800	4.5	1895	
14 S	11 E	WM	14	SE SE	700	2.5	1895	
14 S	11 E	WM	14	SE SE	800	1.5	1895	
15 S	10 E	WM	24	SE SE	505	21.0	1895	Mark Koos
15 S	10 E	WM	26	NW NE	600	22.9	1895	Mike Mansker
15 S	10 E	WM	26	NW NE	600	15.1	1904	
15 S	10 E	WM	26	NE NW	600	25.0	1895	
15 S	11 E	WM	3	NW NW	1101	30.0	1895	Joseph Angel
15 S	11 E	WM	4	SW SW	401	30.6	1895	James Enger
15 S	11 E	WM	10	NW NE	302	7.1	1895	Wayne Cornick

Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

6. There is no duty associated with the water right proposed to be leased instream.
7. 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.
8. The Lessor and Lessee have requested to protect water instream during the period July 2 through October 1. Certificate 74135 does not have an irrigation season specified by certificate or decree. Flows could potentially be protected instream over a longer period without injury or enlargement.
9. The instream use has been modified from the lease application based on Finding of Fact #4 and is as follows:
 Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #5) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
74135	1895	3.312	604.37	July 2 through October 1
	1904	0.312	59.93	
Totals		3.624	664.30	

10. Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that Three Sisters Irrigation District (TSID) is diverting to rights of the same priority within the district. Each Monday morning during the period of the instream period of this lease, TSID shall report to the District 11 Watermaster's office the percentage diverted under the 1895 and 1904 priority dates. This information only needs to be reported to the Watermaster's office once TSID is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once TSID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.

During the irrigation season, the amount of water diverted at the point of diversion under Certificate 74135 shall not exceed 148.096 CFS.

11. 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.

12. 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.

13. 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.

14. The Lessor and Lessee requested that the lease terminate on October 31, 2008.

CONCLUSIONS OF LAW

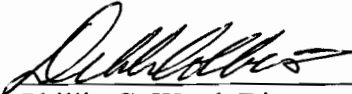
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2008.

Dated at Salem, Oregon this 25th day of August, 2008.


R Phillip C. Ward, Director

Mailing date: AUG 27 2008