

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1067, Certificates 76013 and 83850,) FINAL ORDER ON PROPOSED
Crook 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

City of Prineville
387 NE 3rd Street
Prineville, OR 97754

Lessor #3

Peoples Irrigation Company
615221 O'Neil Highway
Prineville, OR 97754

Lessor #2

U.S. Bureau of Reclamation
Columbia-Cascades Area Office
1917 Marsh Road
Yakima, WA 98901

Lessee

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

Findings of Fact

1. On April 13, 2010, the City of Prineville, U.S. Bureau of Reclamation, Peoples Irrigation Company and the DRC filed an application to lease a portion of Certificates 76103 and 83850 for instream use. The Department assigned the application number IL-1067.
2. Both Certificate 76013 and Certificate 83850 involve the use of live flow and stored water from Prineville Reservoir. On May 3, 2010, the City of Prineville clarified that the portion of each right being leased instream is for live flow only.
3. The portion of the first right to be leased has been clarified from the lease application and is as follows:

Certificate: 76013 in the name of U.S. Bureau of Reclamation and Peoples Irrigation Company
Use: Irrigation of 8.3 acres
Priority Date: April 8, 1914
Quantity: **Rate:** 0.207 Cubic Foot per Second (CFS)
Duty: 33.2 Acre-Feet (AF)

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: **Limit:** One-fortieth CFS per acre, not to exceed 4.0 AF per acre per year
Crooked River and Prineville Reservoir, constructed under Permit R-2223,
tributary to the Deschutes River

Authorized Points of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	W.M.	8	NW SW	PEOPLES DITCH: 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8
17 S	16 E	W.M.	11	SW NW	BOWMAN DAM: 1650 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	W.M.	35	NW NE	8.3

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

Certificate: 83850 in the name of U.S. Bureau of Reclamation
Use: Irrigation of 21.8 acres
Priority Date: April 8, 1914
Quantity: **Rate:** 0.551 Cubic Foot per Second (CFS)
Duty: 87.2 Acre-Feet (AF)
Limit: One-fortieth CFS per acre, not to exceed 4.0 AF per acre per year
Source: Crooked River and Prineville Reservoir, constructed under Permit R-2223,
tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	W.M.	26	SE SE	DIRECT DIVERSION #36: 100 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	W.M.	35	NE NE	21.8

5. Certificates 76013 and 83850 are both deficient water rights. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed, the total rate and duty for the water rights would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs, the portion of the rights involved in this instream lease would be limited as described in Findings of Fact #3 and #4. These rates and duties are also the quantities by which the diversions for each certificate shall be reduced, if this instream lease is approved.
6. Certificates 76013 and 83850 do not specify an irrigation season. However, the decreed irrigation season for the area is February 1 to December 1. For the purposes of instream leasing, an irrigation season of February 1 to December 1, consistent with the Crooked River Decree, shall be used to establish when water may be protected 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 Lessors and Lessee have requested to protect water instream from the PODs on the Crooked River to Lake Billy Chinook. A portion of the water diverted at each POD returns to the Crooked River below each POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows immediately below each POD. At this time, the Department estimates that return flows are 10% of the amount diverted.
9. The lease application requests to protect water instream during the period June 26 through October 5, a 102 day period. At the proposed instream rates and volumes, water may not be protected over this full time period without enlargement of the rights.
10. On June 7, 2010, the Lessee agreed to modify the proposed instream use. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Crooked River, tributary to the Deschutes River

Instream Point #1: At the Peoples Ditch POD (as described in Findings of Fact #3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
76013	4/8/1914	0.166	33.2	June 27 through October 5

Instream Reach #1: From immediately below the Peoples Ditch POD to Direct Diversion #36 (as described in Finding of Fact #4)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
76013	4/8/1914	0.149	29.93	June 27 through October 5

Instream Point #2: At Direct Diversion #36

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
76013	4/8/1914	0.149	29.93	June 27 through October 5
83850	4/8/1914	0.435	87.2	June 27 through October 5

Instream Reach #2: From immediately below Direct Diversion #36 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
76013	4/8/1914	0.149	29.93	June 27 through October 5
83850	4/8/1914	0.392	78.43	June 27 through October 5

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 has requested that the lease terminate on October 31, 2010. Instream leases generally terminate on the last day of the period of allowed use or irrigation season. The irrigation season ends on November 30, 2010. Therefore, the instream lease may terminate on November 30, 2010.

CONCLUSIONS OF LAW

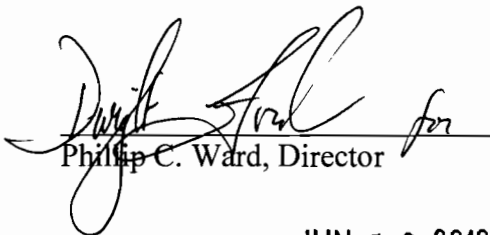
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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 November 30, 2010.

Dated at Salem, Oregon this 9 day of June, 2010.


Philip C. Ward, Director

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUN 10 2010