

**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

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**

Marc Thalacker  
70625 Lower Bridge Way  
Terrebonne, OR 97760

**Lessor #2**

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

**Lessee**

Deschutes River Conservancy (DRC)  
P.O. Box 1560  
Bend, Oregon 97709  
[ghubert@deschutesrc.org](mailto:ghubert@deschutesrc.org)

**Findings of Fact**

1. On March 28, 2007, the DRC, TSID, and Marc Thalacker filed a split-season instream lease application to lease a portion of Certificate 74135 to instream use. The Department assigned the application number S-8.
2. The right to be leased is as follows:

**Certificate:** 74135  
**Season of Use:** unspecified by certificate or decree  
**Priority Date:** 1895 and 1904  
**Use:** Irrigation of 165.0 acres, being 163.5 acres under the 1895 priority date and 1.5 acres under the 1904 priority date  
**Quantity:** 3.3 Cubic Foot per Second (CFS), being 3.27 CFS under the 1895 priority date and 0.03 CFS 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	Priority Date	Acres
14 S	12 E	WM	7	SE SE	1401	1895	8.0

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.

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority Date	Acres
14 S	12 E	WM	17	SW NW	1401	1895	32.5
14 S	12 E	WM	18	NE NE	1401	1895	40.5
14 S	12 E	WM	18	SW NE	1401	1895	37.0
14 S	12 E	WM	18	SE NE	1401	1895	32.5
14 S	12 E	WM	18	NW SE	1401	1895	13.0
14 S	12 E	WM	18	NW SE	1401	1904	1.5

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 feet North & 1211 feet East from the SW Corner of Section 21

- 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 lease application, as proposed, is a split season lease. Water may be used for its existing use up to a maximum rate of 3.3 CFS, being 3.27 CFS under the 1895 priority date and 0.03 CFS under the 1904 priority date. The existing use period (out of stream) will be July 1 through October 31, a period of 123 days.
- The instream use has been modified from the lease application and is as follows:  
Whychus Creek, tributary to the Deschutes River

**Instream Reach:** From the POD (as described in Finding of Fact #2) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
74135	1895	3.27	April 15 through June 30
	1904	0.03	

- Other conditions to prevent injury and enlargement are:

The Lessor shall make daily measurements of use during the existing use period. The measuring device shall be a three foot Cipolletti weir, which serves Marc Thalacker only, or another acceptable device to the Director. The daily measurements shall be submitted on a monthly basis to the District 11 Watermaster.

The instream reach has been modified to extend only as far as the mouth of Whychus Creek. The applicant originally requested that the reach extend beyond Whychus Creek and into the Deschutes River down to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being the Deschutes River (OAR 690-077-0015 (7)).

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.

7. 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.
8. 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.
9. The lease will terminate on October 31, 2007.

#### **CONCLUSIONS OF LAW**

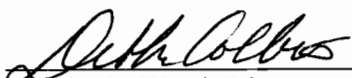
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

#### **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, 2007.

Dated at Salem, Oregon this 27<sup>th</sup> day of April 2007.

  
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Phillip C. Ward, Director

Mailing date: APR 30 2007