

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1015, Certificates 276 and 30561, ) FINAL ORDER ON PROPOSED  
Deschutes and 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**

Squaw Creek Canyon Estates  
Ron Remund  
17807 Mountain View Rd.  
Sisters, OR 97759

**Lessee**

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

**Findings of Fact**

1. On June 30, 2009, the DRC and Squaw Creek Canyon Estates filed an application to lease all of Certificates 276 and 30561 for instream use. The Department assigned the application number IL-1015.
2. The first right to be leased is as follows:

**Certificate:** 276 in the name of Water S. Fullerton

**Use:** Irrigation of 15.0 acres

**Priority Date:** August, 1901

**Quantity:** **Rate:** 0.3 Cubic Foot per Second (CFS)

**Limit:** One-fiftieth CFS per acre

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

**Authorized Point of Diversion (POD):** Unspecified by certificate.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	16	SW NW	8.0
14 S	11 E	WM	17	SE NE	5.0
14 S	11 E	WM	17	NE SE	2.0

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.

- The second right to be leased is as follows:

**Certificate:** 30561 in the name of A.N. Voorhees and Sons

**Use:** Irrigation of 7.5 acres

**Priority Date:** May 26, 1958

**Quantity:** **Rate:** 0.15 Cubic Foot per Second (CFS)

**Duty:** 33.75 Acre-Feet (AF)

**Limit:** One-fiftieth CFS per acre, not to exceed 4.5 AF per acre per year

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

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	17	SW SE	Unspecified by Certificate.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	16	SW NW	2.0
14 S	11 E	WM	17	NE SE	5.5

- 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.
- Certificate 276 does not describe the location of the authorized POD. The Squaw Creek Decree identifies the name of the diversion ditch as W.S. Fullerton ditch. The Department also has information that suggests that the POD for Certificate 276 is the same as that identified for Certificate 30561. For purposes of this instream use, the POD for Certificate 30561 shall be used as the start point for the instream reach.
- Certificates 276 and 30561 do not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
- The Lessor has requested to protect up to 127.34 AF instream under Certificate 276, which is the equivalent of 8.49 AF per acre. The Squaw Creek Decree does set a duty limit for water rights established under this decree in the Whychus Creek (formerly Squaw Creek) subbasin. Historically the Lessor has used a push up dam at the POD to divert the full quantity allowed by the right into the ditch during the entire irrigation season.
- The place of use is in close proximity to Whychus Creek. A portion of the quantity diverted at the POD returns to Whychus Creek below the POD. To prevent enlargement of the use and any injury to downstream water users, return flows should be accounted for immediately below the POD.
- The lease application requests to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be

leased instream from Whychus Creek is not measurable into the Deschutes River and may not be protected instream in the Deschutes River.

10. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Whychus Creek, tributary to the Deschutes River

**Instream Point:** At the POD for Certificate 30561 (as described in Finding of Fact #3)

Certificate	Priority Date	Protected Period Instream			Instream Volume (AF)
		April 1 – June 10	June 11 – Oct. 1	Oct. 2 – Oct. 31	
		Instream Rate (cfs)			
276	1901	0.3	0.3	0.3	127.43
30561	5/26/1958		0.15		33.75
<b>Totals</b>		<b>0.3</b>	<b>0.45</b>	<b>0.3</b>	<b>161.18</b>

**Instream Reach:** From immediately below the POD (as described in Finding of Fact #3)

Certificate	Priority Date	Protected Period Instream			Instream Volume (AF)
		April 1 – June 10	June 11 – Oct. 1	Oct. 2 – Oct. 31	
		Instream Rate (cfs)			
276	1901	0.064	0.064	0.064	27.0
30561	5/26/1958		0.060		33.75
<b>Totals</b>		<b>0.064</b>	<b>0.124</b>	<b>0.064</b>	<b>60.75</b>

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, 2013.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### CONCLUSIONS OF LAW

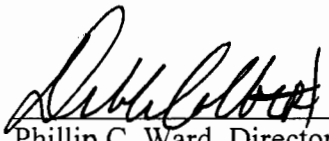

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

**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, 2013. For multiyear leases, the lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (April 1) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 12<sup>th</sup> day of August, 2009.

  
Phillip C. Ward, Director 

Mailing date: AUG 13 2009