

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

In the Matter of the Proposed Lease of )  
Existing Water Rights for Instream Use, )  
Certificates 83656, 83657, and 83656, )  
Crook County )

) DETERMINATION and  
) FINAL ORDER ON PROPOSED  
) 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**

Mill Creek Land, LLC (Mark Copeland)  
7900 NE Mill Creek Rd.  
Prineville, OR 97754  
[analysisllc@aol.com](mailto:analysisllc@aol.com)

**Lessee**

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

**Findings of Fact**

1. On March 10, 2008, the DRC and Mill Creek Land, LLC, filed an application to lease all of Certificates 83656 and 83657 and a portion of Certificate 83658 to instream use. The Department assigned the application number IL-892.

2. The first right to be leased is as follows:

**Certificate:** 83656  
**Use:** Irrigation, domestic and stock use  
**Acres:** 60.0 acres  
**Priority Date:** 1868  
**Season of Use:** Unspecified by certificate  
**Quantity:** Rate: a reasonable amount for Domestic and Stock use and 0.75 Cubic Foot per Second (CFS) for Irrigation  
Duty: 240.0 Acre-Feet (AF)  
If available at the original authorized point of diversion: Johnson Lawson Freeland Ditches  
**Source:** Mill Creek, tributary to Ochoco Creek  
**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	22	SE SE	1122 FEET NORTH AND 346 FEET WEST FROM THE NW CORNER OF SECTION 26

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.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Acres
14	S	17	E	W.M.	26	NW	NW	15.1
14	S	17	E	W.M.	26	SW	NW	37.2
14	S	17	E	W.M.	26	SE	NW	0.4
14	S	17	E	W.M.	26	NW	SW	7.3

3. The second right to be leased is as follows:

**Certificate:** 83657

**Use:** Irrigation, domestic and stock use

**Acres:** 113.0 acres

**Priority Date:** 1868

**Season of Use:** Unspecified by certificate

**Quantity:** Rate: a reasonable amount for Domestic and Stock use and 1.42 CFS for Irrigation

Duty: 452.0 AF

If available at the original authorized point of diversion: No Name Ditch

**Source:** Mill Creek, tributary to Ochoco Creek

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

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	22	SE SE	1122 FEET NORTH AND 346 FEET WEST FROM THE NW CORNER OF SECTION 26

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Acres
14	S	17	E	W.M.	26	NW	NE	5.0
14	S	17	E	W.M.	26	SW	NE	7.3
14	S	17	E	W.M.	26	NE	NW	1.8
14	S	17	E	W.M.	26	NW	NW	5.2
14	S	17	E	W.M.	26	SW	NW	1.3
14	S	17	E	W.M.	26	SE	NW	13.9
14	S	17	E	W.M.	26	NE	SW	9.7
14	S	17	E	W.M.	26	NW	SW	22.7
14	S	17	E	W.M.	26	SW	SW	17.7
14	S	17	E	W.M.	26	SE	SW	24.3
14	S	17	E	W.M.	26	SW	SE	4.1

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

**Certificate:** 83658

**Use:** Irrigation

**Acres:** 14.8 acres

**Priority Date:** 1880

**Season of Use:** Unspecified by certificate

**Quantity:** Rate: 0.185 CFS for Irrigation  
 Duty: 59.2 AF  
 If available at the original authorized point of diversion: SW ¼ SW ¼,  
 Section 36, T14S, R17E, W.M.; Ochoco Ditch – 350 Feet East from the NW  
 Corner of the SW ¼ SW ¼, Section 36.

**Source:** Ochoco Creek, tributary to Crooked River

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

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	35	SE NW	2018 FEET SOUTH AND 2605 FEET EAST FROM THE NW CORNER OF SECTION 35

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4 1/4		Acres
14	S	17	E	W.M.	26	SW	SW	13.5
14	S	17	E	W.M.	35	NW	NW	1.3

- The irrigation season for each of the above rights is not specified in the certificates. However, the decreed irrigation season for the Crooked River Basin is February 1 to December 1.
- 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.
- The Lessor is also the water right holder of Certificate 567. Certificate 567 has a priority date of 1869. The Lessor has requested that Certificate 567 not be regulated due to the proposed instream lease.
- The instream use has been modified from the lease application and is as follows:  
 Mill Creek, tributary to Ochoco Creek

**Instream Reach #1:** From the authorized POD (as described in Finding of Fact #2 and 3) to the mouth of Mill Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83656	1868	0.75	240.0	May 1 through October 8
83657	1868	1.42	452.0	May 1 through October 8
<b>Totals</b>		<b>2.17</b>	<b>692.0</b>	

**Instream Reach #2:** From the authorized POD (as described in Finding of Fact #4) on Ochoco Creek to the confluence with Mill Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83658	1880	0.185	59.2	May 1 through October 8
<b>Totals</b>		<b>0.185</b>	<b>59.2</b>	

**Instream Reach #3:** From the confluence between Mill Creek and Ochoco Creek to the mouth of Ochoco Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83656	1868	0.75	240.0	May 1 through October 8
83657	1868	1.42	452.0	May 1 through October 8
83658	1880	0.185	59.2	May 1 through October 8
<b>Totals</b>		<b>2.355</b>	<b>751.2</b>	

9. The lease shall be conditioned as follows:

For the purposes of this lease, Certificates 83656 and 83657 are subordinate to Certificate 567.

If, however, Certificate 567 is regulated (due to a water right other than Certificates 83656 and 83657) then during the period when Certificate 567 is being regulated, Certificates 83656 and 83657 will not be subordinate to Certificate 567 and may be regulated in favor of if the instream use is not being met.

The reach extends into a receiving stream (Ochoco Creek). The quantity of water available to the instream use will be checked periodically at the currently authorized points of diversions (as described in Findings of Fact #2, 3, and 4) for the quantity that may be protected throughout the reach. However, the quantity available at the authorized points of diversion is also limited to the quantity of water available at the original points of diversion (as described in Findings of Fact 2, 3, and 4).

10. The lease application requests to protect water instream from Mill Creek into Ochoco Creek. An instream reach is generally from the point of diversion to the mouth of the source stream (Mill Creek) but may be protected further if measurable in the receiving stream (Ochoco Creek) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Mill Creek is measurable into Ochoco Creek and may be protected instream in Ochoco Creek.

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 lease will terminate on November 30, 2012.

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

### CONCLUSIONS OF LAW

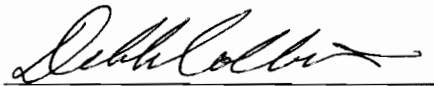
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

### 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 November 30, 2012. The Lessor has the option of terminating the lease each year, with notification to the Department by January 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 18<sup>th</sup> day of April 2008.



*PC* Phillip C. Ward, Director

Mailing date: APR 22 2008