

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

In the Matter of the Proposed Short-Term Lease of Existing Water Rights for Instream Use, Certificate 74135, Deschutes County)
)
) DETERMINATION and
) FINAL ORDER ON PROPOSED
) SPLIT-SEASON 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 short-term instream lease applications.

Lessor #1
 Marc and Pamela Thalacker
 70625 Lower Bridge Way
 Terrebonne, OR 97760

Lessor #2
 Three Sisters Irrigation District (TSID)
 PO Box 2230
 Sisters, OR 97759
tsid@uci.net

Lessee
 Deschutes River Conservancy (DRC)
 PO Box 1560
 Bend, OR 97709
gghubert@deschutesrc.org

Findings of Fact

1. On July 17, 2006, the DRC, TSID and Marc and Pamela 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-7.
2. The right to be leased is as follows:

Certificate: 74135
Season of Use: unspecified by certificate or decree
Priority Date: 1889 and 1895
Use: Irrigation of 180.0 acres, being 178.5 acres under the 1895 priority date and 1.5 acres under the 1904 priority date
Quantity: 8.16 Cubic Foot per Second (CFS), being 0.4 CFS under the 1889 priority date and 7.76 CFS under the 1895 priority date
Source: Wychus 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	SW SE	1401	1895	4.0
14 S	12 E	WM	7	SE SE	1401	1895	11.5

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	NW NE	1401	1895	5.5
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	15.0
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 3.6 CFS, being 3.57 CFS under the 1895 priority date and 0.03 CFS under the 1904 priority date. The existing use period will be October 2 through October 31, a period of 31 days.
- The instream use is as follows:

Wychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

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

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
74135	1895	3.57	May 1 through July 15
	1904	0.03	May 1 through July 15

- 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 and Pamela 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 Wychus Creek. The applicant originally requested that the reach extend beyond Wychus 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, 2006.

CONCLUSIONS OF LAW

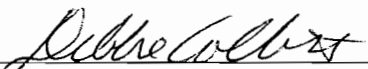
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on October 31, 2006.

Dated at Salem, Oregon this 17th day of August 2006.


Phillip C. Ward, Director

Mailing date: AUG 23 2006