

**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 76358, Deschutes County)

DETERMINATION and
FINAL ORDER ON PROPOSED
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

Brooks Resources Corporation
409 NW Franklin Ave.
Bend, OR 97701

Lessor #2

Tumalo Irrigation District (TID)
64697 Cook Ave.
Bend, OR 97701

Lessor #3

Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
transfers@coid.org

Lessee

Deschutes River Conservancy
PO Box 1560
Bend, OR 97709
ghubert@deschutesrc.org

Findings of Fact

1. On May 5, 2006, the DRC, TID, COID, and Brooks Resources Corporation filed an application to lease a portion of Certificate 76358 to instream use. The Department assigned the application number L-738.
2. The right to be leased is as follows:

Certificate: 76358

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1
May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2
May 15 to Sept. 15 described herein as Season 3

Priority Date: October 31, 1900 and December 2, 1907

Use: Irrigation of 2.0 acres

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.

Quantity:

Rate:

- Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre)
- Season 2 (limited to 1/60th cfs per acre)
- Season 3 (limited to 1/32.4th cfs per acre)
- Duty (limited to 9.91 acre-feet per acre)

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.025 CFS	0.033 CFS	0.044 CFS	
December 2, 1907			0.018 CFS	
Totals	0.025 CFS	0.033 CFS	0.062 CFS	19.82 AF

The listed quantities reflect allowance of a 45% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Direct diversions, by certificate, are not allowed this transmission loss.

Source:

Deschutes River, tributary to the Columbia River

Place of Use:

Irrigation of 2.0 acre						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	11 E	WM	24	NW NE	200	2.0

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	32	NW NE	TID Bend Feed Canal POD #9 – 2050 feet West from the NE corner of Section 32

3. 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.
4. The instream use is as follows:
Deschutes River tributary to the Columbia River

Instream Reach: From POD #9 (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
76358	10/31/1900	Season 1: 0.014 Season 2: 0.018 Season 3: 0.034	10.9	April 1 – Oct. 26

5. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 76358 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

6. 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.

7. 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.
8. The lease will terminate on October 31, 2006.

CONCLUSIONS OF LAW

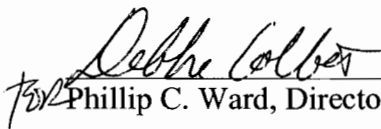
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

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 9th day of June 2006.


Phillip C. Ward, Director

Mailing date: JUN 13 2006