

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1066, Certificate 83571, Deschutes) FINAL ORDER ON PROPOSED
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

Richard and Robyn Eberhard
P.O. Box 2191
Redmond, OR 97756

Lessor #2

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

Lessee

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

Findings of Fact

1. On March 12, 2010, the DRC, COID, and Richard and Robyn Eberhard filed an application to renew instream lease IL-374, which originally involved a portion of Certificate 76358 (primary irrigation) and 76714 (supplemental irrigation).
2. The request to renewal Instream Lease IL-374 does not include Certificate 76714. Additionally, since IL-374 was originally leased instream, the amount of water that may be diverted from the points of diversion for Certificate 76358 has been further affected (reduced) by allocation of conserved water projects, instream transfers, and other actions. As a result, the amount of water that may be diverted for the portion of the right proposed to be leased instream has been further reduced from the amount identified in the original final order approving IL-374, as evidenced by Special Order Volume 57, Page 623. Therefore, the Department is assigning this lease a new lease number to distinguish it from IL-374. The lease is now assigned application number IL-1066.
3. On September 26, 2007, Certificate 83571 was issued superseding Certificate 76358.

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.

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

Certificate: 83571 in the name of Central Oregon Irrigation District
Use: Irrigation of 1.0 acre
Priority Date: October 31, 1900 and December 2, 1907
Season of Use: April 1 to September 15, further limited as follows:
 April 1 through April 30 and Oct. 1 through Oct. 31 described herein as Season 1
 May 1 through May 14 and Sept. 15 through Sept. 30 described herein as Season 2
 May 15 through Sept. 14 described herein as Season 3

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: 9.91 Acre-Feet (AF)

The above listed rates and duty reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17S	12E	W.M.	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot
15S	13E	W.M.	30	NE SE	1.0	1418

5. The Department has information that the season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

Season of Use: April 1 through October 31, further limited as follows:
 April 1 through April 30 & October 1 through October 31 described herein as Season 1
 May 1 through May 14 & September 15 through September 30 described herein as Season 2
 May 15 through September 14 described herein as Season 3

6. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #4), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #4), the portion of the right involved in this instream lease would be limited as

described in the tables below. These rates and duty are also the quantities by which the diversion POD #11 under Certificate 83571 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
Irrigation Use				
October 31, 1900	0.012 CFS	0.017 CFS	0.022 CFS	9.88 AF
December 2, 1907			0.009CFS	

7. 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.
8. The instream use has been modified from the original lease IL-374 and is as follows:
Deschutes River tributary to Columbia River

Instream Reach: From POD #11 (as described in Finding of Fact #11) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900 12/2/1907	Season 1: 0.007 Season 2: 0.009 Season 3: 0.017	5.45	April 1 through October 26

9. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 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.

10. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #4. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
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, 2012. The lease will commence on date the Final Order is signed and on April 1 of each succeeding calendar year that the lease is in place.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

CONCLUSIONS OF LAW

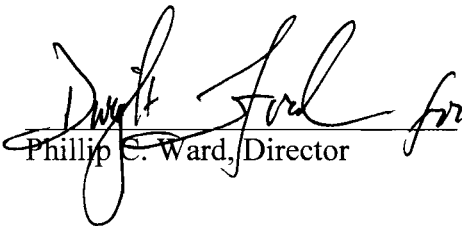
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

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, 2012. For multiyear leases, the lease shall commence upon approval and on April 1 of each succeeding calendar year of the instream lease. 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 21 day of April 2010.


Phillip C. Ward, Director

Mailing date: APR 26 2010