

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

In the Matter of the Proposed Lease of            )     DETERMINATION and  
Existing Water Rights for Instream Use,         )     FINAL ORDER ON PROPOSED  
Certificate 83571, Deschutes 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**

City of Bend  
PO Box 431  
Bend, OR 97709

**Lessor #2**

Central Oregon Irrigation District (COID)  
1055 SW Lake Court  
Redmond, OR 97756  
[lauraw@coid.org](mailto:lauraw@coid.org)

**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 19, 2009, COID, the City of Bend, and the DRC filed an application to lease a portion of Certificate 83571 to instream use. The Department assigned the application number IL-969.
2. The portion of the right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 83571 in the name of Central Oregon Irrigation District  
**Use:** Municipal Use (13.0 equivalent acres) and Pond Maintenance (2.5 equivalent acres)  
**Priority Date:** October 31, 1900 and December 2, 1907  
**Season of Use:** April 1 through October 31, further limited as follows:  
April 1 through April 30 & October 1 through October 31  
May 1 through May 14 & September 16 through September 30  
May 15 through September 15

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.

**Maximum Quantity (Rate) that can be applied to an acre:**

Season 1: limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre

Season 2: limited to 1/60<sup>th</sup> CFS per acre

Season 3: limited to 1/32.4<sup>th</sup> CFS per acre

**Maximum Duty that can be applied to an acre:**

Not to exceed 9.91 acre-feet (AF) per acre per year.

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):**

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
18	S	11	E	W.M.	13	SW NE	POD #1 (CO CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13
17	S	12	E	W.M.	31	NE SE	POD #4 (DRAKE PARK SOUTH): 700 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF NE ¼ SE ¼ OF SECTION 31

**Authorized Places of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot
Pond Maintenance – POD #1						
17 S	13 E	WM	20	SE NW	2.5	Lot 200
Municipal – POD #4						
17 S	12 E	WM	32	SW NW	13.0	

- 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

- Point of Diversion #4 is a direct diversion and not entitled to the 45% transmission losses allowed at the main canal diversions. On April 17, 2009, COID requested that for the purpose of the instream lease that the priority date for water diverted at POD #4 for the use described in Finding of Fact #2 be October 31, 1900.
- 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 #2), 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 POD #1 (described in

Finding of Fact #2), 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 at POD #1 and POD #4 under Certificate 83571 shall be reduced, if this instream lease is approved.

POD #1

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.031 CFS	0.042 CFS	0.055 CFS	24.67 AF
December 2, 1907			0.022 CFS	

POD #4

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.089 CFS	0.119 CFS	0.221 CFS	70.86 AF

6. 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.
7. The Lessor and Lessee have requested to protect water instream from the PODs described in Finding of Fact #2 to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use likely begin to re enter the river below River Mile 125 on the Deschutes River. To prevent injury to downstream water right holders, the quantity of water that may be protected instream requires modification and return flows should be accounted for at River Mile 125.
8. The instream use has been modified from the original lease application to prevent injury and/or enlargement and is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach #1: From POD #1 to POD #4 (both as described in Finding of Fact #2)**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	Season 1: 0.017 Season 2: 0.023 Season 3: 0.042	13.63	April 1 – Oct. 26

**Instream Reach #2: From POD #4 to River Mile 125**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	Season 1: 0.107 Season 2: 0.142 Season 3: 0.263	84.48	April 1 – Oct. 26

**Instream Reach #3: From River Mile 125 to the mouth of the Deschutes River**

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
83571	10/31/1900	0.084	35.02	April 1 – Oct. 26

9. 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 from POD #1. The transmission loss may not be leased and protected instream.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion. Stream channel losses and gains calculated based on available data and the use of water by senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

10. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact #2. 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 Lessors have requested that the lease terminate on October 31, 2012.

### **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.

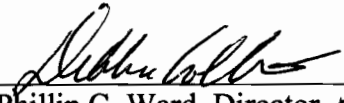
### **ORDER**

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.

Dated at Salem, Oregon this 6<sup>th</sup> day of May, 2009.

  
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Phillip C. Ward, Director *pcw*

Mailing date: MAY 11 2009