

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1425, Crook County ) 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**

Jim Bauersfeld  
5600 NE Mill Creek Rd.  
Prineville, OR 97754

**Lessee**

Deschutes River Conservancy (DRC)  
700 NW Hill Street  
Bend, Oregon 97701  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On June 30, 2014 Jim Bauersfeld and the DRC filed a Temporary Drought Instream Lease application to lease a portion of Certificates 75205, 83370, and 83371 for instream use. The Department assigned the application number IL-1425.
2. On July 14, 2014 the DRC requested that the Temporary Drought Instream Lease application be amended to a Standard Instream Lease application.
3. The portion of the first right to be leased is as follows:

**Certificate:** 75205 in the name of Oregon & Western Colonization Company  
(confirmed by Crooked River Decree, of record at Salem, in the Order  
Record of the Water Resources Director, in Volume 1, at Page 420 – 1)

**Use:** Irrigation of 6.8 acres

**Priority Date:** 1868

**Quantity:** **Rate:** 0.08 Cubic Foot per Second (CFS)

**Volume:** 27.2 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated  
and shall be further limited to a diversion of not to exceed 4.0 AF for  
each acre irrigated during the irrigation season of each year

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

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

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	Description
14 S	17 E	WM	10	SE SE	STANTON DITCH

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NW NE	0.6
14 S	17 E	WM	15	SW NE	3.2
14 S	17 E	WM	15	NW SE	3.0
<b>Total Acres</b>					<b>6.8</b>

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

**Certificate:** 83370 in the name of Billy L. Coffey (confirmed by Crooked River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at Page 325)

**Use:** Irrigation of 72.3 acres

**Priority Date:** 1868

**Quantity: Rate:** 0.9 Cubic Foot per Second (CFS)  
**Volume:** 289.2 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 AF for each acre irrigated during the irrigation season of each year

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

**Authorized Points of Diversion (PODs):**

Twp	Rng	Mer	Sec	Q-Q	Description
14 S	17 E	WM	10	SE SE	STANTON DITCH
14 S	17 E	WM	11	SW SW	STANTON AND EVANS DITCH

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NW NE	31.5
14 S	17 E	WM	15	SE NE	21.2
14 S	17 E	WM	15	NE SE	13.2
14 S	17 E	WM	15	SE SE	6.4
<b>Total Acres</b>					<b>72.3</b>

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

**Certificate:** 83371 in the name of Billy L. Coffey (confirmed by Crooked River Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at Page 449)

**Use:** Irrigation of 4.0 acres

**Priority Date:** 1868

**Quantity: Rate:** 0.05 Cubic Foot per Second (CFS)  
**Volume:** 16.0 Acre-Feet (AF)

**Limit:** One-eightieth CFS per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.0 AF for each acre irrigated during the irrigation season of each year

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

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

Twp	Rng	Mer	Sec	Q-Q	Description
-	-	-	-	-	Stanton Ditch

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	15	NE SE	0.6
14 S	17 E	WM	15	SE SE	3.4
<b>Total Acres</b>					<b>4.0</b>

6. Certificates 75205, 83370, and 83371 do not provided a full description of the location of the point of diversion. Based upon additional information provided by the applicant and Watermaster, for purposes of this instream lease, the point of diversion for the start point of the instream use is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
14 S	17 E	WM	10	SE SE	STANTON DITCH: 580 FEET NORTH AND 410 FEET WEST FROM THE SE CORNER OF SECTION 10

7. None of the certificates proposed to be leased specify the irrigation season. However, the Crooked River Decree establishes the irrigation season for the area as February 1 to December 1.
8. 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.
9. The instream use is as follows:  
 Mill Creek, tributary to Ochoco Creek  
**Instream Reach:** From the POD (as described in Finding of Fact No. 6) to the mouth of Mill Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75205	1868	0.08	27.2	June 22 through November 30
83370		0.90	289.2	
83371		0.05	16.0	
<b>Total</b>		<b>1.03</b>	<b>332.4</b>	

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.

11. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;

- b. The location of confluences with other streams downstream of the point of diversion.
  - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
12. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
13. The instream use created as a result of this instream lease will likely exceed estimated average natural flows during the months of September and October. Protection of instream flows is limited to the estimated average natural flows of the stream source.
14. The Department has determined that the estimated average natural flows may be exceeded due to the following:
- a. There is an existing state agency established instream water right certificate (Certificate 73211) that covers the same reach or portion of the reach to be established by the proposed instream lease. In addition, the quantities to be protected instream will not exceed the amounts requested in the original instream water right application (IS-70608) filed by the Oregon Department of Fish and Wildlife (ODFW) and;
  - b. The water right proposed to be leased is in an Oregon Department of Fish and Wildlife (ODFW) flow restoration priority watershed.
14. The total monthly quantities of water to be protected instream, by the creation of this instream lease, will exceed the instream flows established under Certificate 73211 during the months of September and October. Instream rights established by an instream lease generally replace all or a portion of an instream certificate established through the state agency application process, which generally carry junior priority dates. However, as identified above, Mill Creek is a high priority for restoration of salmonids. The original application filed by ODFW requested up to 23 CFS in both September and October for protection of flows for migration, spawning, egg incubation, fry emergency and juvenile rearing. The Department has determined that the instream flow established by this instream lease may replace all or a portion of Certificate 73211 for the full instream period (June 22 through November 30) and also be additive to the flows identified in Certificate 73211 during the months of September and October.
15. 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.
16. Based upon review of the application, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream 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.

17. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
18. The lease may commence on the date this final order is signed.


### 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.

### Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on November 30, 2014.

Dated at Salem, Oregon this 11 day of August, 2014.

  
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Dwight French,  
Water Right Services Division Administrator, for  
Director, Oregon Water Resources Department

*This document was prepared by  
Lanaya Blakely and if you have any  
questions, please call 503-986-0888.*

Mailing date: AUG 12 2014