

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-1873, Deschutes County) PROPOSED INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Pooled Instream Lease for several water right holders (described in Findings of Fact No. 3, 6, 8 and 9)

Co-Lessor

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759
manager@tsidweb.org

Lessee

Deschutes River Conservancy
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Bend, Oregon 97703
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Findings of Fact

1. On May 14, 2021, the DRC and TSID, on behalf of several water right holders, filed an application to lease a portion of Certificate 74135 and the entirety of Certificates 93690, 93689, and 93692 for instream use. The Department assigned the application number IL-1873.
2. Certificate 74135 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. Some tax lot configurations have changed and some tax lots have been partitioned or subdivided since this certificate was issued and may no longer match those shown on the map of the water right of record. The portion of the water right to be leased as described in Finding of Fact No. 3 is consistent with the water right of record in so far as possible.
3. The portion of the first right to be leased is as follows:

Certificate: 74135 Squaw Creek Irrigation District (now known as Three Sisters Irrigation District (perfected under the Squaw Creek Decree, of record at

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.

Salem, in the Order Record of the Water Resources Director, in Volume 1, at Pages 121, 122, 123, 124, 435, 438, 445, 472, and 473)

Priority Date: 1895, 1899, 1903 and 1904

Use: Irrigation of 157.0 acres, being 10.5 acres under the 1895 priority date; 24.1 acres under the 1899 priority date; 85.4 acres under the 1903 priority date; 37.0 acres under the 1904 priority date;

Quantity: **Limit:** One-fiftieth of one cubic foot per second (CFS) per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority Date	Acres	Lessor
Irrigation Use – 274.1 acres total								
15 S	10 E	WM	11	NW SE	1400	1903	1.0	Circle of Trees, Lazy Z East
15 S	10 E	WM	11	SW SE	1400		28.7	Circle of Trees, Lazy Z East
15 S	10 E	WM	11	SE SE	1400		17.9	Circle of Trees, Lazy Z East
15 S	10 E	WM	14	NW NE	1800		15.1	Circle of Trees, Lazy Z East
15 S	10 E	WM	14	NE NE	1800		0.3	Circle of Trees, Lazy Z East
15 S	10 E	WM	11	SW NE	1200		4.6	David Helm
15 S	10 E	WM	11	NW SE	1200		15.3	David Helm
15 S	10 E	WM	11	NE SE	1200		2.5	David Helm
<i>Sub Total:</i>							85.4	
15 S	10 E	WM	14	NE NE	1800	1895	10.5	Circle of Trees, Lazy Z East
<i>Sub Total:</i>							10.5	
14 S	11 E	WM	30	NE SW	4701	1899	24.1	Paul Drake
<i>Sub Total:</i>							24.1	
15 S	10 E	WM	24	SW SE	501	1904	26.0	Janet Herring
15 S	10 E	WM	24	SE SE	501		9.0	
15 S	10 E	WM	24	SE SE	501		2.0	
<i>Sub Total:</i>							37.0	
Total:							157.0	

4. Certificate 74135 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

5. Certificate 74135 describes the rate limit per acre as 1/50th cubic foot per second per (cfs) acre. Certificate 74135 has been modified by transfers, cancellation, and allocation of

conserved water projects. The rate available per acre or rate per acre equivalent has been reduced as a result of previous transactions.

6. The second right to be leased is as follows:

Certificate: 93689 in the name of Willitts, LLC (perfected under the Squaw Creek Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at Page 471)
Use: Irrigation of 5.0 acres
Priority Date: 1908
Quantity: **Rate:** 0.078 Cubic Foot per Second (CFS)
Volume: 15.0 Acre-Feet (AF)
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	ORIGINAL POD - UNCLE JOHN DITCH – 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21
15 S	10 E	WM	21	SW SW	NEW POD – 998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	10	SW NW	1.3
15 S	10 E	WM	10	NW SW	3.7
Total Acres					5.0

7. Certificate 93689 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.

8. The third right to be leased is as follows:

Certificate: 93690 in the name of R & B Ranch, LLC (perfected under the Squaw Creek Decree, of record at Salem, in the Order Record of the Water Resources Director, in Volume 1, at Page 471)
Use: Irrigation of 23.7 acres
Priority Date: 1908
Quantity: **Rate:** 0.37 Cubic Foot per Second (CFS)
Volume: 71.1 Acre-Feet (AF)
Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	ORIGINAL POD - UNCLE JOHN DITCH – 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21
15 S	10 E	WM	21	SW SW	NEW POD – 998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	11	SW NE	5.6
15 S	10 E	WM	11	SE NE	5.5
15 S	10 E	WM	11	NE SE	12.4
15 S	10 E	WM	11	SE SE	0.2
Total Acres					23.7

9. The fourth right to be leased is as follows:

Certificate: 93692 in the name of R & B Ranch, LLC, C/O Barbara Morrow (perfected under Permit E-176)

Use: Irrigation of 14.9 acres

Priority Date: October 7, 1912

Quantity: **Rate:** 0.148 Cubic Foot per Second (CFS)

Volume: 44.7 Acre-Feet (AF)

Source: Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	21	SW SW	ORIGINAL POD - UNCLE JOHN DITCH – 140 FEET NORTH AND 1190 FEET EAST FROM THE SW CORNER OF SECTION 21
15 S	10 E	WM	21	SW SW	NEW POD – 998 FEET NORTH AND 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	11	SW NE	10.8
15 S	10 E	WM	11	SE NE	4.1
Total Acres					14.9

10. 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.

11. The lease application requests to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Whychus Creek is measurable into the Deschutes River and may be protected instream in the Deschutes River.

12. The instream use will be conditioned to allow less water to be protected instream below TSID's point of diversion based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly. The instream quantity may not exceed the instream quantity identified at the point of diversion.

13. The instream use is as follows:

Whychus Creek, tributary to the Deschutes River

Instream Reach: At the POD (as described in Finding of Fact No. 3), located approximately at RM 24.5 to the mouth of Whychus Creek into Deschutes River to Lake Billy Chinook

Certificate	Priority Dates	Instream Rate (CFS)	Instream Volume (AF)	Instream Period
74135	1895	0.165	31.5	May 1 through August 4
	1899	0.380	72.3	
	1903	1.345	256.2	
	1904	0.583	111.0	
93689	1908	0.078	15.0	
93690	1908	0.370	71.1	
93692	10/7/1912	0.148	44.7	
Totals:		3.069	601.8	

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

15. 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. The 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.

16. Instream water rights, with a senior priority date, created through an instream lease generally replace portions of other instream water rights, which carry junior priority dates, established through minimum flow conversion or the state agency application process to establish new instream water rights. On Whychus Creek, during the period April 1 through September 30, the total quantities of water to be protected instream under the existing and proposed instream rights within a portion of the reach from approximately T15S, R10E, Section 21 (approximately River Mile (RM) 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20) will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73224, which was created under ORS 537.341, an application process for state agencies to establish new instream water rights. During the period June 1 through October 31, the total quantities of water to be protected instream under the existing and proposed instream rights within another portion of the reach from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek will exceed the quantities identified as necessary for instream use for various fish life stages under Certificate 73223, which was also created under ORS 537.341. However, the Department has identified that this instream lease will provide an additional beneficial purpose. The Oregon Department of Fish and Wildlife has identified that Whychus Creek is a high priority for flow restoration. In addition, the original instream flows established

under Certificates 73224 and 73223 were based on flow needs for resident redband trout and did not account for flows necessary to support reintroduction of Mid-Columbia summer steelhead trout and spring Chinook salmon.

17. The Department has identified that during the term of this lease, the quantities protected instream may be additive to other existing instream water rights established within the same reach under ORS 537.341, 537.346, 537.348 or 537.470 during the months of April through October for the portion of the reach extending from approximately T15S, R10E, Section 21 (approximately RM 24.5) to the confluence with Indian Ford Creek (just upstream from RM 20)] and during the period June 1 through October 31 for the portion of the reach extending from T14S, R10E, Section 26 (approximately RM 16) to the mouth of Whychus Creek. In other portions of the identified reach, the quantities protected instream may be additive to other existing water rights established under ORS 537.348 and 537.470 and may replace a portion of existing water rights established under ORS 537.341 or 537.346 with an earlier priority date, unless otherwise specified in an order approving a new instream water right under these statutes.
18. 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.
19. 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.
20. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under 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.
21. The Lessor and Lessee have requested that the lease terminate on October 31, 2021. The lease may commence on the date this final order is signed.

Conclusions of Law

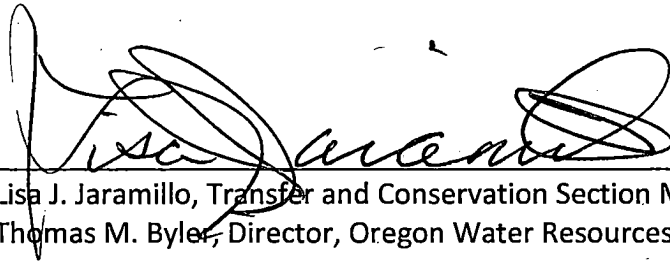
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease conforms to the applicable provisions of OAR 690-077-0015.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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 October 31, 2021.

Dated at Salem, Oregon this day JUL 21 2021.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byle, Director, Oregon Water Resources Department

Mailing date: JUL 23 2021

*This document was prepared by Sarah
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please call 503-979-9872.*