

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-978, 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

CLR c/o Jerry Curl
703 NW Stonepine Dr.
Bend, OR 97703
debi@brickshiphouse.net

Co-Lessor

Swalley Irrigation District (SID)
64672 Cook Ave., Suite 1
Bend, OR 97703
kathy@swalley.com

Lessee

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

Findings of Fact

1. On March 17, 2021, the DRC, SID, and CLR c/o Jerry Curl filed an application to renew instream lease IL-978, a portion of Certificate 74145 for instream use
2. The portion of the right to be leased is as follows:

Certificate: 74145 in the name of Swalley Irrigation District (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County. The decree is of record at Salem, in the Order Record of the Water Resources Director in Volume 12 at Page 282, and Volume 16 at Pages 148 and 396).

Priority Date: September 1, 1899

Use: Irrigation of 25.0 acres, being 5.4 acres from POD No. 12 and 19.6 acres from POD No. 13

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

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.

5. The Lessors and Lessee have requested to protect water instream from each of the POD's described in Finding of Fact No. 2 to the mouth of the Deschutes River. A portion of the water diverted at each POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. The place of use associated with each POD is located near the Deschutes River. Return flows are likely back in the river system immediately below each POD. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for return flows below each POD.
6. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deschutes River, tributary to the Columbia River

Instream Reach No. 1: At POD No. 12 (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.037 Season 2: 0.050 Season 3: 0.092	29.46	April 1 – Oct. 25

Instream Reach No. 2: From immediately below POD No. 12 to POD No. 13 (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	0.024	9.7	April 1 – Oct. 25

Instream Reach No. 3: At POD No. 13 (as described in Finding of Fact No. 2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	Season 1: 0.159 Season 2: 0.204 Season 3: 0.358	116.62	April 1 – Oct. 25

Instream Reach No. 4: From immediately below POD No. 13 to mouth of Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74145	9/1/1899	0.110	45.0	April 1 – Oct. 25

7. Other conditions to prevent injury and enlargement are:

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.

The amount of water to be leased instream under Certificate 74145 does not include a 43% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

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 amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
10. The protection of flows within the proposed reaches 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. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected instream in Reach Nos. 2, 3, and 4 has been reduced to account for return flows.
11. 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.
12. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
13. 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.
14. 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.
15. 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.

16. The Lessor has requested that the lease terminate on October 31, 2025. The lease has been submitted prior to the first day of the irrigation season. The lease will commence the first day of the irrigation season, and on April 1 of each succeeding calendar year the lease is in place.
17. The Lessor has requested the option of terminating the lease early with written notice to the Department.

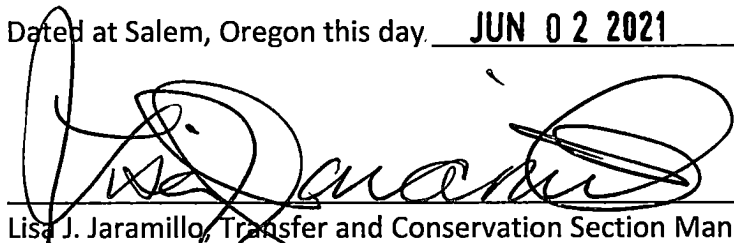
Conclusions of Law

The Department concludes 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 each year of the term of the lease (2021, 2022, 2023, 2024, and 2025), 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, 2025.
4. For multiyear leases, the lessor and/or lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (April 1 through October 25) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day, JUN 02 2021



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

Mailing date: JUN 03 2021

This document was prepared by Arla Davis. If you have any questions please contact me by email at arla.l.davis@oregon.gov