

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

In the Matter of the Proposed Short-Term )	DETERMINATION and
Lease of Existing Water Rights for Instream )	FINAL ORDER ON PROPOSED
Use, Certificates 72279, 72283 and 72284, )	INSTREAM LEASE
Jefferson County )	

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 short-term instream lease applications.

**Lessor #1**

Pooled Instream Lease for several landowners  
(described in Findings of Fact #2, 3, and 4)

**Lessor #2**

North Unit Irrigation District (NUID)  
2024 NW Beech Street  
Madras, OR 97741  
[nuid@palmain.com](mailto:nuid@palmain.com)

**Lessee**

Deschutes River Conservancy (DRC)  
PO Box 1560  
Bend, OR 97709  
[ghubert@deschutesrc.org](mailto:ghubert@deschutesrc.org)

**Findings of Fact**

1. NUID and the DRC filed an application to lease a portion of Certificates 72279, 72283, and 72284 to instream use. The Department assigned the application number L-744.
2. The description of the portion of the first right to be leased, Certificate 72279, has been modified from the lease application to correctly describe the place of use and is as follows (modifications shown in bold and italics):

**Certificate:** 72279

**Season of Use:** April 1 to November 1 (by Decree)

**Priority Date:** February 28, 1913

**Quantity:** Rate: **4.3** Cubic Foot per Second (CFS) (proportioned rate)  
Duty: **1025.85** Acre-Feet (AF)

**Source:** Deschutes River, Wickiup Reservoir, constructed under Permit R-1677, and Haystack Reservoir, constructed under Permit R-1754, tributaries of the Columbia River

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.

**Place of Use:**

IRRIGATION OF 195.4 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
10 S	13 E	WM	36	NW NE	300	12.8	BLM Properties LLC
10 S	13 E	WM	36	NE NW	300	17.7	BLM Properties LLC
10 S	13 E	WM	36	SE NW	300	6.0	BLM Properties LLC
10 S	13 E	WM	36	SW SE	1001	1.5	Loy and Carol Petersen
11 S	13 E	WM	3	SW NE	112	2.9	Shatterlee Family Trust
11 S	13 E	WM	3	SE NE	112	3.1	Shatterlee Family Trust
11 S	13 E	WM	3	SE NE	300	0.9	Shatterlee Family Trust
11 S	13 E	WM	14	NE NW	200	4.1	Jefferson County
11 S	13 E	WM	14	NE SE	1501	1.3	HDD Inc.
11 S	13 E	WM	22	NE SE	1101	2.6	Mark & Pam Morlin
11 S	13 E	WM	22	NW SE	1101	2.4	Mark & Pam Morlin
11 S	13 E	WM	22	SW SE	1101	12.3	Mark & Pam Morlin
11 S	13 E	WM	22	SE SE	1101	4.5	Mark & Pam Morlin
<b>11 S</b>	<b>13 E</b>	<b>WM</b>	<b>23</b>	<b>NW SW</b>	<b>1101</b>	<b>0.9</b>	<b>Mark &amp; Pam Morlin</b>
12 S	13 E	WM	3	SW NE	600	30.9	Bette Corwin
12 S	13 E	WM	3	SE NE	600	33.8	Bette Corwin
12 S	13 E	WM	3	NW SE	600	21.4	Bette Corwin
12 S	12 E	WM	12	NW SE	1300	16.8	Gary & Nancy Popp
12 S	13 E	WM	15	NE SE	802	1.0	Shaun D. & Michelle L. Steinbeck
12 S	13 E	WM	15	NE SE	804	12.3	Shaun D. & Michelle L. Steinbeck
12 S	13 E	WM	15	SE SE	804	2.6	Shaun D. & Michelle L. Steinbeck
12 S	13 E	WM	16	NW NE	300	3.6	G. Thayne & N. Kaye Corwin

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	Deschutes River - 1700 feet South & 730 feet West from the NE Corner of Section 29
22 S	9 E	WM	7	SW NE	Wickiup Reservoir
12 S	13 E	WM	27	SW NE	Haystack Reservoir

3. The portion of the second right to be leased, Certificate 72283, has been clarified from the lease application and is as follows:

**Certificate:** 72283

**Season of Use:** February 1 to December 1 (by Decree)

**Priority Date:** September 18, 1968

**Quantity:** Rate: 2.31 CFS (proportioned rate)

Duty: 406.6 AF

**Source:** Crooked River, tributary of the Deschutes River

**Place of Use:**

IRRIGATION OF 101.7 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
11 S	13 E	WM	3	SW NE	112	8.5	Shatterlee Family Trust
11 S	13 E	WM	14	NE SE	1500	0.4	HDD Inc.
11 S	13 E	WM	14	NE SE	1501	0.3	HDD Inc.
11 S	13 E	WM	22	NE SE	1101	13.8	Mark & Pam Morlin
11 S	13 E	WM	22	NW SE	1101	5.8	Mark & Pam Morlin
<b>11 S</b>	<b>13 E</b>	<b>WM</b>	<b>23</b>	<b>NW SW</b>	<b>1101</b>	<b>0.3</b>	<b>Mark &amp; Pam Morlin</b>
11 S	13 E	WM	25	NW SW	300	5.5	Howard Erlandsen
11 S	13 E	WM	25	SW SW	300	4.5	Howard Erlandsen

IRRIGATION OF 101.7 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
11 S	13 E	WM	27	NE SE	1200	0.6	Pearl Besand
12 S	12 E	WM	27	NE NE	100	0.3	Bureau of Land Management
12 S	12 E	WM	27	SW NE	100	1.8	Bureau of Land Management
12 S	12 E	WM	27	SE NE	100	0.6	Bureau of Land Management
12 S	13 E	WM	16	NW NE	300	19.9	G. Thayne & N. Kaye Corwin
12 S	13 E	WM	16	NE NW	300	39.4	G. Thayne & N. Kaye Corwin

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	13 E	WM	13	SW NE	590 feet North & 2790 feet East from the W ¼ Corner of Section 13

4. The portion of the third right to be leased, Certificate 72284, has been clarified from the lease application and is as follows:

**Certificate:** 72284

**Season of Use:** February 1 to December 1 (by Decree)

**Priority Date:** September 18, 1968

**Quantity:** Rate: 4.65 CFS (proportioned rate)  
Duty: 819.2 AF

**Source:** Crooked River, tributary of the Deschutes River

**Place of Use:**

IRRIGATION OF 204.8 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
11 S	13 E	WM	8	SW NE	300	37.6	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	SE NE	300	14.6	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	SW NW	300	39.4	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	NW SW	300	39.4	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	SW SW	300	11.7	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	NE SE	300	33.6	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	NW SE	300	14.6	Ingalsbe Testamentary Trust
11 S	13 E	WM	8	SE SE	300	13.9	Ingalsbe Testamentary Trust

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	13 E	WM	13	SW NE	590 feet North & 2790 feet East from the W ¼ Corner of Section 13

5. The Department provided notice of the lease application pursuant to OAR 690-077-0077(6) on May 16, 2006. Timely comments were received from the Bureau of Reclamation (BOR) on June 6, 2006, which raised concerns regarding the leasing of a portion of certificate 72279 to instream use. This certificate includes the diversion of water from two storage facilities, Haystack Reservoir and Wickiup Reservoir, owned by the BOR. There is no contract agreement between NUID and the BOR allowing the release of water from these reservoirs for instream purposes. In addition, the BOR has identified that pursuant to OAR 690-077-0077 (2)(b) that they would need to be a co-lessor on any lease that would include the use of stored water from either of these reservoirs for instream use. The BOR request that any water leased instream under certificate 72279 be limited to live flow only from the Deschutes River.

6. Pursuant to OAR 690-077-0077 (2)(b), the owner of any storage facility which is the source of water for a lease must be a co-lessor. The BOR is not a co-lessor to this lease.
7. Certificate 72279 allows the diversion of water from the Deschutes River, Haystack Reservoir and Wickiup Reservoir, as described in Finding of Fact #2. However, the lease application, in Section 2.2 of the lease application, describes that the source of water for the proposed lease is the Deschutes River. As the BOR is not a co-lessor on this lease, the lease of water under certificate 72279 shall be limited to live flow from the Deschutes River.
8. The lease application includes the information required under OAR 690-077-0077(3).
9. The instream use is clarified and modified from the lease application to prevent injury and enlargement, and to account for a small adjustment in the portion of certificate 72279 to be leased instream, and is as follows:

Deschutes River, tributary to the Columbia River

**Instream Reach:** From the POD (as described in Finding of Fact #2) to Lake Billy Chinook.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	1.42	390.8	May 15 – September 30

Crooked River, tributary to the Deschutes River

**Instream Reach:** From the POD (as described in Finding of Fact #3 & 4) to Lake Billy Chinook (River Mile 6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72283	9/16/1968	0.37	101.7	May 15 – September 30
72284	9/16/1968	0.74	204.8	
	Totals	1.11	306.5	

10. Other conditions to prevent injury and enlargement are:

Water leased instream under Certificate 72279 shall only be limited to live flow from the Deschutes River.

11. 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.
12. 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.

13. The lease will terminate on November 30, 2006, the last day of the irrigation season on the Crooked River.

### CONCLUSIONS OF LAW

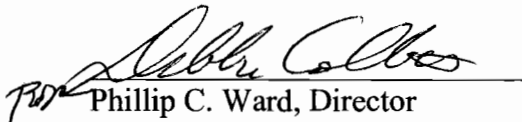
The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement conforms to the applicable provisions of OAR 690-077-0015.

### ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on November 30, 2006.

Dated at Salem, Oregon this 25<sup>th</sup> day of June 2006.

  
Phillip C. Ward, Director

Mailing date: JUN 28 2006