

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

In the Matter of the Proposed Lease of )  
Existing Water Rights for Instream Use, )  
Certificates 81663 and 67284, Deschutes )  
County ) DETERMINATION and  
FINAL ORDER ON PROPOSED  
INSTREAM LEASE

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**  
John Tehan  
PO Box 34  
Sisters, OR 97759

**Lessee**  
Deschutes River Conservancy (DRC)  
P.O. Box 1560  
Bend, Oregon 97709  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On June 28, 2007, the DRC and John Tehan filed an application to lease a portion of Certificates 81663 and 67284 to instream use. The Department assigned the application number IL-858.
2. The portion of the first right to be leased is as follows:

**Certificate:** 81663  
**Priority Date:** 1883  
**Season of Use:** unspecified by certificate or decree  
**Use:** Irrigation of 7.6 acres  
**Quantity:** 0.15 Cubic Foot per Second (CFS)  
**Source:** Whychus Creek (formerly Squaw Creek), tributary to the Deschutes River  
**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	4	SE SE	101	7.6

**Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	9	SE NW	BUCHANAN DITCH – 2050 FEET SOUTH AND 1250 FEET WEST OF THE N ¼ CORNER OF SECTION 9

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.

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

**Certificate:** 67284

**Priority Date:** 1883

**Season of Use:** unspecified by certificate or decree

**Use:** Irrigation of 3.5 acres

**Quantity:** 0.07 Cubic Foot per Second (CFS)

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

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	10 E	WM	4	SE SE	101	3.5

**Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	9	SE NW	BUCHANAN DITCH – 2050 FEET SOUTH AND 1250 FEET WEST OF THE N ¼ CORNER OF SECTION 9

4. There is no duty associated with the water rights proposed to be leased instream.
5. The rights proposed to be leased instream do not have a specified season of use (irrigation season). For purposes of this lease, a season of March 1 through October 31 shall be used.
6. The lease application includes the information required under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). No comments were received.
7. As identified in Finding of Fact #4, these rights do not have a duty limitation. The applicant has requested to protect water instream at the full rates during the period April 1 through October 31, a period of 214 days. The instream volume over this period would be 64.52 AF for Certificate 81663 and 29.71 AF for Certificate 67284, which would equate to approximately 8.5 acre feet per acre. This is more water than could be beneficially used without waste. To prevent enlargement of the right, the volume protected instream will be limited to 5.5 AF/acre.
8. Based upon Finding of Fact #7, on July 18, 2007, the Lessee requested that the instream use be modified as follows:

Whychus Creek (formerly Squaw Creek), tributary to the Deschutes River

**Instream Reach:** From POD (as described in Finding of Fact #2 and #3) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81663	1883	0.15	41.80	June 1 through October 16
67284	1883	0.07	19.25	June 1 through October 16

9. Other conditions to prevent injury and enlargement are:

The instream reach has been modified to extend only as far as the mouth of Whychus Creek. The applicant originally requested that the reach extend beyond Whychus Creek and into the Deschutes River down to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being the Deschutes River (OAR 690-077-0015 (7)).

10. There is a supplemental water right, Certificate 81664, appurtenant to all or a portion of the lands described in Finding of Fact # 2 and #3. The Lessor and Lessee have not 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 lease will terminate on October 31, 2011.
15. The Lessor has requested the option of terminating the lease early with written notice to the Department.

### **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 (including Certificate 81664), 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, 2011. The Lessor has the option of terminating the lease each year, with notification to the Department by May 1 of each year, and before any use has occurred on the property.

Dated at Salem, Oregon this 27<sup>th</sup> day of July 2007.

  
Phillip C. Ward, Director

Mailing date: JUL 31 2007