

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1143, Certificate 72279, Jefferson)	FINAL ORDER ON PROPOSED
County)	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 #1

Pooled Instream Lease for several water right holders (described in Finding of Fact #2)

Lessor #2

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

Lessee

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

Findings of Fact

1. On April 7, 2011, the DRC and NUID, on behalf of several water right holders, filed an application to lease a portion of Certificate 72279 for instream use. The Department assigned the application number IL-1143.
2. Certificate 72279 includes the diversion of water from two storage facilities, Haystack Reservoir and Wickiup Reservoir, owned by the Bureau of Reclamation (BOR). Pursuant to OAR 690-077-0077 (2)(b), the BOR would need to be a co-lessor on any lease that includes the use of stored water from either of these reservoirs for instream use. The BOR is not a co-lessor to this lease. In Section 2.2 of the lease application, the source of water for the proposed lease is described as 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

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 right to be leased has been clarified from the lease application and is as follows:

Certificate: 72279
Use: Irrigation of 152.8 acres
Season of Use: April 1 to November 1 (by Decree)
Priority Date: February 28, 1913
Quantity: Maximum Rate: 1/40th Cubic Foot per Second (CFS) per acre
Maximum Duty: 5.25 Acre-Feet (AF) per acre
Source: Deschutes River, Wickiup Reservoir, constructed under Permit R-1677, and Haystack Reservoir, constructed under Permit R-1754, tributaries of the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	DESCHUTES RIVER: 1,700 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Lot #	Acres	Owner (Lessor #1)
10S	14E	WM	5	NE NE	100	1	32.2	Leona Waldow Revocable Living Trust
10S	14E	WM	5	NW NE	100	2	35.9	
10S	14E	WM	5	SW NE	100		32.8	
10S	14E	WM	5	SE NE	100		38.5	
11S	13E	WM	14	NW NE NE NE	200 AB		5.5	Jefferson County
11S	13E	WM	22	NE SE	1101		2.6	Mark & Pam Morlan
11S	13E	WM	22	SE SE	1101		0.8	
11S	13E	WM	23	NW SW	1101 CB		0.9	
12S	13E	WM	16	NW NE	300		3.6	G. Thayne & N. Kaye Corwin

4. Certificate 72279 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #3), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #2), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at the Deschutes River POD under Certificate 72279 shall be reduced, if this instream lease is approved.

Rate	Duty
3.466 CFS	611.20 AF

5. 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.
6. The District limits the quantity of water delivered to lands within the district to 2.0 acre-feet per acre (out of the 5.25 acre-feet per acre that may be diverted), which is reflected in the maximum volume of water that may be protected instream.

7. The Lessors and Lessee have requested to protect water instream under Certificate 72279 from the POD described in Finding of Fact #3 to the mouth of the Deschutes River. A portion of the water diverted at the POD returns to the Deschutes River within the proposed reach and is available to downstream water right holders. Return flows from the existing use are back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders or enlargement of the right, the quantity of water that may be protected instream requires modification to account for return flows at the Madras Gage.
8. 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 #1: From the Deschutes River POD (as described in Finding of Fact #3) to the Madras Gage.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	1.116	305.6	May 1 through September 15

Instream Reach #2: From the Madras Gage to the mouth of the Deschutes River

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72279	2/28/1913	1.005	275.04	May 1 through September 15

9. Other conditions to prevent injury and enlargement are:

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

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.

10. 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.
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 Lessor has requested that the lease terminate on October 31, 2011.

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, 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.

Dated at Salem, Oregon this 19 day of July, 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: JUL 20 2011