

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

In the Matter of the Proposed Lease of                    )     DETERMINATION and  
Existing Water Rights for Instream Use,                 )     FINAL ORDER ON PROPOSED  
Certificate 81601, Crook County                            )     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**  
The Daniels Group, LLC  
111 Main Street, Suite 700  
Vancouver, WA 98660

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

**Findings of Fact**

1. On June 29, 2007, the DRC and the Daniels Group filed an application to lease a portion of Certificate 81601 to instream use. The Department assigned the application number IL-859.
2. The portion of the right to be leased has been clarified from the lease application and is as follows:

**Certificate:** 81601 in the name of Peoples Irrigation Company  
**Priority Date:** 1892  
**Use:** Irrigation of 64.0 acres, being 50.6 acres from Point of Diversion (POD ) #1 and 13.4 acres from POD #6  
**Quantity:** Rate: 0.8 Cubic Foot per Second (CFS), being 0.6 CFS from POD #1 and 0.2 CFS from POD #6  
Duty: 256.0 Acre-Feet (AF), being 202.4 AF from POD #1 and 53.6 AF from POD #6  
**Source:** Crooked River, tributary of the Deschutes River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	POD	Acres
14 S	14 E	WM	20	SW SW	200	6	10.0
14 S	14 E	WM	29	NE NW	200	6	5.0
14 S	14 E	WM	29	NW NW	200	1	2.4
14 S	14 E	WM	29	NW NW	200	6	35.6
14 S	14 E	WM	29	SW NW	200	1	3.0
14 S	14 E	WM	29	SE NW	200	6	8.0

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.

**Authorized POD:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	16 E	WM	8	NW SW	1920 FEET NORTH & 340 FEET EAST FROM THE SW CORNER OF SECTION 8
14 S	14 E	WM	29	NE NW	1085 FEET SOUTH & 970 FEET WEST FROM THE N ¼ CORNER OF SECTION 29

3. Peoples Irrigation Company is not an identified Lessor on the lease. Irrigation districts are required by rule (OAR 690-077-0076) to be a co-lessor on an instream lease for water rights served by a district. However, it appears that the lands described in Finding of Fact #2 are no longer within this irrigation district. Therefore, Peoples Irrigation Company does not need to be included on the lease application.
4. The irrigation season is not identified in Certificate 81601. However, the irrigation season is defined by Decree as February 1 to December 1.
5. 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.
6. The lease application requests to protect water instream at the full rate and volume for a period of 214 days, being April 1 through October 31. At the full rate and volume, water may be protected instream for a period of 161 days.
7. Based upon Finding of Fact #6, on July 27, 2007, the Lessee requested to modify the instream use to prevent injury and enlargement. The instream use is as follows:  
Crooked River, tributary to the Deschutes River

Reach #1: Pod #1 to POD #6 (both as described in Finding of Fact #2)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81601	1892	0.6	202.4	May 8 through October 15

Reach #2: Pod #6 to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81601	1892	0.8	256.0	May 8 through October 15

8. There is a supplemental water right, Certificate 80795, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have 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.
9. 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.
10. 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.

11. 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.
12. The application requests that the lease terminate on November 1, 2007. Instream leases terminate on the last day of the period of allowed use. The irrigation season, by Decree, for this water right is February 1 to December 1. The lease will terminate on November 30, 2007.

### 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 80795, 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 November 30, 2007.

Dated at Salem, Oregon this 31<sup>ST</sup> day of July 2007.

  
Phillip C. Ward, Director

Mailing date: AUG 07 2007