

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1088, Certificate 74135, Deschutes) 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 Findings of Fact #5)

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759

Lessee

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

Findings of Fact

1. On June 29, 2010, the DRC and TSID, on behalf of several water right holders, filed an application to lease a portion of Certificate 74135 for instream use. The Department assigned the application number IL-1088.
2. Additional information and/or revised application materials were received from the DRC (Lessee) on July 26 and 27, 2010.
3. On July 28, 2010, the DRC (Lessee) requested to amend the application to remove the following:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
14 S	11 E	WM	13	SW SW	701	0.5	1895	Kenneth Tisher, Tim & Wendy DiPaolo, and David & Marlene Ludi

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.

4. On September 2, 2010, the DRC requested to amend the application to remove the following:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Priority Date	Water Right Holder
14 S	11 E	WM	30	SE SE	4800	4.42	1895	John Leason
14 S	11 E	WM	31	NW SE	5300	2.27	1895	
14 S	11 E	WM	31	NW SE	5300	1.6	1899	
14 S	11 E	WM	31	SW SE	5400	4.63	1895	
Total						12.92		

5. Certificate 74135 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. Some tax lot configurations have changed and some tax lots have been partitioned or subdivided since this certificate was issued and no longer match those shown on the map of the water right of record. The portion of the water right to be leased as described in Finding of Fact #7 is consistent with the water right of record in so far as possible.
6. In addition, the Department identified a few typographical errors in the description of the right to be leased provided in the lease application. The portion of the right to be leased is clarified in Finding of Fact #7.
7. The portion of the right to be leased has been clarified and modified from the lease application consistent with Findings of Fact #2 through #6 and is as follows:

Certificate: 74135

Priority Date: 1895, 1899, and 1904

Use: 195.98 acres, being 144.88 acres of Irrigation under the 1895 priority date, 8.6 acres of Irrigation under the 1899 priority date and 42.5 acres of Irrigation under the 1904 priority date

Quantity: 3.92 Cubic Foot per Second (CFS), being 2.898 CFS under the 1895 priority date, 0.172 CFS under the 1899 priority date, and 0.85 CFS under the 1904 priority date

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

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Gov Lot	Acres	Priority Date	Water Right Holder
14 S	11 E	WM	13	SW SW	700		21.0	1895	Kenneth Tisher, Tim & Wendy DiPaolo, and David & Marlene Ludi
14 S	11 E	WM	13		700		0.5	1904	
14 S	11 E	WM	13		800		4.0	1895	
14 S	11 E	WM	14	SE SE	700		3.5	1895	
14 S	11 E	WM	14		800		2.0	1895	
14 S	11 E	WM	23	NE NE	100		6.0	1895	
14 S	11 E	WM	23		400		1.5	1895	
14 S	11 E	WM	24	NW NW	100		1.5	1895	
14 S	11 E	WM	24		400		6.0	1895	
14 S	11 E	WM	30	SW SE	4800		8.6	1899	John Leason
14 S	11 E	WM	30	SE SE	4800		3.28	1895	
14 S	11 E	WM	31	NE SE	5300		20.0	1895	
14 S	11 E	WM	31	NW SE	5300		5.73	1895	
14 S	11 E	WM	31	SW SE	5400		7.57	1895	
14 S	11 E	WM	31	SE SE	5500		39.1	1895	
15 S	10 E	WM	24	SW SE	500		19.0	1904	Janet Herring
15 S	10 E	WM	24	SW SE	501		7.0	1904	Janet Herring

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Gov Lot	Acres	Priority Date	Water Right Holder
15 S	10 E	WM	24	SE SE	501		2.0	1904	
15 S	10 E	WM	24		500		14.0	1904	
15 S	11 E	WM	18	SE SW	2000		23.7	1895	Susan Trone
					2100				
Total Acres							195.98		

Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 FEET NORTH & 1211 FEET EAST FROM THE SW CORNER OF SECTION 21

8. Additional information submitted with the lease application, being the application maps for each of the landowners identified in Finding of Fact #7 indicates that the portion of the right to be leased may be more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Gov Lot	Acres	Priority Date	Water Right Holder
14 S	11 E	WM	13	SW SW	700		20.5	1895	Kenneth Tisher, Tim & Wendy DiPaolo, and David & Marlene Ludi
14 S	11 E	WM	13		700		0.5	1904	
14 S	11 E	WM	13		800		4.5	1895	
14 S	11 E	WM	14	SE SE	700		2.5	1895	
14 S	11 E	WM	14		800		3.0	1895	
14 S	11 E	WM	23	NE NE	100		5.0	1895	
14 S	11 E	WM	23		400		2.5	1895	
14 S	11 E	WM	24	NW NW	100		3.0	1895	
14 S	11 E	WM	24		400		4.5	1895	
14 S	11 E	WM	30	SW SE	4800		8.6	1899	John Leason
14 S	11 E	WM	30	SE SE	4800		3.28	1895	
14 S	11 E	WM	31	NE SE	5300		20.0	1895	
14 S	11 E	WM	31	NW SE	5300		5.73	1895	
14 S	11 E	WM	31	SW SE	5400		7.57	1895	
14 S	11 E	WM	31	SE SE	5400		39.1	1895	
15 S	10 E	WM	24	SW SE	501		26.0	1904	Janet Herring
15 S	10 E	WM	24	SE SE	501		16.0	1904	
15 S	11 E	WM	18	SE SW	2000		23.7	1895	Susan Trone
Total Acres							195.98		

The above differences in the description of the place of use are primarily due to tax lot partitions and lot line adjustments.

9. Certificate 74135 does not specify the irrigation season. Nor is an irrigation season specified by Basin Program or Decree. For the purposes instream leasing, an irrigation season of March 1 through October 31, consistent with OAR 690-250, shall be used to establish when water may be protected instream.
10. There is no duty associated with the water right proposed to be leased instream.
11. 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.

12. The lease application requests to protect water instream from Whychus Creek into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Whychus Creek) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Whychus Creek is not measurable into the Deschutes River and may not be protected instream in the Deschutes River.

13. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Whychus Creek, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #6) to the mouth of Whychus Creek

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
74135	1895	2.898	528.75	July 16 through October 15
	1899	0.172	31.39	
	1904	0.850	155.11	
Totals		3.92	715.25	

14. Other conditions to prevent injury and enlargement are:

The portion of water protected instream under this lease shall be based at the same percentage of diversion and delivery rate that Three Sisters Irrigation District (TSID) is diverting to rights of the same priority within the district. Each Monday morning during the period of the instream period of this lease, TSID shall report to the District 11 Watermaster's office the percentage diverted under the 1895, 1899, and 1904 priority dates. This information only needs to be reported to the Watermaster's office once TSID is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once TSID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.

During the irrigation season, the amount of water diverted at the point of diversion under Certificate 74135 shall not exceed 138.161 CFS (except when water is being diverted for the existing use as specified Special Order Volume 81, Page 509), or as further limited in a previous or subsequent order affecting Certificate 74135.

15. 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.

16. 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.

17. 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

17. 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.

18. The Lessor has requested that the lease terminate on October 31, 2010.

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, 2010.

Dated at Salem, Oregon this 2 day of September, 2010.


Phillip C. Ward, Director

Mailing date: SEP 07 2010

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