

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1172, Certificate 81669, 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**

Marilyn Black  
7240 SW 86<sup>th</sup> Ave.  
Portland, OR 97223

**Lessee**

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

**Findings of Fact**

1. On May 24, 2011, the DRC and Marilyn Black filed an application to lease a portion of Certificate 81669 for instream use. The Department assigned the application number IL-1172.

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

**Certificate:** 81669 in the name of Martin Hansen and Cecil and Sally Drinkward  
**Use:** Irrigation of 54.61 acres  
**Season of Use:** May 1 to September 15  
**Priority Date:** 1888  
**Quantity:** **Rate:** 0.009 Cubic Foot per Second (CFS)  
**Duty:** 1.65 Acre-Feet (AF)  
**Limit:** One-sixtieth CFS per acre, not to exceed 3.0 AF per acre per year  
**Source:** Lake Creek, tributary to the Metolius River

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	9 E	W.M.	15	NW NW	POD 1 – 270 FEET SOUTH AND 700 FEET EAST FROM THE NW ¼ CORNER OF SECTION 15
13 S	9 E	W.M.	16	SE NE	POD 2 – 2320 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	9 E	W.M.	16	SE NE	0.55

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 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.
4. The application requests to protect water instream during the period May 1 through September 15, a 138 day period. The instream period requires modification to prevent injury and enlargement. At the rate and volume requested, water may only be protected instream for 90 days. On July 26, 2011, the DRC requested to modify the lease application to protect water instream during the period June 1 through August 29, a 90 day period.
5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Lake Creek, tributary to the Metolius River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
81669	1888	0.009	1.65	June 1 through August 29

6. 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.
7. 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.
8. 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.
9. The Lessor has requested that the lease terminate on November 1, 2015. The last day of the irrigation season is September 15. The lease may terminate on September 15, 2015. The lease will commence the date the final order is signed and on May 1 of each succeeding calendar year that the lease is in place.
10. 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, 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 September 15, 2011. For multiyear leases, the lease shall commence on approval of the instream lease and on May 1 of each succeeding calendar year of the instream lease. The lessor *shall* have the option of terminating the lease each year with written notice to the Department. The lease may be terminated at any time during the calendar year. However, if the termination request is received less than 30-days prior to the period of allowed instream use (June 1 through August 29) or after the period of allowed use has begun for the water right(s) being leased, water shall not be used under the right(s) leased until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this 27 day of July, 2011.

  
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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 28 2011