

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

In the Matter of Instream Lease Application) DETERMINATION and
IL-1737, Deschutes County) FINAL ORDER ON PROPOSED
) INSTREAM LEASE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 077 implements the statutes and provides the Department's procedures and criteria for evaluating instream lease applications.

Lessor

Mar Jo Goodwin
63270 South Road
Bend, Oregon 97703

Lessee

Deschutes River Conservancy (DRC)
700 NW Hill Street, Suite 1
Bend, Oregon 97703
gen@deschutesriver.org

Findings of Fact

1. On April 4, 2019, Mar Jo Goodwin and DRC filed an application to lease the entirety of Certificates 45872 and 55662 for instream use. The Department assigned the application number IL-1737.
2. The first right to be leased is as follows:

Certificate: 45872 in the name of Donald G. Corn (perfected under Permit S-40609)
Use: Domestic use for one family
Priority Date: April 14, 1976
Quantity: **Rate:** 0.005 Cubic Foot per Second (CFS)
Source: Deschutes River, tributary to Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM ⁺	17	SE SW	450 FEET SOUTH AND 250 FEET EAST FROM THE NW CORNER OF THE SESW SECTION 17

Authorized Place of Use:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
17 S	12 E	WM	17	SE SW

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. Certificate 45872 does not specify the period of allowed use. However, use of water for domestic is assumed to be a year round use unless otherwise specified in the certificate.
4. The second right to be leased is as follows:

Certificate: 55662 in the name of Donald G. Corn (confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County, and entered of record in the Order Record of the Water Resources Director, in Volume 9, at Page 362)

Use: Irrigation of 0.5 acre and domestic use for one family

Priority Date: October 10, 1903

Quantity: **Limit and Rate:** 0.0175 cfs; being 0.0125 cfs for irrigation and 0.005 cfs for domestic, if available at the original point of diversion; SW ¼ NE ¼, Section 29, T17S, R12E, WM; and subsequent point of diversion; SE ¼ SW ¼, Section 18, T17S, R12E, WM

Source: Deschutes River, tributary to Columbia River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	17	SE SW	440 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF SESW SECTION 17

Authorized Place of Use:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	
17 S	12 E	WM	17	SE SW	

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	17	SE SW	0.5

5. Certificate 55662 does not specify the period of allowed use. However, use of water for domestic is assumed to be a year round use unless otherwise specified in the certificate, and the Deschutes River Decree established the irrigation season for the area as April 1 to November 1.
6. Certificates 45872 and 55662 do not specify a rate and duty limit per acre. However, the Deschutes River Decree specifies the rate limit as 1/40 cfs per acre of land irrigated and the duty limit as 4.0 acre-feet per acre during the irrigation season.
7. 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.
8. At the full instream rate and volume requested for the irrigation portion of Certificate 55662, water may only be protected instream for 80 days. The full instream period requested by the Lessor and Lessee, April 1 to October 31, is 214 days. To maximize the instream use, the Department has reduced the instream rate to protect water instream over the full irrigation season.

9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Deschutes River, tributary to Columbia River

Instream Reach: From the POD's (as described in Finding of Fact No. 2 and No. 4) to Lake Billy Chinook

Certificate	Priority Date	Original Use	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
45872	4/14/1976	DM	0.005	3.62	January through December 31
55662	10/10/1903	DM	0.005	3.62	
		IR	0.005	2.00	April 1 through October 31

10. Other conditions to prevent injury and enlargement are:

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.

Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.

11. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water rights.
12. The protection of flows within the proposed reach is appropriate, considering:
- a. The instream water use begins at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion.
 - c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
13. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.
14. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
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, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream 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, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
18. The Lessor and Lessee have requested that the lease terminate on December 31, 2023. The lease may commence on the date this final order is signed.
19. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department.

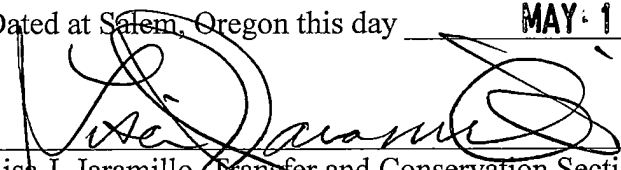
Conclusions of Law

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.

Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. During each year of the term of the lease, the former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered irrigation water rights, including ground water registrations and permits.
3. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2023. For multiyear leases, the lessor and lessee *shall* have the option of terminating the lease any time each year with written notice to the Department. However, if the termination request is received less than 30-days prior to the instream use period (January 1 through December 31) or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

Dated at Salem, Oregon this day MAY 10 2019



 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
 Thomas M. Byler, Director, Oregon Water Resources Department

This document was prepared by Sarah Henderson. If you have any questions, please call 503-986-0884.

Mailing date: MAY 13 2019