

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-2023, Deschutes County) PROPOSED 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

Pooled Instream Lease for several water right holders (described in Finding of Fact No. 2)

Co-Lessor

Central Oregon Irrigation District (COID)
1055 SW Lake Ct.
Redmond, OR 97756
Jtalbott@coid.org
mwaterson@coid.org

Lessee

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

Findings of Fact

1. On April 5, 2024, the DRC and COID, on behalf of several water right holders, filed an application to lease a portion of Certificate 94956 for instream use. The Department assigned the application number IL-2023.
2. The portion of the right to be leased is as follows:
 - Certificate:** 94956 in the name of Central Oregon Irrigation District
 - Use:** Irrigation of 50.39 acres
 - Priority Date:** October 31, 1900
 - Season of Use:** April 1 through October 31, further limited as follows:
 - Season 1:** April 1 through April 30 & October 1 through October 31
 - Season 2:** May 1 through May 14 & September 15 through September 30
 - Season 3:** May 15 through September 14

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.

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: limited to 1/80th cubic foot per second (CFS) per acre

Season 2: limited to 1/60th CFS per acre

Season 3: limited to 1/32.4th CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (AF) per acre per year.

The above listed rates and duty reflect allowance of a 45% transmission loss on the main canals as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: The Deschutes River, tributary to the Columbia River

Authorized Point of Diversion (POD):

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 18 S | 11 E | WM | 13 | SW NE | POD No. 1 (CENTRAL OREGON CANAL): 1520 FEET SOUTH AND 1535 FEET WEST FROM THE NE CORNER OF SECTION 13 |

Authorized Places of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres | Additional Place of Use Description Provided in Application - Tax Lot | Water Right Holder (Lessor) |
|------|------|-----|-----|-------|-------|---|---|
| 15 S | 14 E | WM | 23 | SE SE | 0.65 | 1000 | Jennifer and Joseph Wilcox |
| 16 S | 14 E | WM | 17 | NE SE | 0.77 | 400 | Kenneth and Mandy Faulkner |
| 16 S | 14 E | WM | 17 | SE SE | 4.77 | | |
| 17 S | 12 E | WM | 13 | NW NE | 1.15 | 600 | Todd Anderson and Siobhan Nash & Nash 2016 Trust |
| 17 S | 12 E | WM | 14 | SE SW | 0.1 | 600 | Jerry and Doris Page |
| 17 S | 12 E | WM | 23 | NE NE | 0.44 | 100 | G & MJ, LLC |
| 17 S | 13 E | WM | 19 | SE SW | 0.2 | 1600 | Richard and Margaret Wyman, Wyman Trust |
| 17 S | 13 E | WM | 28 | NW SE | 2.58 | 1300 | Donald and Nadine Carey, Carey Trust |
| 17 S | 13 E | WM | 30 | NE NW | 1.17 | 201 | Mark and Kara Valenti |
| 17 S | 13 E | WM | 30 | SE SE | 0.83 | 500 | Derek and Heather Hart |
| 17 S | 13 E | WM | 31 | SE NW | 0.34 | 1500 | Jose Martinez Vasquez and Cynthia Martinez |
| 17 S | 14 E | WM | 22 | SE SE | 1.9 | 1000 | James Howell |
| 17 S | 14 E | WM | 23 | NW NW | 6.15 | 500 | Ann Bernert and Joshua Hamon |
| 17 S | 14 E | WM | 23 | SE NE | 0.2 | 1000 | Michael and Laura Palmer, Palmer Revocable Trust |
| 18 S | 12 E | WM | 1 | NW NE | 3.84 | 300 | Carl and Mary Wallace Trust |
| | | | | | 0.73 | 302 | |
| 18 S | 12 E | WM | 1 | SW NW | 0.5 | 1800 | Daniel Schafer and Jean Sifneos, Shafer Sifneos Joint Trust |
| 18 S | 12 E | WM | 2 | NE SE | 2.48 | 1300 | David and Cammy Vodak |
| 18 S | 13 E | WM | 6 | NW SE | 1.0 | 1000 | Choice Holdings LLC |
| 18 S | 13 E | WM | 6 | SW NE | 0.26 | 1300 | Jason Gillam and Julie Reber, Gillam Reber Family Trust |

| | | | | | | | |
|------|------|----|----|-------|-------|-----|---------------------------------------|
| 18 S | 13 E | WM | 11 | NE SW | 14.85 | 700 | Benson Burbank, Kenneth Burbank Trust |
| | | | | NW SW | 2.0 | | |
| | | | | | 3.48 | 702 | |
| | | | | Total | 50.39 | | |

3. Certificate 94956 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 No. 2), 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 No. 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 POD No. 1 under Certificate 94956 shall be reduced, if this instream lease is approved.

| Priority Date | Season 1 | Season 2 | Season 3 | Total Volume |
|------------------|-----------|-----------|-----------|--------------|
| Irrigation Use | | | | |
| October 31, 1900 | 0.624 CFS | 0.832 CFS | 1.100 CFS | 494.23 AF |
| December 2, 1907 | | | 0.440 CFS | |

4. There is a supplemental irrigation water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact No. 2. The Lessor, Co-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.
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 Lessor, Co-Lessor and Lessee have requested to protect water instream from the POD described in Finding of Fact No. 2 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 generally back in the river system once river flows reach the Madras Gage. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows should be accounted for at the Madras Gage.
7. 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 No. 1: From Central Oregon Canal POD No. 1 (as described in Finding of Fact No. 2) to the Madras Gage

| Certificate | Priority Date | Use | Instream Rate (CFS) | | | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|-----|---------------------|----------|----------|----------------------|---------------------------|
| | | | Season 1 | Season 2 | Season 3 | | |
| 94956 | 10/31/1900 | IR | 0.346 | 0.462 | 0.855 | 274.65 | April 1 – October 26 |

Instream Reach No. 2: From the Madras Gage to the mouth of the Deschutes River

| Certificate | Priority Date | Use | Instream Rate (CFS) | Instream Volume (AF) | Period Protected Instream |
|-------------|---------------|-----|---------------------|----------------------|---------------------------|
| 94956 | 10/31/1900 | IR | 0.220 | 90.70 | April 1 – October 26 |

8. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 94956 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

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.

9. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

10. 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. Return flows resulting from the exercise of the existing water right would re-enter the river downstream from the POD within the reach of the instream water right. As such, the rate and volume of water protected instream within specified reach has been reduced in Reach No. 2 to prevent injury and enlargement.

11. 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.

12. 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.

13. 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.

14. 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.

15. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed for 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.
16. The Lessors, Co-Lessor and Lessee have requested that the lease terminate on October 31, 2024. The lease may commence on the date this final order is signed.
17. The Lessors, Co-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 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 lease may commence on the date this final order is signed, and terminate on October 31, 2024.

Signed at Salem, Oregon this day MAY 24 2024.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR,
Oregon Water Resources Department

This document was prepared by Arla Davis and if you have any questions, please call 503-979-3129.

Mailing date: MAY 27 2024