BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON

In the Matter of Instream Lease Application IL-1837, Deschutes County	))	DETERMINATION and 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
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Lessee
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Findings of Fact

1. On May 6, 2025, North Unit Irrigation District (NUID) and DRC filed an application to renew instream lease IL-1837, involving a portion of Certificate 51229, as required under the terms of the Memorandum of Agreement identified in Finding of Fact No. 2 below.

2. On January 19, 2021, the Department and NUID executed a Memorandum of Agreement to Perpetually Lease Water to Instream Use (Memorandum of Agreement). This Memorandum of Agreement was executed and attached to a Final Order of Approval on Completion of Allocation of Conserved Water CW-102, recorded at Special Order Volume 118, Pages 365 - 386. The Memorandum of Agreement is memorialized in pages 383-386.

3. Pursuant to OAR 690-077-0076 (2)(b), the owner of any storage facility which is the source of water for a lease must be a co-lessor. The Bureau of Reclamation (BOR) is the storage facility owner for the water right being leased instream and is not a co-lesser. On March 3, 2021, the Department received an email from the BOR with consent and agreement of the processing of this instream lease application and any renewals that are submitted for storage instream out of Wickiup Reservoir.

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

Certificate: 51229 in the name of North Unit Irrigation District (appropriated under Permit S-23196)
Use: Storage under Reservoir Permit No. R-1677
Priority Date: February 28, 1913
Quantity: **Volume:** 457.5 Acre-Feet (AF)
Source: Deschutes River, tributary of Columbia River for storage in Wickiup Reservoir

Reservoir Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	9 E	WM	7	SW NE	1830 FEET SOUTH AND 1950 FEET WEST FROM THE NE CORNER OF SECTION 7

5. The quantity of water released from storage in Wickiup reservoir is conserved water from Application CW-102. The priority date for the conserved water is February 28, 1913, *plus one minute*. Therefore, the priority date for the water under this lease shall be February 28, 1913, *plus one minute,* as set forth in the Memorandum of Agreement.

6. The Lessor has requested that stored water from Wickiup Reservoir be leased instream during the period of November 2 through March 31, a 150-day period, with a volume of 457.5 acre-feet. Given the proposed instream period, up to 1.53 cfs may be leased instream.

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. The lease application requests to protect water instream from the dam at Wickiup Reservoir (approximately RM 227) to Lake Billy Chinook (approximately RM 120). The segment of the reach on the mainstem Deschutes River from Wickiup Reservoir to Benham Falls is a losing reach. At this time, the best available information to the Department indicates this reach loses approximately 12.5%. The segment of the reach from Benham Falls to Bend is also a losing reach. At this time, based on the best available information to the Department, this reach loses approximately 7%. If further investigation later reveals the stream channel losses to be greater or lesser than those indicated, the Department will consider adjusting the protected rates accordingly at the next renewal period. The quantity of water that may be protected instream in the mainstem Deschutes River within these segments require additional modification to prevent injury and enlargement.

9. The instream use is as follows:
Deschutes River, tributary of Columbia River from storage in Wickiup Reservoir

Instream Reach Point No. 1: At the Wickiup Reservoir dam (approximately RM 227):

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
51229	February 28, 1913, *plus one minute*	1.53	457.5	November 2 through March 31

Instream Reach No. 1: From the OWRD Gauge Station #14056500 (WICO) to Benham Falls

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
51229	February 28, 1913, *plus one minute*	1.35	400.31	November 2 through March 31

Instream Reach No. 2: From Benham Falls to Lake Billy Chinook (approximately RM 120)

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
51229	February 28, 1913, *plus one minute*	1.25	372.29	November 2 through March 31

10. Other conditions to prevent injury and enlargement are:

    Live flow must be bypassed through the reservoir authorized under Certificate 51229 during the term of this lease.

    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 the best 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.

    The instream use may be conditioned to allow for less water to be protected instream below the gauge based upon instream measurements conducted by Department staff or others approved by the Department, which may show lower or higher levels of loss and allow the instream flows to be adjusted accordingly but may not exceed the instream quantities identified at the reservoir.

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

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 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 has requested that the lease terminate on March 31, 2030. The lease may commence on November 2, 2025. This lease is subject to the terms and conditions of the Memorandum of Agreement described in Finding of Fact No. 2.

19. The Lessor and Lessee have requested the option of terminating the lease early with written notice to the Department, subject to the terms and conditions of the Memorandum of Agreement described in Finding of Fact No. 2.

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.

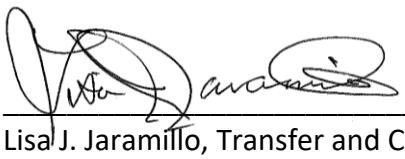
Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.

2. The term of the lease will commence November 2, 2025, and terminate on March 31, 2030.

3. 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 provided the termination complies with the terms and conditions of the Memorandum of Agreement described in Finding of Fact No. 2. However, if the termination request is received less than 30-days prior to the instream use period (November 2 through March 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 June 9, 2025.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.

Mailing date: June 11, 2025