

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

In the Matter of Instream Lease Application )	DETERMINATION and
IL-1314 and Preliminary and Final Award )	FINAL ORDER ON PROPOSED
of Mitigation Credits, Certificate 74135, )	INSTREAM LEASE and MITIGATION
Deschutes County )	CREDIT PROJECT

**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.

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

**Lessor #1**

Pooled Instream Lease for several water right holders (described in Findings of Fact #3)

**Lessor #2**

Three Sisters Irrigation District (TSID)  
PO Box 2230  
Sisters, OR 97759  
[manager@tsidonline.org](mailto:manager@tsidonline.org)

**Lessee**

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

**Findings of Fact**

1. On May 30, 2013, the DRC Mitigation Bank 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-1314.
2. 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 #3 consistent with the water right of record in so far as possible.

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 portion of the right to be leased is as follows:

**Certificate:** 74135  
**Priority Date:** 1895  
**Use:** 137.2 acres of irrigation  
**Quantity:** 2.744 Cubic Foot per Second (CFS) (limited to 1/50<sup>th</sup> CFS per acre)  
**Source:** Whychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder
15S	10E	WM	24	NW NW	200	32.0	Kay Patterson
15S	10E	WM	24	SW NW	200	9.6	
15S	11E	WM	4	NW NE	100	25.00	Karen Swaner
15S	11E	WM	4	SW NE	100	40.00	
15S	11E	WM	4	SW SW	401	30.6	James Enger

**Authorized 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

4. 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.
5. There is no duty associated with the water right proposed to be leased instream. However, TSID (Lessor #2) has requested to lease the equivalent of 3.05 acre-feet per acre to instream use.
6. 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.
7. 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 measurable into the Deschutes River and may be protected instream into the Deschutes River.
8. 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 #3) to the mouth of Whychus Creek and then into the Deschutes River to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74135	1895	2.744	419.08	May 31 through August 15

9. 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 priority date. 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 150.276 CFS, or as further limited in a previous or subsequent order affecting Certificate 74135.

10. 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.
11. 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. 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.
12. 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.
13. The Lessor has requested that the lease terminate on October 31, 2013.

**Preliminary Award of Deschutes Basin Mitigation Credits**

14. The Lessee, a mitigation bank chartered by the Water Resources Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
15. The Department assigned this mitigation credit project number MP-181.
16. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). The Department also provided notice of the mitigation credit project to the Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon Parks and Recreation Department, Oregon Department of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2). No comments were received.

17. The lease of 137.2 acres of irrigation use generates 247.0 AF of mitigation water. Therefore, the Department finds that 247.0 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC Mitigation Bank. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Whychus and General Zones of Impact.
18. The mitigation credits expire on December 31, 2013.
19. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
20. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of the Final Order approving the proposed instream lease shall result in completion of the project and verification that the project is complete.
21. No precedent is set by this Final Order as to the amount of mitigation credits that may be generated by a subsequent mitigation credit project.

### **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.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

### **ORDER**

Therefore, it is ORDERED:

1. That 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 water rights for irrigation use, including ground water registrations.
3. The term of the lease will commence upon approval of the instream lease and terminate on October 31, 2013.
4. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of this Final Order results in completion of the project and verification by the Department that the project is complete. The Department concludes that the mitigation credit project is awarded mitigation credits, as described above, pursuant to OAR 690-521-0400 and ORS 537.746. Mitigation Credits, in the amount of 247.0 credits, as described herein, are awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation Credits may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the Whychus and General Zones of Impact.

5. Mitigation credits are valid until used (or until they expire or are terminated) to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.
6. The mitigation credits shall expire on December 31, 2013.

Dated at Salem, Oregon this 16 day of July, 2013.

  
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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 19 2013