

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

In the Matter of Instream Lease Application )  
IL-1812 and Preliminary and Final Award of )  
Mitigation Credits for Mitigation Project )  
MP-262, Crook County )

DETERMINATION and FINAL ORDER ON  
PROPOSED INSTREAM LEASE and  
MITIGATION CREDIT PROJECT

**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.

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**

Pooled Instream Lease on behalf  
of several Water Users  
(as described in Finding of Fact #2)

**Co-Lessor**

Ochoco Irrigation District (OID)  
1001 N. Deer Street  
Prineville, OR. 97754

**Lessee**

Deschutes River Conservancy Mitigation Bank (DRCMB)  
700 NW Hill Street, Suite 1  
Bend, Oregon 97703  
[gen@deschutesriver.org](mailto:gen@deschutesriver.org)

**Findings of Fact**

1. On June 4, 2019, the DRCMB and OID on behalf of several water users filed an application to lease a portion of Certificate 82246 for instream use. The Department assigned the application number IL-1812.

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

**Certificate:** 82246 in the name of OCHOCO IRRIGATION DISTRICT (perfected under Permit S-5426)  
**Use:** Irrigation of 101.1 acres  
**Priority Date:** August 10, 1917

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.

**Quantity:** **Rate:** 1.264 Cubic Foot per Second (CFS)

**Volume:** 404.4 Acre-Feet (AF)

**Limit:** The amount of water used for irrigation together with the amount secured under any other right existing for the same lands is limited to a diversion of one-eightieth of one cubic foot per second (or its equivalent) for each acre irrigated and shall be further limited to 4.0 acre feet for each acre irrigated during the irrigation season of each year.

**Source:** Ochoco Creek and Ochoco Reservoir constructed under R-528, tributary to the CROOKED RIVER

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

POD#	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1	15 S	17 E	WM	5	SW NW	OCHOCO FEED CANAL: 500 FEET NORTH AND 250 FEET EAST FROM THE W1/4 CORNER OF SECTION 5

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Information	
						Tax lot	Water User
14 S	15 E	WM	25	SE SW	11.1	1405	* PORFELY VENTURES, ETAL
14 S	15 E	WM	25	NE SW	2.0		
14 S	15 E	WM	25	NW SE	5.0	1200	*STEVE & KATHLEEN LIESER
14 S	15 E	WM	25	SW SE	3.4		
14 S	15 E	WM	25	SE SE	0.2	800	* SMAF CONSTRUCTION
14 S	15 E	WM	36	NE NE	5.8	1700	** SAMUEL STAFFORD
14 S	15 E	WM	36	SE NE	1.0		
14 S	15 E	WM	36	NW NE	1.9		
14 S	15 E	WM	36	SW NE	3.7		
14 S	15 E	WM	36	NW NE	7.1	1600	
14 S	15 E	WM	36	SW NE	1.6		
14 S	15 E	WM	36	NE NE	3.1	1900	** DAVE MOLONY
14 S	15 E	WM	36	SE NE	2.4		
14 S	16 E	WM	30	SW SW	12.9	400	* PORFELY VENTURES, ETAL
14 S	16 E	WM	30	SW SW	14.9	800	* SMAF CONSTRUCTION
14 S	16 E	WM	30	SE SW	0.1		
14 S	16 E	WM	31	NW NW	7.0	1300	
14 S	16 E	WM	31	NE NW	0.8		
14 S	16 E	WM	31	NE NE	2.2	100	* SMITH LANDING, LLC
14 S	16 E	WM	31	NW NE	14.9		
<b>Total Irrigation Acres</b>					<b>101.1</b>		

<b>Total Mitigation Acres *</b>	<b>74.5</b>
<b>Total Restoration Acres **</b>	<b>26.6</b>

3. The maximum duty for the right is set at 4.0 acre-feet per acre; however, for the purpose of this lease the District has set the duty to 3.0 acre-feet per acre, calculations will be made using 3.0 acre-feet per acre as requested.
4. Certificate 82246 does not specify the irrigation season; The Crooked River Decree specifies the Irrigation Season as February 1 through December 1.
5. There is a supplemental irrigation water right, Certificate 82247, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The 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.
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 Ochoco Creek into the Crooked River. An instream reach is generally from the point of diversion to the mouth of the source stream (Ochoco Creek) but may be protected further if measurable in the receiving stream (the Crooked River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Ochoco Creek is measurable into the Crooked River and may be protected instream in the Crooked River.
8. The Lessors and Lessee have requested to protect water instream from the POD on Ochoco Creek (as described in Finding of Fact #2) to Lake Billy Chinook on the Crooked River. A portion of the water diverted at the POD returns back into the Crooked River along the proposed reach and is available to downstream users. To prevent injury or enlargement of the right, the quantity of water that may be protected instream in the Crooked River has been reduced by 10% to account for return flows from: Immediately below the place of use (where Ochoco Creek crosses the west line of the SE NE of Section 4, T15S, R16E, W.M.)
9. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:  
Ochoco Creek, tributary to the Crooked River

**Instream Reach #1:** From the POD on Ochoco Creek (as described in Finding of Fact #2) to the west line of the SE NE of Section 4, T15S, R16E, W.M.

	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
Mitigation	8/10/1917	0.663	223.5	April 15 through October 1
Restoration		0.237	79.8	
Totals		0.900	303.3	

**Instream Reach #2:** From immediately below the west line of the SE NE of Section 4, T15S, R16E, W.M. to the mouth of Ochoco Creek, into Crooked River to Lake Billy Chinook

	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
Mitigation	8/10/1917	0.60	201.2	April 15 through October 1
Restoration		0.213	71.8	
Totals		0.813	273.0	

10. Other conditions to prevent injury and enlargement are:

When live flow is no longer available, Ochoco Irrigation District shall begin releasing stored water from Ochoco Reservoir to satisfy the instream use described in Finding of Fact #9 for the duration of the instream period. The Irrigation District shall keep a record of the amount and timing of water released from Ochoco Reservoir on a monthly basis and provide that that information to the Watermaster upon request. If determined necessary, the Watermaster may require the Irrigation District to report to the Department the amount and timing of storage releases. The Watermaster shall account for the water released from storage at the Smith Rock State Park gage.

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 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. The quantity of water to be protected instream has been reduced in Instream Reach #2.

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 Lessors and Lessee have requested that the lease terminate on October 1, 2020. The lease may commence on the date this final order is signed.
19. The Lessors and Lessee have requested that there not be an option to terminate the lease.

**Preliminary Award of Deschutes Basin Mitigation Credits**

20. 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.
21. The Department assigned this mitigation credit project number MP-262.
22. 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). Comments were received by the Oregon Department of Environmental Quality in favor of the instream lease application.
23. The Department finds that 134.1 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 General and Crooked River Zones of Impact.
24. The mitigation credits expire on December 31, 2020.
25. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.

26. 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.
27. 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.

### 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 October 1, 2020.
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 **134.1** 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 **General** and **Crooked River** 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, 2020.

7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this day JUN 29 2020.



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

Mailing date: JUN 30 2020

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