

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1734 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
of Mitigation Credits for Mitigation Project ) INSTREAM LEASE and MITIGATION  
MP-247, Deschutes County ) 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 for several water right holders (described in Findings of Fact No. 2)

**Co-Lessor**

Central Oregon Irrigation District (COID)  
1055 SW Lake Ct.  
Redmond, Oregon 97756  
[abby@coid.org](mailto:abby@coid.org)

**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 March 28, 2019, COID and DRCMB on behalf of several water right holders filed an application to lease a portion of Certificate 83571 for instream use. The Department assigned the application number IL-1734.
2. The portion of the right to be leased is as follows:
  - Certificate:** 83571 in the name of Central Oregon Irrigation District
  - Use:** Irrigation of 69.49 acres
  - Priority Date:** October 31, 1900 and December 2, 1907
  - Season of Use:** April 1 through October 31, further limited as follows:  
April 1 through April 30 & October 1 through October 31

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.

May 1 through May 14 & September 16 through September 30  
 May 15 through September 15

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

Season 1: limited to 1/80<sup>th</sup> cubic foot per second (CFS) per acre  
 Season 2: limited to 1/60<sup>th</sup> CFS per acre  
 Season 3: limited to 1/32.4<sup>th</sup> 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 (POD No. 1) 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:** 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 (Lessors #1)
16 S	14 E	WM	22	SE SW	0.44	7600	Mark Gerdes, Brasada Ranch
16 S	14 E	WM	22	SE SW	0.14	3500	
16 S	14 E	WM	22	SW SE	0.08	3500	
16 S	14 E	WM	27	NE NW	0.30	8600	
16 S	14 E	WM	27	NE SW	1.05	2801	
16 S	14 E	WM	27	NW NE	0.98	3500	
16 S	14 E	WM	27	NW NW	0.70	8600	
16 S	14 E	WM	27	NW NW	0.10	700	
16 S	14 E	WM	27	NW SE	1.91	2801	
16 S	14 E	WM	27	NW SW	1.30	2801	
16 S	14 E	WM	27	SE NW	0.39	300	
16 S	14 E	WM	27	SE NW	0.15	2801	
16 S	14 E	WM	27	SE SE	0.61	2803	
16 S	14 E	WM	27	SE SW	0.91	102	
16 S	14 E	WM	27	SW NE	0.24	3500	
16 S	14 E	WM	27	SW NE	0.05	300	
16 S	14 E	WM	27	SW NE	0.18	2801	
16 S	14 E	WM	27	SW NW	0.78	2801	
16 S	14 E	WM	27	SW SW	7.00	100	
16 S	14 E	WM	27	SW SE	2.26	2803	
16 S	14 E	WM	27	SW SW	0.40	2801	
16 S	14 E	WM	28	NE SE	1.77	111	
16 S	14 E	WM	28	NW SE	0.35	111	
16 S	14 E	WM	28	SE NE	0.44	111	
16 S	14 E	WM	28	SE SE	0.20	100	
16 S	14 E	WM	28	SE SE	2.50	107	
16 S	14 E	WM	34	NW NW	4.30	200	

Twp	Rng	Mer	Sec	Q-Q	Acres	Additional Place of Use Description Provided in Application - Tax Lot	Water Right Holder (Lessors #1)
17 S	12 E	WM	23	NE NE	0.25	112	Bena Lechner
17 S	13 E	WM	21	NW SE	1.47	1400	Eric and Donald Howell
17 S	13 E	WM	30	NW NE	1.40	400	Daniel and Janna Brooker, Brooker.Daniel/Janna Joint Trust
17 S	13 E	WM	31	SE NE	0.70	1400	Marlene Ralph
17 S	14 E	WM	14	SW SW	1.80	700	Dianna Broussard
17 S	14 E	WM	27	SE SW	25.57	400	Donna O'Kula
18 S	12 E	WM	1	SE NW	0.72	2000	Douglas and Marian Baster
18 S	12 E	WM	1	SW NW	0.85		
18 S	12 E	WM	2	SE NE	0.41	1315	Paul Stultz, Kathleen Millican
18 S	13 E	WM	9	SW NE	1.70	600	Delmar and Dolores Kennel, Delmar & Dolores Kennel Joint Trust
18 S	13 E	WM	10	NW SE	3.25	201	William and Colleen Faulkner
18 S	13 E	WM	10	NE SE	1.84		
<b>Total Acres</b>					<b>69.49</b>		

3. The season of use described in Certificate 83571 contains scrivener errors. Consistent with the Decree for the Deschutes River (Volume 12, Page 282), the irrigation season should be:

**Season of Use:** April 1 to November 1, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as Season 1

May 1 to May 15 and September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

4. Certificate 83571 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 was 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 83571 shall be reduced, if this instream lease is approved.

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.860 CFS	1.146 CFS	1.515 CFS	681.26 AF
December 2, 1907			0.607 CFS	

5. 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 Lessors 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 instream is as follows:  
Deschutes River, tributary to the Columbia River

**Instream Reach:** From Central Oregon Canal POD No. 1 (as described in Finding of Fact No. 2) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83571	10/31/1900	Season 1: 0.478 Season 2: 0.637 Season 3: 1.180	378.76	April 1 – October 26

8. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under Certificate 83571 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.

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. 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.

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 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.
16. The Lessors and Lessee have requested that the lease terminate on October 31, 2021. The lease may commence upon approval of this final order.
17. The Lessors and Lessee have requested the option of terminating the lease early with written notice to the Department.

**Preliminary Award of Deschutes Basin Mitigation Credits**

18. 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.
19. The Department assigned this mitigation credit project number MP-247.
20. 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 from the Oregon Department of Environmental Quality in favor of the application.
21. The Department finds that 125.1 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 Middle Deschutes and General Zones of Impact.
22. The mitigation credits expire on December 31, 2021.
23. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
24. 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.

25. 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 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 order and terminate on October 31, 2021. For multiyear leases, the Lessors and Lessee shall have the option of terminating the lease with written notice to the Department provided to both the Salem office and Watermaster office. Written notice of termination of a lease must be provided by all Lessors and the Lessee. The lease may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the instream use period (April 1 through October 26) 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 allowed until the following calendar year, unless the Director determines that enlargement would not occur.
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 **125.1** 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 **Middle Deschutes 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, 2021.

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 APR 29 2019.

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

Mailing date: APR 30 2019

*This document was prepared by Sarah  
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questions, please call 503-986-0884*