

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use and Preliminary and Final Award of)	PROPOSED INSTREAM
Mitigation Credits, Certificate 74135,)	LEASE and
Deschutes County, Oregon)	MITIGATION CREDIT
		PROJECT

On May 20, 2003, the Deschutes Water Exchange Mitigation Bank submitted an instream lease application for the purpose of protecting flows instream and generating mitigation credits to offset the impacts of ground water use in the Deschutes Ground Water Study Area.

FINDINGS OF FACT

Short-Term Instream Lease

1. A Short-Term Lease Application, which proposed to lease a portion of certificate 74135 for instream purposes was submitted to the Department by:

Lessor	Lessee
Squaw Creek Irrigation District	Deschutes Water Exchange Mitigation Bank
P.O. Box 2230	P.O. Box 1560
Sisters, OR 97759	Bend, OR 97709

2. The Department assigned this lease agreement number L-418.
3. The lease application includes the required information under OAR 690-077-0077(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(6). Comments were received from Water For Life.
4. Based upon continued review of the application, comments submitted and information from the Watermaster, the Department has finds that the following condition is necessary to be included in the lease:

The portion of water protected under this lease shall be based on the same percentage diversion and delivery rate that Squaw Creek Irrigation District is diverting to rights of the same priority within the district. Each Monday morning during the period of this lease, the District shall report to the District 11 Watermaster's office the percentage diverted under the 1887, 1895 & 1899 priority dates. This information only needs to be reported to the Watermaster's office once the District is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

are made to the percentage of water being diverted. Once the District begins diverting water on a percentage basis, the amount water leased instream will be adjusted by that same percentage.

5. Water is being leased instream under three priority dates, 1899, 1895 and 1887. The amount of water under each priority date is as follows:

<u>Priority Date</u>	<u>Rate</u>	<u>Volume</u>
1887	0.24 CFS	43.97 AF
1895	2.55 CFS	454.51 AF
1899	0.66 CFS	120.24 AF

6. The reach in which water shall be protected is from the point of diversion to the mouth of Squaw Creek.
7. The period during which water is to be protected instream is June 15 through September 15.
8. Based upon review of the application, comments received and information provided by the Department's Watermaster, the Department finds that the lease, as proposed, will not result in injury or enlargement.
9. The lease will terminate on October 31, 2003.

Preliminary Award of Deschutes Basin Mitigation Credits

10. The Lessee, a mitigation bank chartered by the Commission, has requested that the portion of the right to be protected instream be used to generate mitigation credits.
11. The Department assigned this mitigation credit project number MP-6.
12. 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 State Parks and Recreation Department, Oregon Division 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 Water For Life and the Department's Watermaster.
13. It has been identified by the Department's Watermaster that a portion of the water to be leased instream with the priority date of 1899 will not be available for instream protection past the end of June. The instream lease application requested to protect water during the period June 15 through September 15. The applicant has requested to protect water instream under the 1899 priority date during a period when this water is no longer available. The Department has determined that no mitigation credits may be awarded based upon the 1899 priority date.
14. When the Department originally published notice of this mitigation project, it was identified that the project may generate 290.0 mitigation credits. However, based upon additional evaluation, the Department finds that 235.7 mitigation credits may be awarded to this mitigation credit project. 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 Squaw Creek and General zones of impact.

15. The mitigation credits expire on December 31, 2003.
16. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.

CONCLUSIONS OF LAW

Short-Term Instream Lease

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.


Final Award of Deschutes Basin Mitigation Credits

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.

ORDER

Therefore, it is ORDERED that the Short-Term Lease and Mitigation Credits, in the amount of 235.7 credits, described herein are APPROVED.

Dated at Salem, Oregon this 30th day of July, 2003.



Paul R. Cleary
Director