

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

In the Matter of the Lease of Existing Water )	FINAL ORDER
Rights for Instream Use, Certificate 76358, )	TERMINATING
Deschutes County )	INSTREAM LEASE

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.

**Lessor #1**  
Robert Brown  
2660 NE Hwy 20, Suite 610 PMB 99  
Bend, OR 97701

**Lessor #2**  
Central Oregon Irrigation District (COID)  
1055 SW Lake Court  
Redmond, OR 97756  
[transfers@coid.org](mailto:transfers@coid.org)

**Lessee**  
Deschutes Water Exchange (DWE) Mitigation Bank  
PO Box 1560  
Bend, OR 97709  
[gHubert@deschutesrc.org](mailto:gHubert@deschutesrc.org)

**Findings of Fact**

1. On March 29, 2006, COID, the DWE Mitigation Bank, and Robert Brown filed an application to lease a portion of Certificate 76358 to instream use and to establish mitigation credits. The Department assigned the instream lease application number L-710 and the mitigation credit project MP-68.
2. The lease application requested to protect water instream for five years, terminating on October 31, 2010. A Final Order approving this lease and mitigation credit project was issued by the Department on May 11, 2006, as evidenced by Special Order Volume 68, Page 383. A Superseding Final Order was issued by the Department on May 30, 2006, to clarify the correct order number. The mitigation credit project was awarded 5.9 mitigation credits for use in the General and Middle Deschutes River Zones of Impact. These mitigation credits were assigned to the DWE Mitigation Bank.
3. The final order contained a condition allowing the Lessors and the Lessee to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department from all parties to the lease. On February 8, 2007, the

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.

Department received a request from Robert Brown, COID, and the DWE Mitigation Bank to terminate the lease prior to the 2007 irrigation season.

4. The lease was exercised during the 2006 water use period ending on October 31, 2006. No mitigation credits established by this mitigation project were used during the 2006 calendar year.

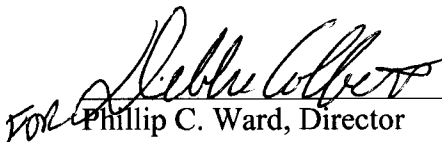
### CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2007 irrigation season is consistent with OAR 690-077.

### ORDER

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED and no longer in effect. The mitigation credits awarded to the Mitigation Project described herein are no longer valid.

Dated at Salem, Oregon this 12<sup>th</sup> day of February 2007.

  
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Phillip C. Ward, Director

Mailing date: FEB 15 2007