

**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 and Mitigation )      TERMINATING INSTREAM LEASE &  
Credit Project, Certificate 83571, Deschutes )      MITIGATION CREDIT PROJECT  
County )

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**  
Central Oregon Irrigation District (COID)  
1055 SW Lake Court  
Redmond, OR 97756

**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 April 27, 2006, the Deschutes Water Exchange (DWE) Mitigation Bank (now known as the DRC Mitigation Bank), COID, and Elbert and Wini Whitaker 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 IL-732 and the mitigation credit project MP-83.
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 June 5, 2006, as evidenced by Special Order Volume 68, Page 593. The mitigation credit project was awarded 17.9 mitigation credits for use in the General and Middle Deschutes Zones of Impact. These mitigation credits were assigned to the DWE Mitigation Bank and were to expire on December 31, 2010.
3. The final order contained a condition allowing the Lessor 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.

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.

4. On September 26, 2007, Certificate 83571 was issued superseding Certificate 76358.
5. On January 21, 2009, the Department received a copy of a request from the DRC Mitigation Bank and COID to terminate the lease and mitigation credit project prior to the 2009 irrigation season. Along with the termination request, information was also provided showing that interest in the portion of the water right leased instream had been conveyed to COID from Eldon Stutz (new owner of the lands involved in the lease). On February 4, 2009, the termination request with original signatures was received by the Department.
6. The lease was exercised during the 2006, 2007, and 2008 water use periods ending on October 31, 2008. Mitigation credits established by this project were not used to provide mitigation for ground water permits in any year that the lease was in effect.

### CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2009 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 17<sup>th</sup> day of February 2009.

  
Phillip C. Ward, Director

Mailing date: FEB 23 2009