

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

In the Matter of Instream Lease Application ) DETERMINATION and  
IL-1743 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
of Mitigation Credits for Mitigation Project ) INSTREAM LEASE and MITIGATION  
MP-249, 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**

Wanek Ranch LLC  
P.O. BOX 1098  
La Pine, OR. 97739  
[artla@yahoo.com](mailto:artla@yahoo.com)

**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 April 22, 2019, Wanek Ranch LLC and the DRC filed an application to involving a portion of Certificate 90239 for instream use. The Department assigned the application number IL-1743.
2. The portion of the right to be leased is as follows:

**Certificate:** 90239 in the name of La Pine Cooperative Water Association (confirmed by the Deschutes River Decree, of record at Salem, in the Order Record of the Water Resources Director in Volume 16, Page 185)

**Use:** Irrigation of 105.1 acres

**Season of Use:** April 1 to November 1

**Priority Dates:** April 30, 1902

**Quantity:** **Rate/Volume:** 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 1/40<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigation, from May 23 to August 20, and 1/80<sup>th</sup> of one cubic foot per second, or its equivalent for each acre irrigated, from

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.

April 1 to May 23 and from August 20 to November 1, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

<b>April 1 to May 23 &amp; Aug. 20 to Nov. 1</b>	<b>May 23 to Aug 20</b>	<b>Duty</b>
1.314 CFS	2.628 CFS	420.4 AF

**Source:** LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER  
**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	9 E	WM	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
22 S	10 E	WM	22	SW NE	101	37.4
22 S	10 E	WM	22	SE NE	101	1.0
22 S	10 E	WM	22	NW SE	101	39.3
22 S	10 E	WM	22	SW SE	101	27.4
<b>Total</b>						<b>105.1</b>

- 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.
- A portion of the water diverted at the POD returns to the Little Deschutes River below the POD and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification to account for both surface and subsurface return flows.

The hydrogeologic evaluation of where subsurface return flows occur is generally based on the following information: 1) the local shallow and regional ground water elevations, 2) the shallow and regional head gradient (i.e. ground water flow direction), 3) elevation of nearby streams, 4) elevation of closest gaining stream reaches, 5) distance from nearby streams and gaining stream reaches, and 6) local geologic information. When evaluating for return flows, the Department generally considers the place of use as a whole and where the majority of return flows occur based upon the presence of surface return flows (overland flow) and the factors described above for any subsurface return flows.

Return flows from the existing use return to the Little Deschutes River in the vicinity of the Little Deschutes gage near the city of LaPine, located approximately at river mile 27.

The instream flows at River Mile 27 have been reduced to the consumptive portion of the right to account for return flows.

- The lease application requests to protect water instream from Little Deschutes River into the Deschutes River. An instream reach is generally from the point of diversion to the mouth of the source stream (Little Deschutes River) but may be protected further if measurable in the receiving stream (the Deschutes River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from the Little Deschutes River is measurable into the Deschutes River and may be protected instream in the Little Deschutes River.

6. The segment of the reach on the main stem Deschutes River between the confluence with the Little Deschutes River and Bend is a losing reach and loses approximately 7% of its flows. The quantity of water that may be protected instream in the main stem Deschutes River requires additional modification to prevent injury and enlargement.
7. At the instream rates and volumes requested, the Department cannot protect water instream during the full instream period. However, water may be protected instream over the full instream period by reducing the proposed instream rates.
8. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Little Deschutes River, tributary to the Deschutes River

**Instream Reach 1:** From the POD (as described in Finding of Fact No. 2) to the gage near LaPine at approximate River Mile 27.0

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.673	420.34	April 1 through May 22
	1.640		May 23 through August 19
	0.431		August 20 through October 31

**Instream Reach 2:** From the gage near LaPine at approximately River Mile 27.0 to the mouth of the Little Deschutes River

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.448	189.18	April 1 through October 31

**Instream Reach 3:** Into the Deschutes River from the confluence with the Little Deschutes River to Lake Billy Chinook

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
April 30, 1902	0.420	175.94	April 1 through October 31

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 known areas of natural loss of streamflow to the river bed downstream from the point of diversion and have been accounted for in Reach 3; and
  - d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right and have been accounted for in Reach 2.
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 Lessor and Lessee have requested that the lease terminate on October 31, 2023. The lease may commence on the date this final order is signed.
17. The Lessor 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-249.
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 by the Oregon Department of Environmental Quality, in favor of the instream lease application.
21. As part of the public notice of the mitigation project, the Department identified that the project may result in 189.2 mitigation credits. Irrigation of 105.1 acres has an average consumptive use of 189.2 AF. However, this volume may only be protected instream in the Little Deschutes River. The quantity of water that may be protected instream downstream of the Little Deschutes River requires modification to account for streamflow losses on the Deschutes River, which reduces the amount of mitigation available from the project. In the Little Deschutes River up to 189.2 AF may be protected instream for mitigation purposes. This is the amount of mitigation available in the Little Deschutes Zone of Impact. Only up to 175.9 AF of this quantity may be protected instream into the Deschutes River. This is the amount of mitigation available in the Upper Deschutes, Middle Deschutes, and General Zones of Impact.

22. The Department finds that up to 189.2 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 Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact. However, the number of mitigation credits that may be used, out of 189.2 total mitigation credits, is limited to no more than 175.9 credits in the Upper Deschutes, Middle Deschutes and General Zones of Impact.
23. The mitigation credits expire on December 31, 2023.
24. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
25. 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.
26. 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.

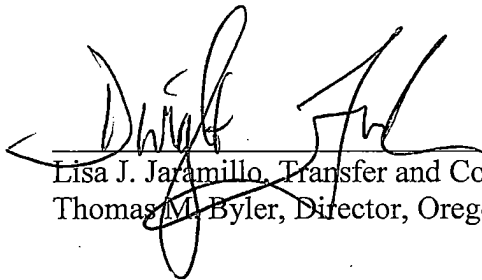
### **Now, therefore it is ORDERED:**

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 31, 2023. For multiyear leases, the Lessor 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 to October 31) 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 **189.2** 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 **Little Deschutes Zone of Impact**. Of the **189.2** mitigation credits awarded to this project, up to **175.9** of those credits may also be used in the **Upper Deschutes, 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, 2023.
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     MAY 24 2019    .



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

Mailing date:     MAY 28 2019    

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