

**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 47267, Crook)	LEASE and
County, Oregon		MITIGATION CREDIT
		PROJECT

On June 17, 2004, 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 47267 for instream purposes was submitted to the Department by:

Lessor	Lessee
Emmett Ranch LLC	Deschutes Water Exchange Mitigation Bank
PO Box 1830	P.O. Box 1560
Bend, OR 97709	Bend, OR 97709

2. The Department assigned this lease agreement number L-579.
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). No comments were received.
4. The right to be leased, as requested by the applicant, is as follows:

Certificate: 47267 in the name of Low Line Ditch Company
Priority Date: 1903
Use: Irrigation
Acres: 17.9 acres
Season of Use: February 1 to December 1
Quantity: Rate: 0.22 Cubic Feet per Second (CFS) (limited to 1/80th CFS/acre)
Duty: 71.6 Acre-Feet (AF) (limited to 4.0 AF/acre)
Source: Crooked River, tributary to the Deschutes River

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.

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	14	E	W.M.	20	SE	SE	270 feet North and 190 feet West from the SE Corner, Section 20

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	14	E	W.M.	28	NW	NW	200	1903	17.9

5. The applicant proposed to lease water for instream as follows:

Reach: From the POD (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 270 feet North and 190 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
47267	1903	0.22 CFS	May 21 through Oct. 31	71.6 AF

6. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified to account for return flows below the point of diversion. The Department has estimated that 5% of the water diverted for use under this right returns to the Crooked River as return flows below the point of diversion. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the POD (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 270 feet North and 190 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
47267	1903	At the POD: 0.22 CFS Below the POD: 0.209 CFS	May 21 through Oct. 31	71.6 AF

7. Based upon review of the application and information provided by the Department's Watermaster, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
8. The lease will terminate on November 30, 2008. The lessor and lessee have requested to have the option of terminating the lease with written notice provided to the Department. In order to assure adequate notice of any termination of the lease, the Department will require that written notice be provided by all parties on the lease and be submitted to both the Salem office and the Watermaster's office.

Preliminary Award of Deschutes Basin Mitigation Credits

9. 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.
10. The Department assigned this mitigation credit project number MP-26.
11. 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). No comments were received.
12. The Department finds that **32.2** mitigation credits may be awarded to this mitigation credit project and assigned to the Deschutes Water Exchange 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 **General and Crooked River** zones of impact.
13. The mitigation credits expire on December 31, 2008, unless the lease agreement is terminated earlier by the Lessor and the Lessee.
14. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
15. 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 for the proposed instream lease shall result in completion of the project and verification that the project is complete.
16. 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, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

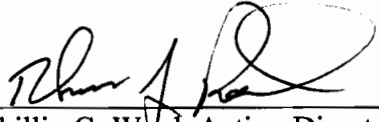
Reach: From the POD (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 270 feet North and 190 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
47267	1903	At the POD: 0.22 CFS Below the POD: 0.209 CFS	May 21 through Oct. 31	71.6 AF

4. The lease will terminate on November 30, 2008. The lessor 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 written notice to Salem office must include original signatures. The notice to the Watermaster office may be made by fax or e-mail. The lease may be terminated at any time during a calendar year. However, if the termination request is received after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year.
5. **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 32.2 credits, as described herein, are awarded to this mitigation project and assigned to the Deschutes Water Exchange 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 **General and Crooked River** zones of impact.
6. Mitigation credits are valid until used (or expire) 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.
7. The mitigation credits shall expire on December 31, 2008, unless the lease agreement is terminated earlier by the Lessor and the Lessee.

8. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.

Dated at Salem, Oregon this 2nd day of August, 2004.


Phillip C. Ward, Acting Director