

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1123 and Preliminary and Final Award)	FINAL ORDER ON PROPOSED
of Mitigation Credits, Certificate 86022,)	INSTREAM LEASE and MITIGATION
Deschutes County)	CREDIT PROJECT

Authority

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

Gordon Wanek
50825 Huntington Rd.
LaPine, OR 97739

Lessee

Deschutes River Conservancy (DRC) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On March 24, 2011, the DRC Mitigation Bank and Gordon Wanek filed an application to lease a portion of Certificate 86022 for instream use. The Department assigned the application number IL-1123.
2. Revised application information was received on May 3, 2011.
3. Certificate 86022 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lots on which portions of the right to be leased have changed since the original certificate was issued. Some tax lot configurations no longer match those shown on the map of the water right and some of the original tax lots identified on the water right of record have been partitioned or subdivided. The portion of the water right to be leased is described in Finding of Fact #4 is consistent with the water right of record.

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. The portion of the right to be leased has been clarified from the lease application and is as follows:

Certificate: 86022 in the name of LaPine Cooperative Water Association (confirmed by Deschutes River (F))
Use: IRRIGATION of 300.0 ACRES, being 193.8 acres under the 1897 priority date and 106.2 acres under the April 30, 1902 priority date
Priority Date: 1897 and April 30, 1902
Season of Use: April 1 to November 1
Rate: April 1 to May 23 & August 20 to November 1: limited to 1/80th cubic foot per second (cfs) per acre
 May 23 to August 20: limited to 1/40th cfs per acre
Duty: Not to exceed 4.0 AF per acre for each acre irrigated during the irrigation season of each year

Priority Date	April 1 to May 23 & Aug. 20 to Nov. 1	May 23 to August 20	Duty
1897	2.423 CFS	4.845 CFS	775.2 AF
April 30, 1902	1.328 CFS	2.655 CFS	424.8 AF

Source: LITTLE DESCHUTES RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Govt Lot	Tax Lot	Acres	Owner
1897 Priority Date								
22 S	10 E	WM	22	SE NE		101	22.7	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	NE SE		101	30.0	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SE NE		700	6.4	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SW SE		101	2.9	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SW SE		103	1.7	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SE SE		101	5.0	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SE SE		103	0.6	Wanek, Gordon & Henrietta
22 S	10 E	WM	23	NW SW		2400	1.0	Wanek, Gordon & Henrietta
22 S	10 E	WM	23	NW SW		2401	8.1	Wanek, Gordon & Henrietta
22 S	10 E	WM	23	SW SW		2401	4.8	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	NENE		103	7.4	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	NW NE		103	34.6	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	SW NE		103	11.8	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	SW NE		108	20.2	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	SE NE		103	4.6	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	SE NE		108	9.7	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	NE SE		108	5.7	Wanek, Gordon & Henrietta
22 S	10 E	WM	27	NW SE		108	23.0	Wanek, Gordon & Henrietta
April 30, 1902 Priority Date								
22 S	10 E	WM	22	SW NE		101	37.4	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SE NE		101	1.0	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	NW SE		101	39.3	Wanek, Gordon & Henrietta
22 S	10 E	WM	22	SW SE		101	28.5	Wanek, Gordon & Henrietta

5. 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.
6. 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 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

7. 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.
8. However, the segment of the reach on the mainstem 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 mainstem Deschutes River requires additional modification to prevent injury and enlargement.
9. The quantities requested to be protected instream require modification. The rates and volumes identified in the application are based upon the lease of 197.0 acres under the 1898 priority date and 103.0 acres under the April 30, 1902 priority date. The application will actually lease 193.8 acres of irrigation under the 1897 priority date and 106.2 acres of irrigation under the April 30, 1902 priority date.
10. At the maximum instream rate and volume, the Department cannot protect water instream during the full periods requested, May 15 through October 23, a 162 day period, under the 1897 priority date and May 1 through October 10, a 163 day period. However, water may be protected instream at the rate and volume requested for 161 days under the 1897 priority date and 162 days under the April 30, 1902 priority date. The Department's Watermaster has previously recommended that the instream period be reduced by a few days on the front end of the instream period to allow water to be protected instream during the periods of lowest flow on the Little Deschutes River through October 31.

11. 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 POD (as described in Finding of Fact #3) to the gage near LaPine (approximately River Mile 27.0)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1897	2.42	772.80	May 16 through October 23
April 30, 1902	1.32	424.15	May 2 through October 10

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

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
1897	1.09	348.8	May 16 through October 23
April 30, 1902	0.59	191.2	May 2 through October 10

Instream Reach 3: In 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
1897	1.02	324.4	May 16 through October 23
April 30, 1902	0.55	177.8	May 2 through October 10

12. 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.
13. Based upon review of the application, comments received, information provided by the Department's Watermaster, and other available information, the Department finds that the lease will not result in injury or enlargement. This finding is made through an abbreviated review recognizing that the 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.
14. If a right which has been leased is later proposed to be leased again or transferred to an instream use under ORS 537.348 and OAR 690-077-0070 or OAR 690-077-0075 a new injury review shall be required. 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 future leases or transfers.
15. The Lessor has requested that the lease terminate on October 31, 2015. The lease has been submitted after the first day of the irrigation season. The lease will commence the date the final order is signed and on April 1 of each succeeding calendar year that the lease is in place.

16. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

17. 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.
18. The Department assigned this mitigation credit project number MP-145.
19. 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). No comments were received.
20. No modifications were made to the lease based on any comments received or consultation with the above named agencies.
21. As part of the public notice of the mitigation project, the Department identified that the project may result in 540.0 mitigation credits. Irrigation of 300.0 acres has an average consumptive use of 540.0 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 540.0 AF may be protected instream. This is the amount of mitigation available in the Little Deschutes Zone of Impact. Only up to 502.2 AF of this quantity may be protected instream in the mainstem Deschutes River. This is the amount of mitigation available in the Upper Deschutes, Middle Deschutes and General Zones of Impact.
22. The mitigation credits expire on December 31, 2015.
23. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
24. 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.
25. 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.

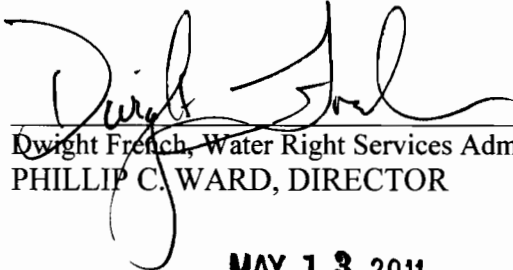
ORDER

Therefore, it is ORDERED:

1. That the Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2015. For multiyear leases, 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 less than 30-days prior to the period of allowed instream use (May 2 through October 23) or after the period of allowed use has begun for the water right being leased, water may not be used under the right leased 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 in the amount of **540.0 credits**, as described herein, may be awarded to this mitigation project and assigned to the DRC Mitigation Bank. Mitigation credits awarded 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 540.0 mitigation credits awarded to this project, up to **502.2** 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, 2015.

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 12 day of May, 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: MAY 13 2011

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.