

**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 74145, 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 #1
City of Bend
PO Box 431
Bend, OR 97701

Lessee
Deschutes Water Exchange (DWE)
Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On April 11, 2005, the DWE Mitigation Bank and City of Bend filed an application to lease a portion of Certificate 74145 to instream use and to establish mitigation credits. The Department assigned the instream lease application number IL-620 and the mitigation credit project MP-35.
2. The lease application requested to protect water instream for five years, terminating on October 31, 2009. A Final Order approving this lease and mitigation credit project was issued by the Department on May 11, 2005, as evidenced by Special Order Volume 64, Page 309. The mitigation credit project was awarded 21.6 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, 2009.
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. On February 21, 2008, the Department received a request from the City of Bend and the DWE Mitigation Bank to terminate the lease and mitigation credit project prior to the 2008 irrigation season.

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 lease was exercised during the 2005, 2006, and 2007 water use periods ending on October 31, 2007. Mitigation credits established by this project have been used to provide mitigation for ground water permits in 2007.

CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2008 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 28th day of February 2008.


Phillip C. Ward, Director

Mailing date: MAR 03 2008