

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

In the Matter of Instream Lease Application ) DETERMINATION and  
 IL-1578 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
 of Mitigation Credits for Mitigation Project ) INSTREAM LEASE and MITIGATION  
 MP-216, 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**

Deschutes River Ranch Group (DRRG)  
 Craig Morton, Manager  
 20210 Swalley Road  
 Bend, Oregon 97701

**Lessee**

Deschutes River Conservancy Mitigation Bank (DRCMB)  
 Gen Hubert, Program Manager  
 700 NW Hill Street Suite 1  
 Bend, Oregon 97703

**Findings of Fact**

1. On February 15, 2017, DRRG and DRCMB filed an application to lease a portion of Certificate 83521 for instream use. The Department assigned the application number IL-1578.
2. The portion of the right to be leased is as follows:
  - Certificate:** 83521 in the name of Deschutes River Ranch Group, LLC (perfected under the Deschutes River Decree Volume 9, at Page 362)
  - Use:** Irrigation of 21.99 acres
  - Season of Use:** Season 1 – April 1 through May 22 and August 20 through October 31  
 Season 2 – May 23 through August 19
  - Priority Date:** SPRING of 1885
  - Quantity:** **Rate:** Season 1 – 0.2155 Cubic Foot per Second (CFS)  
 Season 2 – 0.4332 CFS
  - Volume:** 69.27 Acre-Feet (AF)
  - Limit:** Per Acre Maximum: Season 1 – 1 CFS to 101.6 acres  
 Season 2 – 1 CFS to 50.8 acres

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.

Per Acre Maximum: 3.15 AF

**Source:** DESCHUTES RIVER, tributary to COLUMBIA RIVER

**Authorized Point of Diversion (POD):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	12 E	WM	17	SE SE	POD 3: 637 FEET NORTH AND 1340 FEET EAST FROM THE S1/4 CORNER OF SECTION 17

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	12 E	WM	17	SE SW	1.73
16 S	12 E	WM	17	SW SE	10.35
16 S	12 E	WM	17	SE SE	9.91
Total Acres					21.99

3. There is a another primary irrigation water right, Certificate 74145, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will also be suspended.
4. 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.
5. The instream use is as follows:  
Deschutes River, tributary to Columbia River

**Instream Reach:** From the POD (as described in Finding of Fact #2) to the Madras Gage

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
83521	1885	0.19	69.2	April 15 through October 15

6. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
7. 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 no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
  - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
8. 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.

9. 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.
10. 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.
11. 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.
12. 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.
13. The Lessor and Lessee have requested that the lease terminate on October 31, 2021. The lease has been submitted prior to the first day of the irrigation season. The lease may commence on April 1, 2017, being the first day of the irrigation season.
14. 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**

15. 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.
16. The Department assigned this mitigation credit project number MP-216.
17. 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.
18. The Department finds that 39.6 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 General and Middle Zones of Impact.
19. The mitigation credits expire on December 31, 2021.

20. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
21. 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.
22. 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.

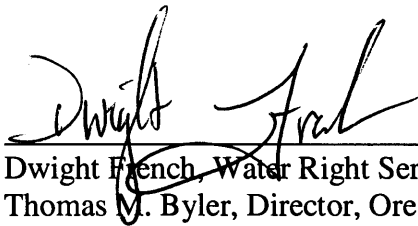
This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

### **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 on April 1, 2017, and terminate on October 31, 2021. 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 15 through October 15) 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 39.6 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 General and Middle 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, 2021.
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 23 day of March, 2017.



Dwight French, Water Right Services Division Administrator, for  
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 27 2017

*This document was prepared by Sarah  
Henderson and if you have any  
questions, please call 503-986-0890.*