

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

In the Matter of the Proposed Short-Term)	DETERMINATION and FINAL
Lease of Existing Water Rights for Instream)	ORDER ON PROPOSED INSTREAM
Use and Preliminary and Final Award of)	LEASE and MITIGATION CREDIT
Mitigation Credits, Certificate 75556, Crook)	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 short-term 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

Emmett Ranch, LLC
PO Box 1830
Bend, OR 97709

Lessee

Deschutes Water Exchange Mitigation Bank
PO Box 1560
Bend, OR 97709
Zach@deschutesrc.org

Findings of Fact

1. Emmett Ranch, LLC filed an application to lease a portion of Certificate 75556 to instream use. The Department assigned the application number L-614.
2. The Department finds that the lease requires modification to clarify and accurately describe the water right to be leased instream. Modifications include the number of acres of irrigation use that may be leased instream. The application identifies 74.82 acres of irrigation. However, upon continued evaluation and comparison with water right map provided for instream transfer application T-9687, which originally covered the portion of the lands to be leased instream, the number of acres to which the water right is appurtenant on the subject lands is 74.1 acres.

<p>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.</p>

3. The right to be leased is as follows:

Certificate: 75556
Priority Date: 1898 and 1904/1910
Use: Irrigation
Acres: 74.1 acres, being 39.5 acres under the 1898 priority date and 34.6 acres under the 1904/1910 priority date
Season of Use: February 1 to December 1
Quantity: 0.926 Cubic Feet per Second (CFS), being 0.494 CFS under the 1898 priority date and 0.432 CFS under the 1904/1910 priority date
Duty: 296.4 Acre-Feet (AF), being 158.0 AF under the 1898 priority date and 138.4 AF under the 1904/1910 priority date
Source: Crooked River, tributary to the Deschutes River

1898 Priority Date

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	14 E	WM	29	NE NE	100	39.5

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	16 E	WM	8	NW SW	1920 feet North and 340 feet East from the SW Corner of Section 8

1904/1910 Priority Date

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	14 E	WM	21	SW SW	201	34.6

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	14 E	WM	20	SE SE	325 feet North and 120 feet West from the SE Corner of Section 20

4. The lease application includes the information required 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.
5. The instream use has been modified from the lease application to prevent injury and enlargement. The instream use has also been modified to protect water over a reach as opposed to a point to make the most effective use of the project and to enhance resource benefits. In addition, water may be protected instream for a 161 day period at the rate and volume requested in the instream lease application. However, no period during which to protect water instream was identified. To make the most effective use of the instream lease, the Department consulted with the Oregon Department of Fish and Wildlife to identify a period during which to protect water instream to provide the most benefit to instream flows. The Oregon Department of Fish and Wildlife recommends that water be protected instream from June 23 through November 30. The lease has been modified to reflect this recommendation.

The instream use is as follows:

Crooked River

Tributary to the Deschutes River in the Deschutes Basin

Instream Reach: From POD (SE SE, Sec. 20, T14S, R14E, W.M.; 325 feet N & 120 feet W from the SE corner of Section 20) to Lake Billy Chinook.

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
75556	1898	0.494	June 23 – November 30

Instream Reach: From POD (NW SW, Sec. 8, T15S, R16E, W.M.; 1920 feet N & 340 feet E from the SW Corner of Section 8) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
75556	1904/1910	0.432	June 23 – November 30

6. 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.
7. 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.
8. The lease application identifies the termination date as October 31, 2005. Leases generally terminate on the last day of the irrigation season. The irrigation season for the right being leased is February 1 to December 1. The lease will terminate on November 30, 2005.

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-32.
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. No modifications were made to the lease based upon comments received. However, a modification was made to the lease to make the most effective use of the mitigation project and mitigation water and to enhance resource benefits. The lease application identifies water is to be protected at the points of diversion. The Department has modified the lease to protect water over a reach, being from the points of diversion to Lake Billy Chinook.
13. When the Department originally published notice of this mitigation project, it was identified that the project may generate 134.7 mitigation credits. This initial determination was based upon the proposal to lease 74.82 acres of irrigation to instream use. However, based upon continued evaluation, the Department has finds that the number of acres of irrigation use that may be leased instream is 74.1 acres. Therefore, the Department finds that **133.4** 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.
14. The mitigation credits expire on December 31, 2005.
15. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
16. 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.
17. 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 agreement 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.

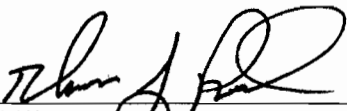
ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on November 30, 2005.

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 133.4 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.
5. 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.
6. The mitigation credits shall expire on December 31, 2005.
7. 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 9th day of May 2005.


Phillip C. Ward, Director

Mailing date: MAY 13 2005