

**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 PROPOSED
Use and Preliminary and Final Award of)	INSTREAM LEASE and MITIGATION
Mitigation Credits, Certificate 74135,)	CREDIT PROJECT
Deschutes 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 #1

Pooled Instream Lease for several landowners
(described in Finding of Fact #2)

Lessor #2

Three Sisters Irrigation District (TSID)
PO Box 2230
Sisters, OR 97759

Lessee

Deschutes Water Exchange (DWE) Mitigation Bank
PO Box 1560
Bend, OR 97709
danielle@deschutesrc.org

Findings of Fact

1. TSID and the DWE Mitigation Bank filed an application to lease a portion of Certificate 74135 to instream use. The Department assigned the application number L-667.
2. The description of the right to be leased has been modified from the lease application to clarify the portion of the right to be leased instream. The right to be leased is as follows:

Certificate: 74135

Season of Use: unspecified by certificate or decree

Priority Date: 1895

Quantity: 6.5 Cubic Foot per Second (CFS)

Source: Squaw Creek, 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 137-004-0080 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.

Place of Use:

IRRIGATION OF 325.2 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
14 S	11 E	WM	32	NE NE	100	29.0	Kerry Paulson
14 S	11 E	WM	32	NW NE	100	32.5	Kerry Paulson
14 S	11 E	WM	32	SW NE	100	7.0	Kerry Paulson
14 S	11 E	WM	33	NW NW	400	20.0	Kerry Paulson
15 S	11 E	WM	4	NW NE	101	25.0	Joseph Angel
15 S	11 E	WM	4	SW NE	101	40.0	Joseph Angel
15 S	11 E	WM	7	NE SE	600	38.5	John Schaad
15 S	11 E	WM	7	NW SE	600	30.5	John Schaad
15 S	11 E	WM	7	SW SE	600	40.0	John Schaad
15 S	11 E	WM	7	SE SE	600	39.0	John Schaad
15 S	11 E	WM	18	SE SW	2100	23.7	Eugene & Susan Trone

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	21	SW SW	998 feet North & 1211 feet East from the SW Corner of Section 21

- 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.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Squaw Creek
Tributary to the Deschutes River in the Deschutes Basin

Instream Reach: From POD (as described in Finding of Fact #2) to the mouth of Squaw Creek

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
74135	1895	6.5	July 7 through July 31

- Other conditions to prevent injury and enlargement are:

The reach has been modified to extend only as far as the mouth of Squaw Creek. The applicant originally requested that the reach extend beyond Squaw Creek and into the Deschutes River to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being the Deschutes River (OAR 690-077-0015 (7)).

- 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 will terminate on October 31, 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-55.
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 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). Comments were received from the Oregon Parks and Recreation Department (OPRD). OPRD's comments identified that emphasis should be placed on providing even flows during the late spring and summer periods not otherwise affected by higher spring runoff events.
12. The Lessor and Lessee have submitted two instream leases proposing to protect water in Squaw Creek. The proposed leases are structured to protect water over the remaining portion of the summer months, with one lease covering one part of the summer and the second lease covering the last portion of the summer months. The first lease, L-667 and subject of this review, is structured to protect water during the month of July at a rate of 6.5 CFS. The second proposed instream lease, L-676, is structured to begin protecting water on August 1 and extending through the remaining portion of the summer months to September 20. L-676 proposes to protect water instream in Squaw Creek at a rate of 8.71 CFS from August 1 through September 20. Both L-667 and L-676 are proposed as one year leases. The proposed lease structure will generally protect flows at an even rate through the remaining summer months, consistent with recommendations made OPRD. Therefore, no modifications have been made to this lease based upon comments received.
13. The Department finds that **325.2** 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 **Squaw Creek and General** 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.

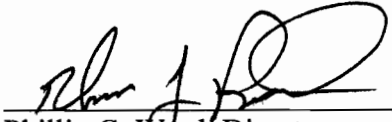
ORDER

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 October 31, 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 **325.2** 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 **Squaw Creek and General** 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 15th day of July 2005.



Phillip C. Ward, Director

Mailing date: JUL 19 2005