

**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 WITHDRAW OF
Mitigation Credits, Certificates 76358 and)	MITIGATION CREDIT PROJECT
76714, Crook, 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

Deryl Ferguson and Carol France
5909 SW Williams Rd
Powell Butte, OR 97753

Lessor #2

Central Oregon Irrigation District (COID)
2598 N Hwy. 97
Redmond, OR 97756
transfers@coid.org

Lessee

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

Findings of Fact

Instream Lease

1. Deryl Ferguson, Carol France, COID and the Deschutes Water Exchange filed an application to lease a portion of Certificates 76358 and 76714 to instream use. The Department assigned the application number L-651.
2. The rights to be leased are as follows:
Certificate: 76358
Season of Use: April 1 to November 1, further limited as follows:
April 1 to May 1 and Oct. 1 to Nov. 1 described herein as Season 1
May 1 to May 15 and Sept. 15 to Oct. 1 described herein as Season 2
May 15 to Sept. 15 described herein as Season 3

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.

Priority Date: October 31, 1900 and December 2, 1907

Quantity: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre): 0.69 CFS under the 10/31/1900 priority date
Season 2 (limited to 1/60th cfs per acre): 0.92 CFS under the 10/31/1900 priority date
Season 3 (limited to 1/32.4th cfs per acre): 1.704 CFS, being 1.214 CFS under the 10/31/1900 priority date and 0.49 CFS under the 12/2/1907 priority date
Duty (limited to 9.91 acre-feet per acre): 547.03 Acre-Feet (AF)
The quantities listed reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933

Source: Deschutes River, tributary to the Columbia River

Place of Use:

IRRIGATION OF 55.2 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	14 E	WM	23	NW SE	901	28.9
15 S	14 E	WM	23	SW SE	901	26.3

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	Central Oregon Canal – 1520 feet South & 1535 feet West from the NE Corner of Section 13

Certificate: 76714

Season of Use: April 1 to November 1

Priority Date: February 28, 1913

Quantity: 547.03 AF. This right does not have a rate limitation.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Place of Use: Same as described for certificate 76358

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	Central Oregon Canal – 1520 feet South & 1535 feet West from the NE Corner of Section 13
21 S	8 E	WM	17	NE NE	Crane Prairie Reservoir Dam

3. 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:

Deschutes River

Tributary to the Columbia River in the Deschutes Basin

Instream Reach: From POD (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
76358 primary	Deschutes R	10/31/1900	Season 1: 0.38 CFS Season 2: 0.506 CFS Season 3: 0.668 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.269 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 53.56 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

- Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 76358 does not include a 45% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected instream.

- Certificate 76714 is supplemental to certificate 76358. The portion of certificate 76714 being leased instream shall only be protected instream if the full rate and duty under certificate 76358 are not available during the period for which water is being leased instream.
- 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.
- 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.
- The lease will terminate on October 31, 2009.
- The lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

11. 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.
12. The Department assigned this mitigation credit project number MP-49.
13. 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). Comments were received from the Oregon Parks and Recreation Department. These comments identified a need for additional instream flow protections from June 1 through mid September for water contact sports. Comments also identified that instream flows may be necessary during the early spring and later fall. To provide flows during period otherwise not affected by higher spring runoff, Parks suggested that flows should be protected as evenly as possible.
14. The shaping proposed by the instream lease application protects water instream over almost the entire irrigation season at the maximum rate possible and appears to meet these recommendations. Therefore, no modifications were made to the lease based upon comments received.
15. On July 7, 2005, the Deschutes Water Exchange Mitigation Bank requested that the mitigation project aspect of this instream lease be withdrawn and that no mitigation credits be awarded.

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 has been withdrawn and, therefore, does not result 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, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any irrigation has occurred on the property.

4. **Final Award of Deschutes Basin Mitigation Credits:** Mitigation Project MP-49 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 11th day of July 2005.


For Phillip C. Ward, Director

Mailing date: JUL 13 2005