

**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 Credits, Certificates 76358 and	)	WITHDRAWAL OF MITIGATION
76714, Deschutes County	)	CREDIT PROJECT

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**

City of Redmond  
875 SE Vetrans Way  
Redmond, OR 97756

**Lessor #2**

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

**Lessee**

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

**Findings of Fact**

1. City of Redmond, COID and the DWE Mitigation Bank filed an application to lease a portion of Certificates 76358 and 76714 to instream use. The Department assigned the application number L-641.
2. The rights to be leased are as follows and have been modified from the lease application to correctly describe the rights:

**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 1/80<sup>th</sup> Cubic Foot per Second (CFS) per acre): 0.121 CFS under the 10/31/1900 priority date  
Season 2 (limited to 1/60<sup>th</sup> cfs per acre): 0.162 CFS under the 10/31/1900 priority date  
Season 3 (limited to 1/32.4<sup>th</sup> cfs per acre): 0.299 CFS, being 0.213 CFS under the 10/31/1900 priority date and 0.086 CFS under the 12/2/1907 priority date  
Duty (limited to 9.91 acre-feet per acre): 96.13 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 9.7 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	13 E	WM	10	NW NE	400	0.6
15 S	13 E	WM	10	NE NW	102	0.47
15 S	13 E	WM	10	SE NW	700	0.3
15 S	13 E	WM	10	NW NE	200	0.55
15 S	13 E	WM	8	NE NE	1900	3.7
15 S	13 E	WM	8	NE NE	2000	2.6
15 S	13 E	WM	8	NW SE	3500	1.48

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID North Canal – 850 feet North & 630 feet West from the E ¼ corner of Section 29

**Certificate:** 76714

**Season of Use:** April 1 to November 1

**Priority Date:** February 28, 1913

**Quantity:** 96.13 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
17 S	12 E	WM	29	SE NE	COID North Canal – 850 feet North & 630 feet West from the E ¼ corner of Section 29
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.

4. 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 COID North Canal POD (as described in Finding of Fact #2) to Lake Billy Chinook

<b>Certificate</b>	<b>Source</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Period Protected Instream</b>
76358 Primary	Deschutes R	10/31/1900	Season 1: 0.067 CFS Season 2: 0.089 CFS Season 3: 0.117 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.047 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 9.41 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

5. 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.

6. 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.
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.
8. 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.
9. The lease will terminate on October 31, 2009.
10. 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-45.
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 Department of Fish and Wildlife (ODFW). ODFW identified that this project will provide effective instream protection of flows during the irrigation season and also identified, along with general comments on the mitigation program, that instream flow protection is needed during the months outside of the irrigation season. Comments were also received from the Oregon Parks and Recreation Department (OPRD). These comments identified a need for additional instream flow protections from June 1 through mid September for water contact sports. OPRD's 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, OPRD suggested that flows should be protected as evenly as possible.
14. The Department is unable to expand the period during which instream flows may be protected outside of the irrigation season, as recommended by ODFW, without causing injury. 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 the recommendations made by OPRD. 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-45 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 15<sup>th</sup> day of July 2005.

  
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Phillip C. Ward, Director

Mailing date: JUL 19 2005