

**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 74145,		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

City of Bend
PO Box 431
Bend, OR 97701

Lessee

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

Findings of Fact

1. The City of Bend filed an application to lease a portion of Certificate 74145 to instream use. The Department assigned the application number L-620 (MP-35).

2. The rights to be leased are as follows:

Certificate: 74145 in the name of Swalley Irrigation District

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 and October 1 to November 1 described herein as
Season 1

May 1 to May 15 and September 15 to October 1 described herein as
Season 2

May 15 to September 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.

Quantity: Season 1 (limited to 1/83rd Cubic Foot per Second (CFS) per acre): 0.145 CFS
 Season 2 (limited to 1/62nd cfs per acre): 0.194 CFS
 Season 3 (limited to 1/33.45 cfs per acre): 0.329 CFS
 Duty (limited to 9.91 acre-feet per acre): 114.96 Acre-Feet (AF)
 The quantities listed reflect allowance of a 43% 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

IRRIGATION OF 12.0 ACRES						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	9	SE SW	2000	7.0
17 S	12 E	WM	20	NW NE	300	5.0

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	Swalley Main Canal – 985 feet North & 617 feet West from the East ¼ corner, of Section 29

- The portion of the water right to be leased has been quit claimed from the landowners to Swalley Irrigation District and then from Swalley Irrigation District to the City of Bend.
- 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 is clarified from the lease application based upon information from the DWE 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	Priority Date	Instream Rate (cfs)	Period Protected Instream
74145	September 1, 1899	Season 1: 0.082 cfs Season 2: 0.110 cfs Season 3: 0.187 cfs	April 1 through October 31

- Other conditions to prevent injury and enlargement are:

 The amount of water to be leased instream under certificate 74145 does not include a 43% transmission loss associated with this right when used for its originally authorized purpose. The transmission loss may not be leased and protected 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.

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 and lessee have requested to have the option of terminating the lease with written notice provided to the Department. In order to assure adequate notice of any termination of the lease, the Department will require that written notice be provided by all parties on the lease and be submitted to both the Salem office and the Watermaster's office.

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-35.
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 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.
14. The Department is unable to expand the period during which instream flows may be protected outside of the irrigation season without causing injury. Therefore, no modifications were made to the lease based upon comments received.
15. The Department finds that **21.6** 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 Middle Deschutes River** zones of impact.
16. The mitigation credits expire on December 31, 2009, unless the lease agreement is terminated earlier by the Lessors and the Lessee.

17. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
18. 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.
19. 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

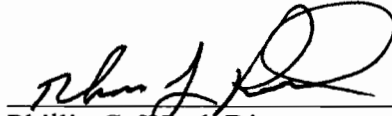
Therefore, it is ORDERED:

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, 2009. The lessor 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 written notice to Salem office must include original signatures. The notice to the Watermaster office may be made by fax or e-mail. The lease may be terminated at any time during a calendar year. However, if the termination request is received after the period of allowed use has begun for the water right(s) being leased, water may not be used under the right(s) leased until the following calendar year.
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 **21.6** 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 Middle Deschutes 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, 2009, unless the lease agreement is terminated earlier by the Lessor and the Lessee.
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 11th day of May 2005.


Phillip C. Ward, Director

Mailing date: MAY 13 2005