

**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, Certificate 74135, Deschutes County )	INSTREAM LEASE and MITIGATION
)	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**

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  
[tsid@uci.net](mailto:tsid@uci.net)

**Lessee**

Deschutes Water Exchange (DWE) Mitigation Bank  
PO Box 1560  
Bend, OR 97709  
[ghubert@deschutesrc.org](mailto:ghubert@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-701.
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 under each priority date. On May 2, 2006, the Lessee also requested to amend the application to exclude 0.5 acres of pond use. The right to be leased is as follows:

**Certificate:** 74135

**Season of Use:** unspecified by certificate or decree

**Priority Date:** 1887 and 1895

**Quantity:** 5.57 Cubic Foot per Second (CFS), being 0.3 CFS under the 1887 priority date and 5.27 CFS under the 1895 priority date

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.

**Source:** Wychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

**Place of Use:**

IRRIGATION OF 15.0 ACRES UNDER THE 1887 PRIORITY DATE							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
15 S	11 E	WM	6	NE SW	1200	15.0	Robert & Dolinda Taylor
IRRIGATION OF 263.5 ACRES UNDER THE 1895 PRIORITY DATE							
15 S	10 E	WM	24	NW NW	200	32.0	Kay Patterson
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	SW SW	2100	15.75	Don & Barbara Chelew
15 S	11 E	WM	18	SE SW	2100	2.75	Don & Barbara Chelew

**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

- Neither the certificate nor the decree specifies an irrigation season. For the purposes of this instream lease, and consistent with OAR 690-250-070, the Department uses an irrigation season of March 1 through October 31.
- 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 and modified from the lease application to prevent injury and enlargement, and to include an amendment to the application, and is as follows:  
Wychus Creek (formerly known as Squaw Creek), tributary to the Deschutes River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
74135	1887	0.297	44.65	May 1 – July 15
	1895	5.212	784.35	May 1 – July 15

- Other conditions to prevent injury and enlargement are:

The reach has been modified to extend only as far as the mouth of Wychus Creek. The applicant originally requested that the reach extend beyond Wychus Creek and into the Deschutes River down 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)).

The portion of water protected under this lease shall be based at the same percentage of diversion and delivery rate that Three Sisters Irrigation District (TSID) is diverting to rights of the same priority within the district. Each Monday morning during the period of this lease, TSID shall report to the District 11 Watermaster's office the percentage diverted under the 1887 and 1895 priority dates. This information only needs to be reported to the Watermaster's office once TSID is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once TSID begins diverting water on a percentage basis, the amount water leased instream shall be adjusted by that same percentage.

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, 2006.

**Preliminary Award of Deschutes Basin Mitigation Credits**

10. 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.
11. The Department assigned this mitigation credit project number MP-59.
12. 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). No comments were received.
13. No modifications were made to the lease based upon comments received.
14. As part of the public notice of the mitigation project, the Department identified that the project may result in 502.2 mitigation credits. Based upon continued evaluation of the project and an amendment to the application, reducing the portion of the water rights to be leased instream, the amount of mitigation credits that may be awarded to this project have also been reduced. The Department finds that **501.3** 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 Wychus Creek (formerly Squaw Creek)** zones of impact.

15. The mitigation credits expire on December 31, 2006.
16. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
17. 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.
18. 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, 2006.
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 **501.3** 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 Wychus Creek (formerly Squaw Creek)** zones of impact.
5. Mitigation credits are valid until used (or until they expire or are terminated) 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, 2006.
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 10<sup>th</sup> day of May 2006.

*Phillip C. Ward*  
FOR Phillip C. Ward, Director

Mailing date: MAY 23 2006