

**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 76358, Deschutes County)	INSTREAM LEASE &
)	WITHDRAWAL OF 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

Herman & Ruth Schassberger
63545 Deschutes Market Rd.
Bend, OR 97701-0036

Lessor #2

Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
transfers@coid.org

Lessee

Deschutes River Conservancy
PO Box 1560
Bend, OR 97709
gHubert@deschutesrc.org

Findings of Fact

1. On March 29, 2006, COID and the DWE Mitigation Bank filed an application to lease a portion of Certificate 76358 to instream use. The Department assigned the application number L-703.
2. The right to be leased is 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

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

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.

Use: Irrigation of 1.2 acres

Quantity: Rate:

Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre):
0.015 CFS under the Oct. 31, 1900 priority date

Season 2 (limited to 1/60th cfs per acre):
0.02 CFS under the Oct. 31, 1900 priority date

Season 3 (limited to 1/32.4th cfs per acre):
0.037 CFS, being 0.026 CFS under the Oct. 31, 1900 priority date
and 0.011 CFS under the Dec. 2, 1907 priority date

Duty (limited to 9.91 acre-feet per acre): 11.89 Acre-Feet (AF)

The listed quantities reflect allowance of a 45% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Direct diversions, by certificate, are not allowed this transmission loss.

Source: Deschutes River, tributary to the Columbia River

Place of Use:

Irrigation of 1.2 acres						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
17 S	12 E	WM	14	NE NW	400	1.2

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	COID North Canal POD #11 - 850 feet North & 630 feet West from the E ¼ corner of Section 29

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 is as follows:
Deschutes River tributary to the Columbia River

Instream Reach: From POD #11 (as described in Finding of Fact #3) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
76358	10/31/1900	Season 1: 0.008 Season 2: 0.011 Season 3: 0.020	6.54	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. 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, 2010.
9. The lessor has requested the option of terminating the lease early with written notice to the Department.

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-62.
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. On April 5, 2006, the DWE Mitigation Bank requested that the mitigation project aspect of this instream lease be withdrawn and that no mitigation credits be awarded. They also requested that the name of the lessee be modified to Deschutes River Conservancy.

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, 2010. The lessor shall have the option of terminating the lease in advance of each irrigation season, with notification to the Department by March 1.
4. **Final Award of Deschutes Basin Mitigation Credits:** Mitigation Project MP-62 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 10th day of May 2006.

Debbie Colbis
FDZ Phillip C. Ward, Director

Mailing date: MAY 11 2006