

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of the Lease of Existing Water)	FINAL ORDER
Rights for Instream Use and Mitigation)	TERMINATING INSTREAM LEASE &
Credit Project, Certificates 87857 and)	MITIGATION CREDIT PROJECT
83732, 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 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

Grass Butte, LLC
1111 Main Street, Suite 700
Vancouver, WA 98660

Lessee

Deschutes River Conservancy (DRC)
Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On June 8, 2010, the DRC Mitigation Bank and Grasse Butte, LLC, filed an application to lease a portion of Certificates 83857 and 83651 to instream use and to establish mitigation credits. The Department assigned the instream lease application number IL-1081 and the mitigation credit project MP-138.
2. A Final Order approving the instream lease and mitigation credit project was issued by the Department on July 27, 2010, as evidenced by Special Order Volume 81, Page 474.
3. On April 25, 2011, the Department issued a Final Order terminating Lease IL-1081 and Mitigation Project MP-138, re-describing the lease, and reassigning the lease to number IL-1159, as evidenced by Special Order Volume 84, Page 19. The mitigation project was also reassigned to number MP-154.
4. The Final Order approving Instream Lease IL-1159 protects water instream for four years, terminating on November 30, 2014. The mitigation credit project was awarded 135.9 mitigation credits for use in the General and Crooked River Zones of Impact. These

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.

mitigation credits were assigned to the DRC Mitigation Bank and were to expire on December 31, 2014.

5. The final order contained a condition allowing the Lessor and the Lessee to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department from all parties to the lease.
6. On May 25 and 26, 2011, the Department received a request from the DRC Mitigation Bank and Grass Butte, LLC, to terminate the lease and mitigation credit project upon approval of Instream Transfer T-10730/Mitigation Project MP-124 and issuance of new instream water right certificates finalizing that mitigation project.
7. The lease was exercised for a few days during the 2011 water use period, beginning on the first day in June. However, termination of this lease and subsequent approval of the instream transfer do not result in any injury or enlargement. Mitigation credits established by this project were not used to provide mitigation for ground water permits in 2011 and will no longer be valid for 2011.


CONCLUSIONS OF LAW

The Department concludes that terminating the lease is consistent with OAR 690-077.

ORDER

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED and no longer in effect. The mitigation credits awarded to the Mitigation Project described herein are no longer valid.

Dated at Salem, Oregon this 3 day of June, 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing date: JUN 06 2011

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.