

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

In the Matter of the Proposed Short-Term ) Lease of Existing Water Rights for Instream ) Use and Preliminary and Final Award of ) Mitigation Credits, Certificate 76358 and ) 76714, Deschutes County, Oregon )	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE and MITIGATION CREDIT PROJECT
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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**

Eugene Gramzow Revocable Trust  
 Eugene Gramzow, Trustee  
 678 Rendezvous Court  
 Pagosa Springs, CO 81147

**Lessor #2**

Central Oregon Irrigation District (COID)  
 2598 N Hwy. 97  
 Redmond, OR 97756

**Lessee**

Deschutes Water Exchange Mitigation Bank  
 PO Box 1560  
 Bend, OR 97709

**Findings of Fact**

1. Eugene Gramzow, trustee, COID and the Deschutes Water Exchange filed an application to lease a portion of Certificates 76358 and 76714 to instream use. The Department assigned the application number L-599.
2. The portion of the rights to be leased are as follows:

**Certificate:** 76358 for Irrigation of 22.85 acres with priority dates of October 31, 1900 and December 2, 1907

Authorized Point of Diversion (POD) - Central Oregon Canal POD #1:

Township		Range		Meridian	Sec	¼ ¼		Location
18	S	11	E	W.M.	13	SW	NE	1520 Feet South and 1535 Feet West from the NE Corner, Section 13

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.

Authorized Place of Use:

Township		Range		Meridian	Sec	1/4 1/4		Tax Lot	Acres
15	S	15	E	W.M.	17	NE	SW	106	8.4
15	S	15	E	W.M.	17	NW	SW	106	2.2
15	S	15	E	W.M.	17	SE	SW	106	9.55
15	S	15	E	W.M.	17	SE	SW	100	0.45
15	S	15	E	W.M.	17	SW	SE	100	2.3

**Certificate:** 76714 for Supplemental Irrigation of 22.85 acres with a priority date of February 28, 1913

Authorized Point of Diversions (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
21	S	8	E	W.M.	17	NE	NE	Crane Prairie Reservoir Dam
18	S	11	E	W.M.	13	SW	NE	Central Oregon Canal POD #1 - 1520 Feet South and 1535 Feet West from the NE Corner, Section 13

Authorized Place of Use: Same as Certificate 76358

- 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 as part of this notice process.
- The instream use has been modified from the lease application, consistent with the amendment made to the application by the Lessee, to prevent injury and enlargement and is as follows:

Deschutes River

Tributary to the Columbia River in the Deschutes Basin

**Instream Reach:** Central Oregon Canal POD #1 to Lake Billy Chinook

Certificate	Priority Dates	Instream Rate (cfs)	Period Protected Instream
76358 (primary)	October 31, 1900 & December 2, 1907	Season 1: 0.157 cfs under the 1900 priority date Season 2: 0.209 cfs under the 1900 priority date Season 3: 0.388 cfs, being 0.276 under the 1900 priority date and 0.111 cfs under the 1907 priority date	April 1 through October 26, further limited as follows: <u>Season 1:</u> April 1 to May 1 and Oct. 1 through Oct. 26 <u>Season 2:</u> May 1 to May 15 and September 15 to October 1 <u>Season 3:</u> May 15 to September 15
76714 (supplemental)	February 13, 1913	22.17 Acre-Feet	April 1 through October 26

5. Other conditions to prevent injury and enlargement are:

Sufficient quantities may be protected instream under Certificate 76714 to make up a deficiency in rate under Certificate 76358. The quantity of water protected instream under both rights may not exceed a cumulative total of the rates allowed under certificate 76358.

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 commence on April 1, 2005 and 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-30.
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. As part of the public notice of the mitigation project, the Department identified that the project may result in 153.9 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 number of mitigation credits that may be awarded to this project have also been reduced. The Department finds that **41.1** 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**

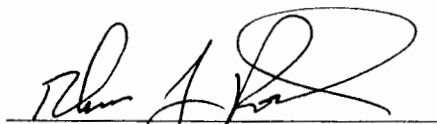
Therefore, it is ORDERED:

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 41.1 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, 2008, 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 14<sup>th</sup> day of March 2005.

  
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Phillip C. Ward, Director

Mailing date: MAR 17 2005