

**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
Use and Preliminary and Final Award of	)	PROPOSED INSTREAM
Mitigation Credits, Certificate 76358 and	)	LEASE and
76714, Deschutes County, Oregon	)	MITIGATION CREDIT
		PROJECT

On March 16, 2004, the Deschutes Water Exchange Mitigation Bank submitted an instream lease application for the purpose of protecting flows instream and generating mitigation credits to offset the impacts of ground water use in the Deschutes Ground Water Study Area.

**FINDINGS OF FACT**

**Short-Term Instream Lease**

1. A Short-Term Lease Application, which proposed to lease a portion of certificates 76358, primary from the Deschutes River, tributary to the Columbia River, and 76714, supplemental from Crane Prairie Reservoir, tributary to the Deschutes River, for instream purposes was submitted to the Department by:

Lessor	Lessee
Central Oregon Irrigation District (COID)	Deschutes Water Exchange Mitigation Bank
2598 N Hwy 97	P.O. Box 1560
Redmond, OR 97756	Bend, OR 97709

2. The Department assigned this lease agreement number L-495.
3. The lease application includes the required information 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 rights to be leased, as requested by the applicant, are as follows:

**Certificate:** 76358  
**Use:** Irrigation  
**Acres:** 19.62 acres  
**Priority Date:** October 31, 1900 & December 2, 1907  
**Season of Use:** April 1 through October 31, further limited as follows:  
April 1 to May 1 and October 1 to November 1 described herein as  
Season 1

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

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

**Quantity:** Season 1 (limited to 1/80<sup>th</sup> Cubic Foot per Second (CFS) per acre): 0.0.25 CFS

Season 2 (limited to 1/60<sup>th</sup> cfs per acre): 0.33 CFS

Season 3 (limited to 1/32.4<sup>th</sup> cfs per acre): 0.61 CFS

Duty (limited to 9.91 acre-feet per acre): 194.4 Acre-Feet (AF)

The quantities listed reflect allowance of a 45% 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

**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

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4	1/4	Lot	Priority Date	Acres
15	S	14	E	W.M.	23	SW	SE	800	10/31/1900 12/2/1907	0.82
15	S	14	E	W.M.	23	SW	SE	900	10/31/1900 12/2/1907	0.18
17	S	14	E	W.M.	26	NE	NW	300	10/31/1900 12/2/1907	2.6
18	S	13	E	W.M.	3	SE	SW	1000	10/31/1900 12/2/1907	1.0
18	S	13	E	W.M.	3	SW	SW	1000	10/31/1900 12/2/1907	6.32
18	S	13	E	W.M.	12	NW	NE	200	10/31/1900 12/2/1907	8.7
									<b>Total acres</b>	<b>19.62</b>

**Certificate:** 76714

**Use:** Supplemental Irrigation

**Acres:** 19.62 acres

**Priority Date:** February 28, 1913

**Season of Use:** April 1 through October 31

**Quantity:** 194.4 AF. This right does not have a rate limitation.

**Source:** Deschutes River, tributary to the Columbia River

**Authorized Place of Use:**

Township		Range		Meridian	Sec	1/4	1/4	Lot	Priority Date	Acres
15	S	14	E	W.M.	23	SW	SE	800	10/31/1900 12/2/1907	0.82
15	S	14	E	W.M.	23	SW	SE	900	10/31/1900 12/2/1907	0.18
17	S	14	E	W.M.	26	NE	NW	300	10/31/1900 12/2/1907	2.6
18	S	13	E	W.M.	3	SE	SW	1000	10/31/1900 12/2/1907	1.0
18	S	13	E	W.M.	3	SW	SW	1000	10/31/1900 12/2/1907	6.32
18	S	13	E	W.M.	12	NW	NE	200	10/31/1900 12/2/1907	8.7
									<b>Total acres</b>	<b>19.62</b>

5. The Department finds that the lease application requires modification in order to clarify the amount of water being leased under each priority date associated with the primary right, certificate 76358. In addition, the supplemental right requires clarification to identify the amount of water that may be leased and to clarify the source of water. The rights are clarified as follows (changes are shown in bold text):

**Certificate:** 76358

**Use:** Irrigation

**Acres:** 19.62 acres

**Priority Date:** October 31, 1900 & December 2, 1907

**Season of Use:** April 1 through October 31, 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

**Quantity:** Season 1 (limited to 1/80<sup>th</sup> Cubic Foot per Second (CFS) per acre): 0.0.25 CFS, under the October 31, 1900 priority date

Season 2 (limited to 1/60<sup>th</sup> cfs per acre): 0.33 CFS under the October 31, 1900 priority date

Season 3 (limited to 1/32.4<sup>th</sup> cfs per acre): **0.61 CFS, being 0.43 CFS under the October 31 priority date and 0.17 CFS under the December 2, 1907 priority date**

Duty (limited to 9.91 acre-feet per acre): 194.4 Acre-Feet (AF)

The quantities listed reflect allowance of a 45% 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

**Certificate:** 76714

**Use:** Supplemental Irrigation

**Acres:** 19.62 acres

**Priority Date:** February 28, 1913

**Season of Use:** April 1 through October 31

**Quantity:** **19.04 AF.** This right does not have a rate limitation. This volume is based upon evenly distributing each acre-foot stored in Crane Prairie Reservoir, 50,000 af, under this certificate between the 51,536.847 acres to which water may be applied. The distribution per acre is 0.97 af per acre.

**Source:** **Crane Prairie Reservoir, tributary to the Deschutes River**

6. The application proposes to lease water for instream as follows:

Reach: From the Central Oregon Canal POD (1) (SW NE, Section 13, T18S, R11E, W.M., 1520 Feet South and 1535 Feet West from the NE Corner, Section 13) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76358 (primary)	October 31, 1900 & December 2, 1907	Season 1: 0.13 cfs Season 2: 0.18 cfs Season 3: 0.33 cfs	April 1 through Oct. 31	214	109.29 af
76714 (supplemental)	February 28, 1913	Season 1: 0.13 cfs Season 2: 0.18 cfs Season 3: 0.33 cfs	April 1 through Oct. 31	214	109.29 af

7. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified. Clarification of the rate at which water is to be leased instream under each priority date and the volume for the primary right is necessary. In addition, the amount of water that may be leased instream under the supplemental right needs some clarification. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the Central Oregon Canal POD (1) (SW NE, Section 13, T18S, R11E, W.M., 1520 Feet South and 1535 Feet West from the NE Corner, Section 13) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76358 (primary)	October 31, 1900 & December 2, 1907	<b>Season 1: 0.13 cfs under the 1900 priority date</b> <b>Season 2: 0.18 cfs under the 1900 priority date</b> <b>Season 3: 0.33 cfs, being 0.24 cfs under the 1900 priority date and 0.1 cfs under the 1907 priority date</b>	April 1 through Oct. 31	214	<b>108.28 af</b>

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76714 (supplemental)	February 28, 1913	<b>Sufficient quantities may be protected instream to make up any deficiency of the primary right</b>	April 1 through Oct. 31	214	<b>19.04 af</b>

8. To prevent injury an enlargement, the amount of water to be leased instream under certificate 76358 accounts for a 45% transmission loss that may not be leased and protected instream.
9. The Department finds that 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.
10. Based upon review of the application and information provided by the Department's Watermaster, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.
11. The lease application originally requested that the lease terminate on October 31, 2008. However, COID amended the application such that the lease will terminate on **October 31, 2004**.

**Preliminary Award of Deschutes Basin Mitigation Credits**

12. The Lessee, the Deschutes Water Exchange, a mitigation bank chartered by the Water Resources Commission, has requested that this instream lease application be used to establish mitigation credits in the Deschutes Ground Water Study Area. Any mitigation credits generated from this project are to be assigned to the Deschutes Water Exchange Mitigation Bank.
13. The Department assigned this mitigation credit project number MP-16.
14. 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 Watermaster and the Oregon Department of Fish and Wildlife (ODFW). ODFW made general comments on the mitigation program. Neither the Watermaster nor ODFW made any specific recommendations on how to enhance resource benefits and make the most effective use of the mitigation project and the mitigation water (credits) generated by the project.
15. No modifications were made to the lease based upon comments received.
16. The Department finds that **35.3** 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 Middle Deschutes and General zone(s) of impact.

17. The mitigation credits expire on December 31, 2004.
18. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
19. 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 for the proposed instream lease shall result in completion of the project and verification that the project is complete.
20. No precedent is set by this Final Order as the amount of mitigation credits that may be generated by a subsequent mitigation credit project.

### CONCLUSIONS OF LAW

The Department concludes that the lease, as modified above, will not result in injury or enlargement, OAR 690-077-0077.

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 described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

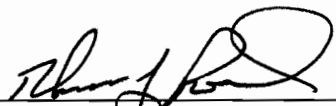
Reach: From the Central Oregon Canal POD (1) (SW NE, Section 13, T18S, R11E, W.M., 1520 Feet South and 1535 Feet West from the NE Corner, Section 13) on the Deschutes River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
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Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
76714 (supplemental)	February 28, 1913	Sufficient quantities may be protected instream to make up any deficiency of the primary right	April 1 through Oct. 31	214	19.04 af

4. 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.
5. The lease will terminate on October 31, 2004.
6. **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 35.3 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 **Middle Deschutes and General** zone(s) of impact.
7. 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.
8. The mitigation credits shall expire on December 31, 2004.
9. 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 20<sup>th</sup> day of May, 2004.

  
 Paul Cleary  
 Director