

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

In the Matter of the Proposed Short-Term	)	SUPERSEDING FINAL ORDER ON
Lease of Existing Water Rights for Instream	)	INSTREAM LEASE L-710 &
Use, Certificate 76358, Deschutes County	)	MITIGATION CREDIT PROJECT
	)	MP68

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**

Robert Brown  
2660 NE Hwy 20, Suite 610 PMB 99  
Bend, OR 97701

**Lessor #2**

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

**Lessee**

Deschutes Water Exchange (DWE) Mitigation Bank  
PO Box 1560  
Bend, OR 97709  
[ghubert@deschutesrc.org](mailto:ghubert@deschutesrc.org)

**Findings of Fact**

1. On March 29, 2006, COID, the DWE Mitigation Bank, and William and Beverly Armstrong filed an application to lease a portion of Certificate 76358 to instream use and to generate mitigation credits. The Department assigned the instream lease application number L-707 and the mitigation credit project number MP-65. The instream lease and mitigation credit project were approved by the Department on May 10, 2006.
2. On March 29, 2006, COID, the DWE Mitigation Bank, and Robert Brown filed an application to lease a portion of Certificate 76358 to instream use and to generate mitigation credits. The Department assigned the instream lease application number L-710 and the mitigation credit project number MP-68. The instream lease and mitigation credit project were approved by the Department on May 10, 2006.

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.

3. Subsequent to issuance of the final orders approving these instream leases and mitigation credit projects, it was identified that both final orders were assigned the same special order volume and page number, Special Order Volume 68, Pages 383 through 387.
4. The correct special order and volume page numbers for the final order approving instream lease L-707 and mitigation credit project MP-65 are Special Order Volume 68, Pages 383 through 387. This correcting order does not modify the terms and conditions of that order.
5. The special order volume and page number for instream lease L-710 and mitigation credit project MP-68 is corrected with this superseding final order. The special order volume and page numbers assigned to this final order are Special Order Volume 68, Pages 422 through 426.
6. 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

**Use:** Irrigation of 3.3 acres

**Quantity:** Rate:

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

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

Season 3 (limited to 1/32.4<sup>th</sup> cfs per acre):  
0.102 CFS, being 0.072 CFS under the Oct. 31, 1900 priority date  
and 0.029 CFS under the Dec. 2, 1907 priority date

Duty (limited to 9.91 acre-feet per acre): 32.7 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 3.3 acres						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
18 S	13 E	WM	5	NE NE	100	3.3

**Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	Central Oregon Canal POD #1 - 1520 feet South & 1535 feet West from the NE corner of Section 13

7. 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.

8. The instream use is as follows:  
Deschutes River tributary to the Columbia River

**Instream Reach:** From POD #1 (as described in Finding of Fact #2) to Lake Billy Chinook

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Instream Volume (af)</b>	<b>Period Protected Instream</b>
76358	10/31/1900	Season 1: 0.023 Season 2: 0.030 Season 3: 0.056	17.99	April 1 – Oct. 26

9. 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.

10. 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.

11. 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.

12. The lease will terminate on October 31, 2010.

13. The lessor has requested the option of terminating the lease early with written notice to the Department.

**Preliminary Award of Deschutes Basin Mitigation Credits**

14. 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.

15. The Department assigned this mitigation credit project number MP-68.

16. 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 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). Comments were received from the Oregon Parks and

Recreation Department. These comments identified a need for additional instream flow protections for water related recreation and aesthetic and scenic attractions. Parks also identified that emphasis should be placed on protecting flows evenly during the late spring and early summer period otherwise not affected by higher spring runoff.

17. The shaping proposed by the instream lease application protects water instream over almost the entire irrigation season at the maximum rates possible and appears to meet these recommendations. Therefore, no modifications were made to the lease based upon comments received.
18. The Department finds that **5.9** 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** zones of impact.
19. The mitigation credits expire on December 31, 2010.
20. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
21. 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.
22. 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.

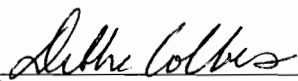
### **ORDER**

Therefore, it is ORDERED:

1. That the Short-Term Lease as modified and described herein is APPROVED.
2. This final order supersedes the original final order (Special Order Volume 68, Pages 383 through 387) issued approving instream lease L-710 and Mitigation Credit Project MP-68.
3. This final order does not modify the final order (Special Order Volume 68, Pages 383 through 387) issued approving instream lease L-707 and Mitigation Credit Project MP-65.

4. The former place of use shall no longer receive water as part of these rights during the term of the lease.
5. The lease shall terminate on October 31, 2010. The lessor and lessee 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.
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 5.9 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** zones of impact.
7. 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.
8. The mitigation credits shall expire on December 31, 2010.
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 30<sup>th</sup> day of May 2006.

  
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Phillip C. Ward, Director

Mailing date: JUN 08 2006