

**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 and Preliminary and Final Award of)	INSTREAM LEASE and
Mitigation Credits, Certificate 76358 and)	WITHDRAWAL OF MITIGATION
76714, Deschutes County)	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

City of Bend
PO Box 431
Bend, OR 97709

Lessor #2

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

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

Lessee

Deschutes Water Exchange (DWE) Mitigation Bank
PO Box 1560
Bend, OR 97709
danielle@deschutesrc.org

Findings of Fact

1. The City of Bend, COID and the DWE Mitigation Bank filed an application to lease a portion of Certificates 76358 and 76714 to instream use. The Department assigned the application number L-645.
2. The lease application identifies the City of Bend as the owner of the water rights involved in this transfer. However, with the exception of 2.5 acres of pond maintenance and 13.0 acres of municipal use, the water rights involved in this lease are not owned by the City of Bend

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.

and are on lands from which the original land owners have quit claimed the water rights to COID. The Department has determined that the City of Bend is not a lessor for all of the acreage proposed to be leased instream.

3. The rights to be leased are 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, pond maintenance and municipal use

Quantity: Rate:

Season 1 (10/31/1900 priority date): 0.192 Cubic Feet per Second (CFS)
for irrigation

0.031 CFS for pond maintenance

0.089 CFS for municipal use

Season 2 (10/31/1900 priority date): 0.256 CFS for irrigation

0.042 CFS for pond maintenance

0.119 CFS for municipal use

Season 3 (10/31/1900 priority date): 0.338 CFS for irrigation

0.055 CFS for pond maintenance

0.157 CFS for municipal use

Season 3 (12/2/1907 priority date): 0.136 CFS for Irrigation

0.022 CFS for pond maintenance

0.063 CFS for municipal use

Duty: 152.22 Acre-Feet (AF) for irrigation

24.78 AF for pond maintenance

70.86 AF for municipal use

The quantities listed for irrigation and pond maintenance 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 15.36 ACRES FROM POD #11							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
14 S	13 E	WM	16	NE SW	3500	0.11	COID
14 S	13 E	WM	16	NE SW	3600	0.11	COID
14 S	13 E	WM	16	NW SW	258	0.24	COID
14 S	13 E	WM	16	NW SW	1004	0.29	COID
14 S	13 E	WM	16	SW SE	1600	0.54	COID
15 S	13 E	WM	8	SW SE	2201	12.37	COID
15 S	13 E	WM	20	NE SW	5000	0.5	COID
15 S	13 E	WM	20	NW SE	4201	0.4	COID
15 S	13 E	WM	20	SW NE	1600	0.8	COID
POND MAINTENANCE ON 2.5 EQUIVALENT ACRES FROM POD #1							
17 S	13 E	WM	20	SE NW	200	2.5	City of Bend

MUNICIPAL USE ON 13.0 EQUIVALENT ACRES FROM POD #4							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Owner (Lessor #1)
17 S	12 E	WM	32	SW NW		13.0	City of Bend

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
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
17 S	12 E	WM	31	NE SE	Drake Park South POD #4 – 2150 feet South & 750 feet East from the SE corner of NE ¼ SE ¼, Section 32

Certificate: 76714

Season of Use: April 1 to November 1

Priority Date: February 28, 1913

Use: Supplemental irrigation, supplemental pond maintenance and supplemental municipal use

Quantity: 152.22 AF for irrigation
24.78 AF for pond maintenance
70.86 AF for municipal use

This right does not have a rate limitation.

Source: Crane Prairie Reservoir, tributary to the Deschutes River

Place of Use: Same as described for certificate 76358

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
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
17 S	12 E	WM	31	NE SE	Drake Park South POD #4 – 2150 feet South & 750 feet East from the SE corner of NE ¼ SE ¼, Section 32
21 S	8 E	WM	17	NE NE	Crane Prairie Reservoir Dam

4. 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.

5. The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:

Deschutes River

Tributary to the Columbia River in the Deschutes Basin

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

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
76358 Primary	Deschutes R	10/31/1900	Season 1: 0.017 CFS Season 2: 0.023 CFS Season 3: 0.03 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.012 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 2.43 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

Instream Reach #2: From Drake Park South POD #4 (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
76358 Primary	Deschutes R	10/31/1900	Season 1: 0.089 CFS Season 2: 0.119 CFS Season 3: 0.157 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.063 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 12.61 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

Instream Reach #3: From COID North Canal POD #11 (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Source	Priority Date	Instream Rate (cfs)	Period Protected Instream
76358 Primary	Deschutes R	10/31/1900	Season 1: 0.106 CFS Season 2: 0.141 CFS Season 3: 0.186 CFS	April 1 – Oct. 26
		12/2/1907	Season 3: 0.075 CFS	
76714 supplemental	Crane Prairie Reservoir	2/28/1913	Up to 14.9 AF (Sufficient quantities may be protected instream to make up any deficiency of the primary right)	April 1 – Oct. 26

6. Other conditions to prevent injury and enlargement are:

The amount of water to be leased instream under certificate 76358 from POD #1 and POD #11 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. Since POD #4 is a direct diversion, there is no transmission loss associated with this portion of the water right being leased instream.

7. 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.
8. 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.
9. 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.
10. The lease will terminate on October 31, 2009.
11. The lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

12. 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.
13. The Department assigned this mitigation credit project number MP-48.
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 (ODFW), Oregon Department of Environmental Quality, Oregon State Parks and Recreation Department (OPRD), 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 ODFW and OPRD. 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. OPRD's comments identified a need for additional instream flow protections from June 1 through mid September for water contact sports and also identified

that instream flows may be necessary during the early spring and later fall. To provide flows during period otherwise not affected by higher spring runoff, OPRD suggested that flows should be protected as evenly as possible.

15. The Department is unable to expand the period during which instream flows may be protected outside of the irrigation season, as recommended by ODFW, without causing injury. The shaping proposed by the instream lease application protects water instream over almost the entire irrigation season at the maximum rate possible and appears to meet the recommendations made by OPRD. Therefore, no modifications were made to the lease based upon comments received.
16. On July 7, 2005, the DWE Mitigation Bank requested that the mitigation project aspect of this instream lease be withdrawn and that no mitigation credits be awarded.

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.

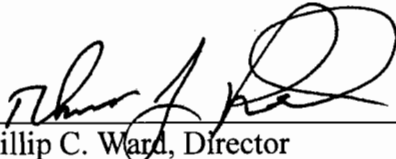
This mitigation project has been withdrawn and, therefore, does not result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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, 2009. The lessor shall have the option of terminating the lease each year, with notification to the Department by March 1 of each year, and before any irrigation has occurred on the property.
4. **Final Award of Deschutes Basin Mitigation Credits:** Mitigation Project MP-48 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 25th day of July 2005.



For Phillip C. Ward, Director

Mailing date: ~~_____~~ JUL 27 2005