

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

In the Matter of the Proposed Short-Term)	DETERMINATION and FINAL
Lease of Existing Water Rights for Instream)	ORDER ON PROPOSED INSTREAM
Use and Preliminary and Final Award of)	LEASE and WITHDRAW OF
Mitigation Credits, Certificate 67706,)	MITIGATION CREDIT PROJECT
Deschutes 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 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

City of Sisters
PO Box 39
Sisters, OR 97759

Lessee

Deschutes Water Exchange Mitigation Bank
PO Box 1560
Bend, OR 97709
scott@deschutesrc.org

Findings of Fact

1. City of Sisters filed an application to lease all of Certificate 67706 to instream use. The Department assigned the application number L-616.
2. The right to be leased are as follows:
 - Certificate:** 76606
 - Period of Use:** Year Round
 - Priority Date:** 1885
 - Quantity:** Rate: 0.2 Cubic Foot per Second (CFS)
 - Source:** Pole Creek, tributary to Squaw Creek

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.

Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
15 S	10 E	WM	4	NW ¼ NE ¼
15 S	10 E	WM	4	SW ¼
15 S	10 E	WM	4	SW ¼ SE ¼
15 S	10 E	WM	5	E ½ SW ¼
15 S	10 E	WM	5	W ½ SE ¼
15 S	10 E	WM	5	SE ¼ SE ¼
15 S	10 E	WM	8	E ½ NE ¼
15 S	10 E	WM	9	NE ¼
15 S	10 E	WM	9	NW ¼

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	10 E	WM	19	NE NE	1540 feet South 36 degrees West from the NE Corner of Section 19

3. 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.

4. The instream use is clarified and modified from the lease application to prevent injury and enlargement and is as follows:

Pole Creek

Tributary to Squaw Creek in the Deschutes Basin

Instream Reach: From POD (as described in Finding of Fact #2) to a lateral ditch and then to where the lateral ditch flows into Squaw Creek at approximately T15S, R 10E, Section 8, W.M.; 300 feet west of the SW Corner, Section 8.

Certificate	Priority Date	Instream Rate (cfs)		Period Protected Instream
		At POD	At end of reach	
76606	1885	0.2	0.16	Year-round

5. Other conditions to prevent injury and enlargement are:

To prevent injury and enlargement, a 10 percent loss per mile has been applied to account for streamflow losses. The reach is approximately 2 miles in length.

The reach has been modified to extend only as far as the mouth of Pole Creek. The applicant originally requested that the reach extend beyond Pole Creek into Squaw Creek and then into the Deschutes River down to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in Squaw Creek and, subsequently, the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being Squaw Creek and the Deschutes River (OAR 690-077-0015 (7)). The reach on Pole Creek also has been modified. Pole Creek has been diverted, in full, from its natural channel into a ditch system. The point of diversion for Certificate 76606 is located off the main ditch. The reach identified above describes a path through this ditch system.

6. 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.
7. 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.
8. The lease application identifies the termination date as October 31, 2009. Leases generally terminate on the last day of the period of allowed use. The period of allowed use for the right being leased is year-round. The lease will terminate on December 31, 2009.
9. The lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

10. 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.
11. The Department assigned this mitigation credit project number MP-34.
12. 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). A comment of no comment was received from the Division of State Lands.
13. No modifications were made to the lease based upon comments received.
14. On July 6, 2005, the Deschutes Water Exchange 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.

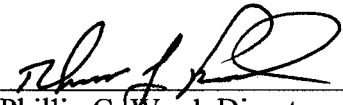
This mitigation project has been withdrawn and, therefore, does not result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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 December 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-34 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 15th day of July 2005.



For Phillip C. Ward, Director

Mailing date: JUL 19 2005