

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1197 and Preliminary and Final Award)	FINAL ORDER ON PROPOSED
of Mitigation Credits, Certificate 82248,)	INSTREAM LEASE and MITIGATION
Crook County)	CREDIT PROJECT

Authority

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 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

Ochoco Lumber Company
PO Box 668
Prineville, OR 97754
Donna.barnes@ochocolumber.com

Lessor #2

Ochoco Irrigation District (OID)
1001 N Deer Street
Prineville, OR 97754
ochocoid@crestviewcable.com

Lessee

Deschutes River Conservancy (DRC) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On February 24, 2012, Ochoco Lumber Company, OID and the DRC filed an application to lease a portion of Certificate 82248 for instream use. The Department assigned the application number IL-1197.
2. The portion of the right to be leased has been clarified from the lease application and is as follows:

Water Right: Certificate 82248
Use: 86.5 equivalent acres of Industrial Use
Season of Use: Year Round
Priority Date: September 2, 1986

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.

Quantity: Rate: 1.189 CFS
 Duty (4.0 Acre-Feet (AF)/acre): 346.0 AF
Source: Ochoco Creek and Ochoco Reservoir, constructed under Permit R-528,
 tributary to the Crooked River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Supplemental Place of Use Information – Tax Lot	Water Right Holder (Lessor #1)
15 S	16 E	WM	4	NE NW	86.5	7200	Ochoco Lumber Company
15 S	16 E	WM	4	NW NW		7200	
15 S	16 E	WM	4	SW NW		7200	
15 S	16 E	WM	4	SE NW		7200	
15 S	16 E	WM	4	NE SW		2900	
15 S	16 E	WM	4	NW SW		2900	
15 S	16 E	WM	4	NW SW		2900	

For the purposes of the legal description of the place of use, the acres equivalent industrial water is listed and arrayed by the quarter-quarter section(s) of land within which the tax lot listed in the supplemental information column is located. However, the acres equivalent water right is not apportioned between the quarter-quarter section(s) of land, and the place of use for the acres equivalent industrial water right is authorized anywhere within the listed tax lots.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
15 S	17 E	WM	5	SW NW	OCHOCO FEED CANAL – 500 FEET NORTH AND 250 FEET EAST FROM THE W ¼ CORNER OF SECTION 5

- A scrivener’s error has been identified in Certificate 82248. This certificate lists a portion of the industrial use as being located in the SE SW of Section 4 in Township 15 South, Range 16 East. The final proof map for Certificate 82248 does not show any industrial use in this quarter quarter. The final proof map does show industrial use in the NE SW, which is not listed on the Certificate. The final proof map has been identified by the District as showing the correct place of use for this portion of the industrial use. For the purposes of this lease, the description of the portion of Certificate 82248 to be leased instream, as described in Finding of Fact #4, is consistent with the final proof map for Certificate 82248.
- The place of use described in Finding of Fact #2 will continue to receive a portion of water during the term of the lease. The portion of Certificate 82248 for Ochoco Lumber Company allows the diversion of up to 1.238 CFS (proportioned) for 90.0 equivalent acres. The applicant has requested to lease 86.5 equivalent acres and leave some water at the place of use for dust control. The quantity of water diverted at the POD, upon approval of this instream lease, will be limited to 0.048 CFS (maximum of 14.0 AF) for dust control.
- The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.
- The lease application requests to protect water instream from Ochoco Creek into the Crooked River. An instream reach is generally from the point of diversion to the mouth of the source stream (Ochoco Creek) but may be protected further if measurable in the receiving stream (the Crooked River) (OAR 690-077-0015 (8)). The quantity that may be leased instream from Ochoco Creek (0.779 CFS) is measurable into the Crooked River and may be protected instream in the Crooked River.

7. The Lessors and Lessee have requested that stored water from Ochoco Reservoir be used to make up any deficiency in the availability of live flow from Ochoco Creek. The Lessors and Lessee have requested to protect water instream at a rate of 0.779 CFS with a volume of 259.5 AF during the period April 30 through October 15, a 169 day period. Given the proposed instream period, up to 0.774 CFS may be protected instream.
8. Based upon Department evaluation, on average, live flow is only available through July 15. Only 118.21 AF may be available from live flow. Therefore, approximately 141.24 AF may need to be released from storage to protect the full 259.5 AF requested for instream use.
9. Based upon the above findings, the instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Ochoco Creek and Ochoco Reservoir, tributary to the Crooked River

Instream Reach: From POD (as described in Finding of Fact #2) to the confluence with the Crooked River and into the Crooked River to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82248	9/2/1986	0.779	259.5	April 30 through October 15

10. Other conditions to prevent injury and enlargement are:

When live flow is no longer available, Ochoco Irrigation District shall begin releasing stored water from Ochoco Reservoir to satisfy the instream use described in Finding of Fact #9 for the duration of the instream period. The Irrigation District shall keep a record of the amount and timing of water released from Ochoco Reservoir on a monthly basis and provide that that information to the Watermaster upon request. If determined necessary, the Watermaster may require the Irrigation District to report to the Department the amount and timing of storage releases. The Watermaster shall account for the water released from storage at the Smith Rock State Park gage.

11. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
12. 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.
13. 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.

14. The Lessor has requested that the lease terminate on November 1, 2012. The term of an instream lease generally ends the last day in the authorized period of allowed use. Certificate 82248 is a year round right. The lease may terminate on December 31, 2012.

Preliminary Award of Deschutes Basin Mitigation Credits

15. 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.

16. The Department assigned this mitigation credit project number MP-163.

17. 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 (OPRD), 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 OPRD. These comments identified that additional streamflow may benefit aquatic resources and potentially improve recreational fishery resources in this area.

18. No modifications were made to the lease based on the comments received.

19. As part of the public notice of the mitigation project, the Department identified that the project may result in up to 259.5 mitigation credits. Based upon continued evaluation, the Department has estimated that approximately 50%, on average, of the water diverted for log mill operations, such as Ochoco Lumber Mill, is consumptive. The amount of mitigation made available by this project has been reduced to 129.8 mitigation credits. In addition, the mitigation water protected instream under this lease includes both live flow and stored water released from Ochoco Creek. Provided that the condition identified in Finding of Fact #10 are met, the Department finds that 129.8 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC 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 Crooked River and General Zones of Impact.

If the condition identified in Finding of Fact #10 is not met, as identified by the Watermaster, the mitigation project may be terminated or modified and the amount of mitigation credits made available by the project reduced proportional to the amount of water protected instream.

20. The mitigation credits expire on December 31, 2012.

21. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.

22. 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.

23. 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 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 Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights, including groundwater registrations during the term of the lease.
3. The lease will terminate on December 31, 2012.
4. The place of use for Certificate 82248 will continue to receive water (0.048 CFS, not to exceed 14.0 AF) as part of this right during the duration of the lease for dust control only.
5. **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 129.8 credits, as described herein, are awarded to this mitigation project and assigned to the DRC 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 Crooked River and General Zones of Impact.

As identified in Finding of Fact #19, if the condition on the release of stored water is not met, as described in Finding of Fact #10, the mitigation project may be terminated or modified and the amount of mitigation made available by this project reduced proportional to the amount of water protected instream.

6. 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.

7. The mitigation credits shall expire on December 31, 2012.
8. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this 15 day of May, 2011.



Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.

Mailing date: MAY 16 2012