

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

In the Matter of Instream Lease Application) DETERMINATION and FINAL ORDER ON
IL-2036 and Preliminary and Final Award of) PROPOSED INSTREAM LEASE and
Mitigation Credits for Mitigation Project) MITIGATION CREDIT PROJECT
MP-319, Crook County

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (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

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

Co-Lessor

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

Lessee

Deschutes River Conservancy (DRC) Mitigation Bank
700 NW Hill Street, Suite 1
Bend, Oregon 97703
gen@deschutesriver.org
james@deschutesriver.org

Findings of Fact

1. On May 6, 2024, the DRC Mitigation Bank, Ochoco Irrigation District, and Ochoco Lumber Company filed an application to lease a portion of Certificate 82248 instream. The Department assigned the application number IL-2036.

2. The portion of the right to be leased is as follows:

Certificate: 82248 Ochoco Irrigation District (perfected under Permit S-49824)
Use: 90.0 acres equivalent of Industrial Use

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.

Priority Date: September 2, 1986
Quantity: **Rate:** 1.238 Cubic Foot per Second (CFS)
Volume: 360.0 Acre-Feet (AF)
Limit: a maximum volume of 4.0 acre-feet per equivalent acre per year
Source: Ochoco Creek and Ochoco Reservoir, constructed under Permit R-528, tributary of the Crooked River

Authorized Point of Diversion (POD):

POD	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
1	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

Authorized Place of Use (POU):

Twp	Rng	Mer	Sec	Q-Q	Acres	Supplemental POU Information – Tax Lot	Lessor
15 S	16 E	WM	4	NE NW	90.0	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	

For the purposes of the legal description of the place of use, the acres equivalent industrial water right 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.

3. Certificate 82248 does not identify a period of allowed use. However, given that the use is for industrial purposes with no seasonal limitations specified, there is an assumed year-round period of allowed use.
4. The maximum duty for the right is set at 4.0 acre-feet per acre; however, for the purpose of the water being leased instream, OID has set the duty to 3.0 acre-feet per acre, calculations will be made using 3.0 acre-feet per acre as shown in the application.
5. 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.
6. 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 but may be protected further if measurable in the receiving stream (OAR 690-077-0015 (8)). The quantity that may be leased instream from Ochoco Creek is measurable into the Crooked River and may be protected instream in the Crooked River.
7. The Lessors and Lessee have requested to protect water instream from the POD described in Finding of Fact No. 2 to where the Crooked River flows into Lake Billy. A portion of the water diverted at the POD returns to the Crooked River within the proposed reach at the mouth of Ochoco Creek and is available to downstream water right holders. To prevent

injury to downstream water right holders and enlargement, the quantity of water that may be protected instream requires modification and return flows in the amount of 10% should be accounted for at the confluence of Ochoco Creek with the Crooked River.

8. Based upon the above findings, the instream use is as follows:
Ochoco Creek, tributary to the Crooked River

Instream Reach No. 1: From the POD on Ochoco Creek (as described in Finding of Fact No. 2) to the confluence with the Crooked River.

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82248	9/2/1986	0.74	270.0	April 15 through October 15

Instream Reach No. 2: In the Crooked River from the confluence with Ochoco Creek to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
82248	9/2/1986	0.67	243.0	April 15 through October 15

9. 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 as described in Finding of Fact No. 8 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.

10. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

11. The protection of flows within the proposed reach is appropriate, considering:

- a. The instream water use begins at the recorded point of diversion;
- b. The location of confluences with other streams downstream of the point of diversion.
- c. There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
- d. Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below the POD. The quantity of water to be protected in Reach No. 2 has been reduced to account for return flows.

12. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose.

13. The total monthly quantities of water to be protected instream under existing and proposed instream rights in the reach do not exceed the estimated average natural flow.
14. 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.
15. Based upon review of the application, information provided by the Department's Watermaster, as well as other available information, the Department finds that the lease will not result in injury or enlargement. The order approving this instream 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.
16. If a right which has been leased is later proposed to be leased again, transferred and/or reviewed under an allocation of conserved water, a new injury review shall be required. For example, instream 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 any future transactions.
17. The Lessors and Lessee have requested that the lease terminate in October 2024. However, this certificate allows the use of water year-round. The term of an instream lease generally ends on the last day in the period of allowed use. Therefore, the lease may terminate on December 31, 2024. The lease may commence on the date this final order is signed.

Preliminary Award of Deschutes Basin Mitigation Credits

18. 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.
19. The Department assigned this mitigation credit project number MP-319.
20. 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 (DEQ), Oregon Parks and Recreation Department, Oregon Department of State Lands, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2). Comments were received by DEQ in favor of the application.
21. Based upon evaluation of the mitigation project, the Department has estimated that approximately 50%, on average, of the water diverted for log mill operations, such as Ochoco Lumber Mill, is consumptive. In addition, the mitigation water protected instream under this lease includes both live flow and stored water released from Ochoco Creek. The Department finds that 180.0 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.

22. The mitigation credits expire on December 31, 2024.
23. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
24. 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.
25. 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, as conditioned, 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.

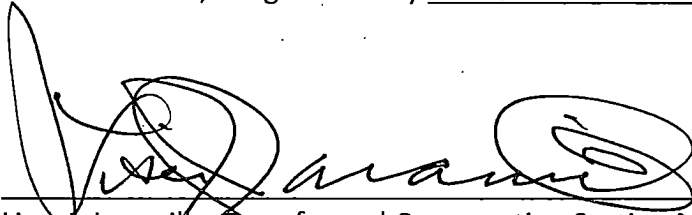
Now, therefore it is ORDERED:

1. The Lease as described herein is APPROVED.
2. The term of the lease will commence upon approval of the instream lease and terminate on December 31, 2024.
3. **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 **180.0 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**.
4. 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.

5. The mitigation credits shall expire on December 31, 2024.
6. 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 day JUN 28 2024.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Mailing date: JUL 03 2024

This document was prepared by Sarah Henderson. If you have any questions, please call 503-979-9872.