

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

In the Matter of the Proposed Lease of) DETERMINATION and
Existing Water Rights for Instream Use and) FINAL ORDER ON PROPOSED
Preliminary and Final Award of Mitigation) INSTREAM LEASE & MITIGATION
Credits, Certificate 76358, Deschutes) CREDIT PROJECT
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 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 Redmond
PO Box 726
Redmond, OR 97756
patd@ci.redmond.or.us

Lessor #2
Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
lauraw@coid.org

Lessee
Deschutes Water Exchange (DWE) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On May 18, 2007, COID, the DWE Mitigation Bank, and the City of Redmond filed an application to lease a portion of Certificate 76358 to instream use. The Department assigned the application number IL-833.
2. The portion of the right to be leased has been clarified from the lease application and is as follows (clarification shown in bold):

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

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: October 31, 1900 and December 2, 1907

Use: Irrigation of 53.13 acres

Quantity:

Rate: Season 1 (limited to 1/80th Cubic Foot per Second (CFS) per acre)

Season 2 (limited to 1/60th cfs per acre)

Season 3 (limited to 1/32.4th cfs per acre)

Duty (limited to 9.91 acre-feet per acre)

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900	0.664 CFS	0.886 CFS	1.169 CFS	526.52 AF
December 2, 1907			0.471 CFS	

The quantities listed above reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: Deschutes River, tributary to the Columbia River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
15 S	13 E	WM	3	SW NW	1302	0.7
15 S	13 E	WM	3	SW NW	1300RD	1.5
15 S	13 E	WM	4	NE NE	700RD	0.78
15 S	13 E	WM	17	NE NE	100	1.0
15 S	13 E	WM	17	NE NE	101	27.0
15 S	13 E	WM	17	SE NE	1502	13.2
15 S	13 E	WM	29	NE NW	100	0.75
15 S	13 E	WM	29	NE NW	101	4.4
15 S	13 E	WM	29	NE NW	102	3.8

Point of Diversion (POD):

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

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 as follows:
Deschutes River tributary to the Columbia River

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
76358	10/31/1900	Season 1: 0.365 Season 2: 0.487 Season 3: 0.902	289.59	April 1 – Oct. 26

5. 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.

6. There is a supplemental water right, Certificate 76714, appurtenant to all or a portion of the lands described in Finding of Fact # 2. The Lessor and Lessee have not requested that this water right not be included as part of this lease application. During the term of the lease, water use under this right will be suspended on the lands involved in the lease.
7. 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.
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, 2011.
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-106.
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 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 and ODFW. 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 identified that this lease, along with other instream projects, will

enhance aesthetics and water needed for recreation. OPRD deferred to ODFW for appropriate timing of when flows should be protected instream.

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 to other water rights. The shaping proposed by the instream lease application does protect water instream over almost the entire irrigation season at the maximum rates possible. Therefore, no modifications were made to the lease based upon comments received.
16. The Department finds that 95.6 mitigation credits may be awarded to this mitigation credit project and assigned to the DWE 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 Middle Deschutes and General Zones of Impact.
17. The mitigation credits expire on December 31, 2011.
18. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DWE Mitigation Bank Charter.
19. 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.
20. 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 for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on October 31, 2011. For multiyear leases, the Lessor 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 less than 30-days prior to the period of allowed instream use (March 1) or 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, unless the Director determines that enlargement would not occur.

4. **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 95.6 credits, as described herein, are awarded to this mitigation project and assigned to the DWE 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 Middle Deschutes and General Zones of Impact.
5. 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.
6. The mitigation credits shall expire on December 31, 2011.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DWE Mitigation Bank Charter.

Dated at Salem, Oregon this 6th day of July 2007.



Phillip C. Ward, Director

Mailing date: JUL 11 2007

