

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

In the Matter of Instream Lease Application)	DETERMINATION and
IL-1065 and Preliminary and Final Award)	FINAL ORDER ON PROPOSED
of Mitigation Credits, Certificates 75486)	INSTREAM LEASE and MITIGATION
and 75488, 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

City of Prineville
387 NE 3rd St.
Prineville, OR 97754

Lessee

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

Findings of Fact

1. On April 6, 2010, the DRC Mitigation Bank and City of Prineville filed an application to lease all of Certificates 75486 and 75488 for instream use. The Department assigned the application number IL-1065.

2. The first right to be leased is as follows:

Certificate:	75486 in the name of Claude P. Williams
Use:	Irrigation of 20.0 acres
Priority Date:	September 11, 1934
Quantity:	Rate: 0.25 Cubic Foot per Second (CFS)
	Duty: 80.0 Acre-Feet (AF)
	Limit: One-eightieth CFS per acre, not to exceed 4.0 AF per acre per year
Source:	Crooked River, tributary to the Deschutes River

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.

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	W.M.	26	SE SE	AT THE SE CORNER OF SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	W.M.	26	NE SW	20.0

- The second right to be leased is as follows:

Certificate: 75488 in the name of Claude P. Williams
Use: Irrigation of 17.0 acres
Priority Date: March 28, 1935
Quantity: **Rate:** 0.21 Cubic Foot per Second (CFS)
Duty: 68.0 Acre-Feet (AF)
Limit: One-eightieth CFS per acre, not to exceed 4.0 AF per acre per year
Source: Crooked River, tributary to the Deschutes River

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	W.M.	26	SE SE	AT THE SE CORNER OF SECTION 26

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	W.M.	35	NE NE	17.0

- Certificates 75486 and 75488 do not specify an irrigation season. However, the decreed irrigation season for the area is February 1 to December 1. For the purposes instream leasing, an irrigation season of February 1 to December 1, consistent with the Crooked River Decree, shall be used to establish when water may be protected instream.
- 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 Lessor and Lessee have requested to protect water instream from the POD on the Crooked River to Lake Billy Chinook. A portion of the water diverted at the POD returns to the Crooked River below the POD 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 to account for return flows immediately below the POD. At this time, the Department estimates that return flows are 5% of the amount diverted.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Crooked River, tributary to the Deschutes River

Instream Point: At the POD (as described in Findings of Fact #2 & #3)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75486	9/11/1934	0.25	80.0	May 6 through October 15
75488	3/28/1935	0.21	68.0	May 6 through October 15

Instream Reach: From immediately below the POD to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
75486	9/11/1934	0.24	76.79	May 6 through October 15
75488	3/28/1935	0.20	64.50	May 6 through October 15

8. There is a supplemental water right, Certificate 83850, appurtenant to all or a portion of the lands described in Findings of Fact #2 and #3. The Lessor and Lessee have 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 also be suspended.
9. 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.
10. 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.
11. 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.
12. The Lessor has requested that the lease terminate on October 31, 2013. However, the last day of the irrigation season for the area is November 30. Instream leases generally terminate on the last day of the period of allowed use. Therefore, the lease may terminate on November 30, 2014. The lease will commence the date the final order is signed and on February 1 (first day of the irrigation season) of each succeeding calendar year that the lease is in place.
13. The Lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

14. 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.
15. The Department assigned this mitigation credit project number MP-134.
16. 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, 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 the Oregon Parks and Recreation Department. These comments identified the additional instream flow in the Crooked River will potentially benefit aquatic resources and improve the fisher resource.

17. No modifications were made to the lease based on the comments received.
18. The proposed lease of 37.0 acres of irrigation use to instream use will provide 66.6 AF of mitigation water. Therefore, the Department finds that 66.6 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.
19. The mitigation credits expire on December 31, 2014.
20. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
21. 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.
22. 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

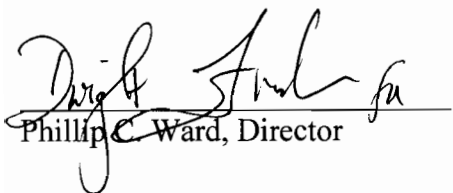
Therefore, it is ORDERED:

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 (including Certificate 83850), 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 November 30, 2014. 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 (May 6 through October 15) 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 66.6 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.
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, 2014.
7. 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 9 day of June, 2010.


Phillip C. Ward, Director

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

Mailing date: JUN 10 2010