

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

In the Matter of the Proposed Lease of) SUPERSEDING FINAL ORDER ON
Existing Water Rights for Instream Use and) PROPOSED INSTREAM LEASE &
Preliminary and Final Award of Mitigation) MITIGATION CREDIT PROJECT
Credits, Certificate 76358, Crook and)
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 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

Pooled Instream Lease for several water right holders (described in Findings of Fact #2)

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
ghubert@deschutesrc.org

Findings of Fact

1. On March 9, 2007, the DWE and COID filed an application to lease a portion of Certificate 76358 to instream use and to generate mitigation credits. The Department assigned the application number IL-804. The DWE Mitigation Bank also requested that this instream lease be used to generate mitigation credits. The Department assigned the mitigation project number MP-97.
2. On April 13, 2007, a Final Order was issued approving the instream lease and mitigation project as evidenced by Special Order Volume 71, Page 484. The mitigation project was awarded 66.5 mitigation credits for use in the General and Middle Deschutes Zones of Impact.

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.

3. Following issuance of the order, it was identified that the order contained a scrivener's error. The termination date for the instream lease was misidentified in the order section as October 31, 2006. The correct termination date is October 31, 2007.
4. This superseding final order is being issued to correct this scrivener's error.
5. The right to be leased is as follows:

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

Priority Date: October 31, 1900 and December 2, 1907

Use: Irrigation of 36.95 acres and Pond Maintenance on 0.1 equivalent acre

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
Irrigation Use				
October 31, 1900	0.462 CFS	0.616 CFS	0.813 CFS	366.17 AF
December 2, 1907			0.328 CFS	
Pond Maintenance				
October 31, 1900	0.001 CFS	0.002 CFS	0.002 CFS	0.99 AF
December 2, 1907			0.001 CFS	
Totals	0.463 CFS	0.618 CFS	1.144 CFS	367.17 AF

The listed quantities reflect allowance of a 45% canal transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Direct diversions, by certificate, are not allowed this transmission loss.

Source: Deschutes River, tributary to the Columbia River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
Irrigation Use							
15 S	14 E	WM	26	SE SE	801	0.75	Frieda M. Copley Family Trust
17 S	12 E	WM	35	NE SE	1401	1.0	Desertscape Properties, LLC
17 S	12 E	WM	35	SE SE	1600	10.7	Desertscape Highway 20 South, LLC
17 S	14 E	WM	27	SE NE	800	7.5	Jenny Sieburg for Robert Benson (deceased)
18 S	13 E	WM	4	SW NE	107	17.0	Kim D. Ward, LLC
Pond Maintenance Use							
17 S	14 E	WM	27	SE NE	800	0.1	Jenny Sieburg for Robert Benson (deceased)

Point of Diversion (POD):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
18 S	11 E	WM	13	SW NE	Central Oregon Canal POD #1 – 1520 feet South & 1535 feet West from the NE corner of Section 13

6. 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.
7. The instream use has been modified from the lease application to clarify the priority date under which water is being leased to instream use:
DESCHUTES RIVER, tributary to the COLUMBIA RIVER

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

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
76358	OCTOBER 31, 1900	Season 1: 0.255 Season 2: 0.340 Season 3: 0.629	201.94	April 1 through October 26

8. 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.

9. 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 be included as part of this lease application. During the term of the lease, water use under this right, and any other layered water rights, will be suspended.
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 lease will terminate on October 31, 2007.

Preliminary Award of Deschutes Basin Mitigation Credits

13. 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.
14. The Department assigned this mitigation credit project number MP-97.

15. On March 15, 2007, the Lessee requested that only the irrigation portion of the right to be leased instream be considered for the calculation of mitigation credits.
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 that this lease will contribute towards flows needed for recreation and aesthetic/scenic attraction. For water contact sports, flows are needed between June 1 and mid September. Flows are also needed during the early spring and later fall for seasonal angling. Emphasis should be placed on protecting flows evenly during the late spring and summer period not otherwise affected by higher spring run-off.
17. The shaping proposed by the instream lease application protects water instream over almost the entire irrigation season at the maximum rates possible and appears to meet these recommendations. Therefore, no modifications were made to the lease based upon comments received.
18. The Department finds that **66.5** 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 **General and Middle Deschutes Zones of Impact**.
19. The mitigation credits expire on December 31, 2007.
20. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DWE 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.

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.

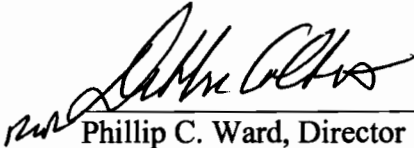
This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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 this right, any supplemental rights, or any other layered water rights, including ground water registrations, for the same use during the term of the lease.
3. The lease will terminate on October 31, 2007.
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 66.5 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 **General and Middle Deschutes 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, 2007.
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 25th day of April 2007.



Phillip C. Ward, Director

Mailing date: APR 27 2007