

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

In the Matter of the Proposed Short-Term)	DETERMINATION and
Lease of Existing Water Rights for Instream)	FINAL ORDER ON
Use and Preliminary and Final Award of)	PROPOSED INSTREAM
Mitigation Credits, Certificate 74135,)	LEASE and
Deschutes County, Oregon)	MITIGATION CREDIT
)	PROJECT

On March 19, 2004, the Deschutes Water Exchange Mitigation Bank submitted an instream lease application for the purpose of protecting flows instream and generating mitigation credits to offset the impacts of ground water use in the Deschutes Ground Water Study Area.

FINDINGS OF FACT

Short-Term Instream Lease

1. A Short-Term Lease Application, which proposed to lease a portion of certificate 74135 for instream purposes was submitted to the Department by:

Lessor	Lessee
Squaw Creek Irrigation District	Deschutes Water Exchange Mitigation Bank
PO Box 2230	P.O. Box 1560
Sisters, OR 97759	Bend, OR 97709

2. The Department assigned this lease agreement number L-499.
3. The lease application includes the required information 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 right to be leased, as requested by the applicant, is as follows:

Certificate: 74135
Priority Date: 1895 & 1904
Use: Irrigation
Acres: 233.2, being 229.7 acres under the 1895 priority date and 3.5 acres under the 1904 priority date
Season of Use: This water right does not have an irrigation season established by certificate or by decree. The Department uses March 1 through October 31 as an irrigation season pursuant to OAR 690-250-0070(1).

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

Quantity: 4.66 Cubic Foot per Second (CFS). This water right does not have a duty limitation.

Source: Squaw Creek, tributary to the Deschutes River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location		
15	S	10	E	W.M.	21	SW	SW	998 Feet North and 1211 Feet East from the SW Corner, Section 21		

Authorized Place of Use for lands owned by John Schaad:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
15	S	11	E	W.M.	7	SE	SE	600	1895	39.0
15	S	11	E	W.M.	7	SW	SE	600	1895	40.0
15	S	11	E	W.M.	7	NW	SE	600	1895	30.5
15	S	11	E	W.M.	7	NE	SE	600	1895	38.5

Authorized Place of Use for lands owned by Eugene and Susan Trone:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
15	S	11	E	W.M.	18	SE	SW	2100	1895	23.7

Authorized Place of Use for lands owned by LHR Ltd.:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	11	E	W.M.	11	NE	NE	101	1895	15.5
14	S	11	E	W.M.	11	NE	NE	101	1895	2.5
14	S	11	E	W.M.	11	NW	NE	101	1895	17.5
14	S	11	E	W.M.	11	NE	NW	101	1895	4.0
14	S	11	E	W.M.	12	NW	NE	103	1895	3.9
14	S	11	E	W.M.	12	NE	NE	103	1895	14.6
14	S	11	E	W.M.	11	NE	NE	101	1904	1.0
14	S	11	W	W.M.	11	NW	NE	101	1904	2.5

5. The Department finds that the lease application requires modification in order to clarify the amount of water being leased under each priority date. The right is clarified as follows (changes are shown in bold text):

Certificate: 74135

Priority Date: 1895 & 1904

Use: Irrigation

Acres: 233.2, being 229.7 acres under the 1895 priority date and 3.5 acres under the 1904 priority date

Season of Use: This water right does not have an irrigation season established by certificate or by decree. The Department uses as an irrigation season pursuant to OAR 690-250-0070(1) March 1 through October 31.

Quantity: **4.66 Cubic Foot per Second (CFS), being 4.59 CFS under the 1895 priority date and 0.07 CFS under the 1904 priority date.** This water right does not have a duty limitation.

Source: Squaw Creek, tributary to the Deschutes River

6. The application proposes to lease water for instream as follows:

Reach: From the POD (SW SW, Section 21, T15S, R10E, W.M., 998 Feet North and 1211 Feet East from the SW Corner, Section 21) to the mouth of Squaw Creek and thence to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74135	1895	4.59 CFS	July 14 through October 1	110	682.21 Acre-Feet (AF)
74135	1904	0.07 CFS	July 14 through October 1	110	10.4 AF
Totals		4.66 CFS			692.61 AF

7. The Department finds that water may only be protected at the rate and volume requested for a period of 74 days. On May 13, 2004, the Deschutes Water Exchange Mitigation Bank (the Lessor) submitted a request to amend the application to clarify that water should be protected instream July 14, through October 31, a period of 110 days, and to reduce the rate such that water may be protected over the full period requested in the application.
8. Based on the above findings, the Therefore, the Department finds that the application water may be leased instream as follows (changes are shown in bold text):

Reach: From the POD (SW SW, Section 21, T15S, R10E, W.M., 998 Feet North and 1211 Feet East from the SW Corner, Section 21) to the mouth of Squaw Creek and thence to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74135	1895	3.13 CFS	July 14 through Oct. 31	110	682.21 AF
74135	1904	0.05 CFS	July 14 through Oct. 31	110	10.4 AF
Totals		3.18 CFS			692.61 AF

9. Based upon continued review of the application, the Department finds that the following condition is necessary:

The portion of water protected under this lease shall be based on the same percentage diversion and delivery rate that Squaw Creek Irrigation District is diverting to rights of the same priority within the district. Each Monday morning during the period of this lease, the District shall report to the District 11 Watermaster's office the percentage diverted under the 1895 & 1904 priority dates. This information only needs to be reported to the Watermaster's office once the District is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once the District begins diverting water on a percentage basis, the amount water leased instream will be adjusted by that same percentage.

10. Based upon review of the application and information provided by the Department's Watermaster, the Department finds that the lease, as proposed and modified above, will not result in injury or enlargement.

11. The lease will terminate on October 31, 2004.

Preliminary Award of Deschutes Basin Mitigation Credits

12. The Lessee, the Deschutes Water Exchange, a mitigation bank chartered by the Water Resources Commission, has requested that this instream lease application be used to establish mitigation credits in the Deschutes Ground Water Study Area. Any mitigation credits generated from this project are to be assigned to the Deschutes Water Exchange Mitigation Bank.
13. The Department assigned this mitigation credit project number MP-17.
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, Oregon Department of Environmental Quality, Oregon State Parks and Recreation Department, Oregon Division 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 Watermaster and the Oregon Department of Fish and Wildlife (ODFW). ODFW made general comments on the mitigation program. Neither the Watermaster nor ODFW made any specific recommendations on how to enhance resource benefits and make the most effective use of the mitigation project and the mitigation water (credits) generated by the project.
15. No modifications were made to the lease based upon comments received.
16. When the Department originally published notice of this mitigation project, it was identified that the project may generate 419.8 mitigation credits. However, based upon additional evaluation, the Department has determined that water used for irrigation under the 1904 priority date is not available at least half of the irrigation season and may not be used to establish mitigation credits. The determination of the amount of mitigation credits generated is therefore based upon the 229.7 irrigated acres to be leased with a 1895 priority date, which is available at least half of the irrigation season. The Department finds that **413.5** mitigation credits may be awarded to this mitigation credit project and assigned to the Deschutes Water Exchange Mitigation Bank.
17. 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 **Squaw Creek and General** zone(s) of impact.
18. The mitigation credits expire on December 31, 2004.
19. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
20. 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 for the proposed instream lease shall result in completion of the project and verification that the project is complete.

21. 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 modified above, will not result in injury or enlargement, OAR 690-077-0077.

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 Short-Term Lease described herein is APPROVED.
2. The authorized place of use shall not be irrigated during the term of this lease.
3. Water is leased instream as follows:

Reach: From the POD (SW SW, Section 21, T15S, R10E, W.M., 998 Feet North and 1211 Feet East from the SW Corner, Section 21) to the mouth of Squaw Creek and thence to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Days Instream	Volume Instream
74135	1895	3.13 CFS	July 14 through Oct. 31	110	682.21 AF
74135	1904	0.05 CFS	July 14 through Oct. 31	110	10.4 AF
Totals		3.18 CFS			692.61 AF

4. The portion of water protected under this lease shall be based on the same percentage diversion and delivery rate that Squaw Creek Irrigation District is diverting to rights of the same priority within the district. Each Monday morning during the period of this lease, the District shall report to the District 11 Watermaster's office the percentage diverted under the 1895 & 1904 priority dates. This information only needs to be reported to the Watermaster's office once the District is diverting water on a percentage basis. Subsequent reports only need to be made to the Watermaster's office when changes are made to the percentage of water being diverted. Once the District begins diverting water on a percentage basis, the amount water leased instream will be adjusted by that same percentage.
5. The lease will terminate on October 31, 2004.
6. **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 413.5 credits, as described herein, are awarded to this mitigation project and assigned to the Deschutes Water Exchange 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 Squaw Creek and General zone(s) of impact.

7. Mitigation credits are valid until used (or expire) 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.
8. The mitigation credits shall expire on December 31, 2004.
9. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.

Dated at Salem, Oregon this 20th day of May, 2004.



For

Paul R. Cleary
Director