

**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 PROPOSED
Use and Preliminary and Final Award of)	INSTREAM LEASE & MITIGATION
Mitigation Credits, Certificate 72196,)	CREDIT PROJECT
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 short-term 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
Emmett Ranch, LLC
PO Box 1830
Bend, OR 97709

Lessor #2
LaPine Cooperative Water Association
PO Box 97
LaPine, OR 97736

Lessee
Deschutes Water Exchange (DWE) Mitigation Bank
PO Box 1560
Bend, OR 97709
gghubert@deschutesrc.org

Findings of Fact

1. On May 4, 2006, the DWE Mitigation Bank, LaPine Cooperative Water Association, and Emmett Ranch filed an application to lease a portion of Certificate 72196 to instream use. The Department assigned the application number L-739.
2. The right to be leased is as follows:
 - Certificate:** 72196
 - Priority Date:** 1900
 - Acres:** 21.1 acres
 - Season of Use:** April 1 to November 1
 - Quantity:** 0.264 Cubic Feet per Second (CFS) April 1 to May 23 &
August 20 to November 1
0.528 CFS May 23 to August 20

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.

Duty: 84.4 Acre-Feet (AF)

Source: Little Deschutes River, tributary to the Deschutes River

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
22 S	10 E	WM	34	SW SW	4100	10.1
22 S	10 E	WM	34	SE SW	4100	11.0

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	9 E	WM	34	SW SW	550 feet North & 1150 feet East from the SW Corner of Section 34

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:
Little Deschutes River tributary to the Deschutes River

Instream Reach 1: From POD (as described in Finding of Fact #2) to the mouth of the Little Deschutes River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72196	1900	0.371	84.4	June 1 – August 19
		0.249		August 20 – October 10

Instream Reach 2: From the confluence of Little Deschutes River and the Deschutes River to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72196	1900	0.35	78.5	June 1 – August 19
		0.23		August 20 – October 10

5. Other conditions to prevent injury and enlargement are:

The segment of the Deschutes River between the confluence with the Little Deschutes River and Bend is a loosing reach. A 7% loss factor has been applied to Reach #2 to account for this loss.

The total volume protected instream shall not exceed 84.4 AF.

6. 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.

7. 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.

8. The lease will terminate on October 31, 2010.
9. The lessor has requested the option of terminating the lease early with written notice to the Department.

Preliminary Award of Deschutes Basin Mitigation Credits

10. 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.
11. The Department assigned this mitigation credit project number MP-84.
12. 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 a need for additional instream flow protections for recreation and aesthetic and scenic attraction. Emphasis should be placed on protecting flows evenly during the late spring and summer period not otherwise affected by higher spring run-off.
13. The shaping proposed by the instream lease application appears to meet these recommendations. Therefore, no modifications were made to the lease based upon comments received.
14. The Department finds that **38.0** mitigation credits may be awarded to this mitigation credit project and assigned to the Deschutes Water Exchange 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 **Little Deschutes, Upper Deschutes, Middle Deschutes, and General** zones of impact.
15. The mitigation credits expire on December 31, 2010.
16. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
17. 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.

18. 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. Lessor #1 has submitted an instream transfer, T-9835 (Mitigation Credit Project MP-29), to transfer the same lands described in this lease application to instream use and to generate mitigation credits.

CONCLUSIONS OF LAW

The Department concludes that the lease will not result in injury or enlargement, OAR 690-077-0077. The lease agreement 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.

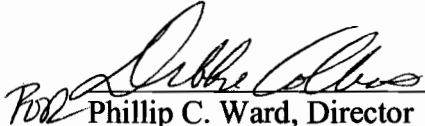
ORDER

Therefore, it is ORDERED:

1. That the Short-Term Lease as described herein is APPROVED.
2. The former place of use shall no longer receive water as part of these rights during the term of the lease.
3. The lease shall terminate on October 31, 2010. The lessor and lessee 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 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.
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 **38.0** 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 **Little Deschutes, Upper Deschutes, 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, 2010.

7. 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 22nd day of June 2006.


Phillip C. Ward, Director

Mailing date: JUN 28 2006