

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

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|--|---|------------------------------|
| In the Matter of the Lease of Existing Water |) | FINAL ORDER |
| Rights for Instream Use and Mitigation |) | TERMINATING INSTREAM LEASE & |
| Credit Project, Certificate 43547, Deschutes |) | MITIGATION 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
Emmett Ranch, LLC
PO Box 1830
Bend, OR 97709

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

Findings of Fact

1. On June 17, 2004, Emmett Ranch and the DWE Mitigation Bank filed an application to lease a portion of Certificate 43547 to instream use and to establish mitigation credits. The Department assigned the instream lease application number L-579 and the mitigation credit project MP-26.
2. The lease application requested to protect water instream for five years, terminating on October 31, 2008. A Final Order approving this lease and mitigation credit project was issued by the Department on August 2, 2004, as evidenced by Special Order Volume 61, Page 2. The mitigation credit project was awarded 32.2 mitigation credits for use in the General and Crooked River Zones of Impact. These mitigation credits were assigned to the DWE Mitigation Bank and were to expire on December 31, 2008.
3. A correcting order, to correctly describe the water right to be leased, was issued by the Department on September 16, 2004, as evidenced by Special Order Volume 61, Page 512. This correcting order did not supersede the original order but did clarify which water right was to be leased. All other terms and conditions of the original order remained the same.

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.

4. The final order contained a condition allowing the Lessor and the Lessee to terminate the lease in any year of the lease, prior to the lease being exercised that season, with written notification to the Department from all parties to the lease. On November 9, 2007, the Department received a request from Emmett Ranch and the DWE Mitigation Bank to terminate the lease and mitigation credit project prior to the 2008 irrigation season.
5. The lease was exercised during the 2004, 2005, 2006, and 2007 water use periods ending on October 31, 2007. Mitigation credits established by this project have been used to provide mitigation for ground water uses in 2005, 2006, and 2007.
6. Mitigation credits awarded to this project are valid through December 31, 2007.

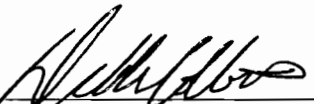
CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2008 irrigation season is consistent with OAR 690-077.

ORDER

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED and no longer in effect. The mitigation credits awarded to the Mitigation Project described herein are no longer valid after December 31, 2007.

Dated at Salem, Oregon this 30th day of November 2007.



Phillip C. Ward, Director

Mailing date: DEC 05 2007