

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

In the Matter of the Proposed Short-Term) Lease of Existing Water Rights for Instream) Use, Certificate 72196, Deschutes County))	DETERMINATION and FINAL ORDER ON PROPOSED INSTREAM LEASE & MITIGATION CREDIT PROJECT
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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
Pooled Instream Lease for several landowners
(described in Finding of Fact #2)

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, on behalf of various landowners, filed an application to lease a portion of Certificate 72196 to instream use. The Department assigned the application number L-740.
2. The right to be leased has been clarified from the application and is as follows (clarifications shown in bold):
 - Certificate:** 72196
 - Priority Date:** 1897 and April 30, 1902
 - Acres:** 250.9 acres under the 1897 priority date and 147.1 acres under the April 30, 1902 priority date
 - Season of Use:** April 1 to November 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 137-004-0080 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.

Quantity: 1897:

Rate: **3.14 Cubic Feet per Second (CFS)** April 1 to May 23 & August 20 to November 1

6.27 CFS May 23 to August 20

Duty: 1003.6 Acre-Feet (AF)

April 30, 1902:

Rate: 1.84 CFS April 1 to May 23 & August 20 to November 1

3.68 CFS May 23 to August 20

Duty: 588.4 AF

Source: Little Deschutes River, tributary to the Deschutes River

Authorized Place of Use:

IRRIGATION OF 398.0 ACRES							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Landowner (Lessor #1)
1897 Priority Date (250.9 acres)							
22 S	10 E	WM	22	SE NE	101	15.4	Gordon Wanek
22 S	10 E	WM	22	NE SE	101	26.2	Gordon Wanek
22 S	10 E	WM	22	SW SE	101/102/109	5.1	Gordon Wanek
22 S	10 E	WM	22	SE SE	101/109	5.6	Gordon Wanek
22 S	10 E	WM	23	NW SW	2400	1.0	Gordon Wanek
22 S	10 E	WM	23	NW SW	2401	8.1	Gordon Wanek
22 S	10 E	WM	23	SW SW	2401	4.8	Gordon Wanek
22 S	10 E	WM	27	NE NE	102/103	12.0	Gordon Wanek
22 S	10 E	WM	27	NW NE	102/103	34.0	Gordon Wanek
22 S	10 E	WM	27	SW NE	103/104/108	35.3	Gordon Wanek
22 S	10 E	WM	27	SE NE	103/104/108	15.2	Gordon Wanek
22 S	10 E	WM	27	NE SE	108/105	5.7	Gordon Wanek
22 S	10 E	WM	27	NW SE	108/105	28.6	Gordon Wanek
22 S	10 E	WM	15	SE SE	2802	22.7	Stearns Land Company
22 S	10 E	WM	22	NE NE	100	31.2	Stearns Land Company
April 30, 1902 Priority Date (147.1 acres)							
22 S	10 E	WM	22	SW NE	101	37.4	Gordon Wanek
22 S	10 E	WM	22	SE NE	101	1.0	Gordon Wanek
22 S	10 E	WM	22	NW SE	101	33.0	Gordon Wanek
22 S	10 E	WM	22	SW SE	101	31.6	Gordon Wanek
23 S	10 E	WM	6	NE NE	700	32.7	Albert and Patricia Havlic
23 S	10 E	WM	6	NW NE	700	5.0	Albert and Patricia Havlic
23 S	10 E	WM	6	SE NE	700	6.4	Albert and Patricia Havlic

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

- 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 #10) to the mouth of the Little Deschutes River

Certificate	Priority Date	Instream Rate (CFS)	Instream Volume (AF)	Period Protected Instream
72196	1897	3.108	1003.1	May 1 – October 10
	April 30, 1902	1.823	588.2	May 1 – May 22
		1.822		May 23 – August 19
		1.823		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	1897	2.89	932.9	May 1 – October 10
	April 30, 1902	1.70	547.0	May 1 – May 22
		1.69		May 23 – August 19
		1.70		August 20 – October 10

5. Other conditions to prevent injury and enlargement are:

A 7% loss factor has been applied to the portion of the reach extending from the confluence of the Little Deschutes River and Deschutes River to Lake Billy Chinook. The segment of the Deschutes River at the confluence to Bend is a loosing reach.

The maximum volume protected instream over the entire length of the reach, being from the point of diversion to Lake Billy Chinook, during the period May 1 through October 10 shall not exceed 1003.1 AF under the 1897 priority date and 588.2 AF under the April 30, 1902 priority date.

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-85.
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 recreational fishing.
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 **716.4** 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.

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.

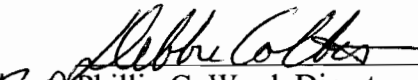
This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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 **716.4** 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 13th day of June 2006.


Phillip C. Ward, Director

Mailing date: JUN 16 2006