

**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(s) 75556,)	LEASE and
Crook County, Oregon)	MITIGATION CREDIT PROJECT

On March 11, 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 75556 for instream purposes was submitted to the Department by:

Lessor Emmett Ranch LLC PO Box 1830 Bend, OR 97709	Lessee Deschutes Water Exchange Mitigation Bank P.O. Box 1560 Bend, OR 97709
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2. The Department assigned this lease agreement number L-493.

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: applicant:

Certificate: 75556 in the name of Peoples Irrigation Company
Priority Date: 1898 and 1904/1910
Use: Irrigation
Acres: 108.77 acres
Season of Use: February 1 to December 1
Quantity: 1.35 Cubic Feet per Second (CFS), being 0.87 CFS under the 1898 priority date and 0.48 CFS under the 1904/1910 priority date
 Duty: 435.08 Acre-Feet (AF), being 280.0 AF under the 1898 priority date and 155.08 AF under the 1904/1910 priority date
Source: Crooked River, tributary to the Deschutes River

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.

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	14	E	W.M.	20	SE	SE	325 feet North and 120 feet West from the SE Corner, Section 20

Authorized Place of Use associated with the above POD:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	14	E	W.M.	29	NE	NE	100	1898	40.0
14	S	14	E	W.M.	29	NW	NE	100	1898	30.0

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
15	S	16	E	W.M.	8	NW	SW	1920 feet North and 340 feet East from the SW Corner, Section 8

Authorized Place of Use associated with the above POD:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	14	E	W.M.	21	SW	SW	200	1904/1910	38.77

5. The Department finds that not all of the irrigated acreage requested may be leased instream since the water right has not been used under the terms and conditions of the right during the last five-years and is not otherwise exempt from forfeiture under ORS 540.610 and the applicant does not own all of the lands for which the appurtenant water right is proposed to be leased. In Section 29, T14S, R14E, there is a rail road running through a portion of the lands to be leased. And in Section 21, a portion of the acres is located on an adjacent property not part of this lease application. A revised application map showing the appropriate irrigated acres to be leased in each quarter quarter was submitted by the Deschutes Water Exchange Mitigation Bank in association with transfer application T-9687, which is an instream transfer application for the same irrigated lands as this instream lease. However, the revised map and associated cover letter conflict with the certificated water right for the lands described in the NW NE of Section 29. Both the revised map and the cover letter identify some additional irrigated acres in this quarter quarter beyond the 30.0 acres allowed by certificate. Only 30.0 acres may be leased out of this quarter quarter. Changes are shown in bold text below.

The description of the water right that may be leased is as follows:

Certificate: 75556 in the name of Peoples Irrigation Company
Priority Date: 1898 and 1904/1910
Use: Irrigation
Acres: 104.1 acres
Season of Use: February 1 to December 1
Quantity: 1.3 CFS, being 0.87 CFS under the 1898 priority date and 0.43 CFS under the 1904/1910 priority date
Duty: 416.4 AF, being 278.0 AF under the 1898 priority date and 138.4 AF under the 1904/1910 priority date
Source: Crooked River, tributary to the Deschutes River

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	14	E	W.M.	20	SE	SE	325 feet North and 120 feet West from the SE Corner, Section 20

Authorized Place of Use associated with the above POD:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	14	E	W.M.	29	NE	NE	100	1898	39.5
14	S	14	E	W.M.	29	NW	NE	100	1898	30.0

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location
15	S	16	E	W.M.	8	NW	SW	1920 feet North and 340 feet East from the SW Corner, Section 8

Authorized Place of Use associated with the above POD:

Township		Range		Meridian	Sec	1/4 1/4		Lot	Priority Date	Acres
14	S	14	E	W.M.	21	SW	SW	200	1904/1910	34.6

6. The applicant proposed to lease water for instream as follows:

Reach: From the POD (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 325 feet North and 120 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
75556	1898	0.87 CFS	May 22 through Oct. 31	280.0 AF

Reach: From the POD (NW 1/4 SW 1/4, Section 8, T15S, R16E, W.M.; 1920 feet North and 340 feet East from the SW Corner, Section 8) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
75556	1904/1910	0.48 CFS	May 22 through Oct. 31	155.08 AF

7. The Department finds that in order to prevent injury and enlargement the applicant's request must be modified. The number of acres to be leased instream has been reduced as has the period that water may be leased instream. Therefore, the Department finds that water may be leased instream as follows (changes are shown in bold text):

Reach: From the POD (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 325 feet North and 120 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
75556	1898	0.87 CFS	May 24 through Oct. 31 (161 days instream)	278.0 AF

Reach: From the POD (NW 1/4 SW 1/4, Section 8, T15S, R16E, W.M.; 1920 feet North and 340 feet East from the SW Corner, Section 8) on the Crooked River to Lake Billy Chinook.

Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
75556	1904/1910	0.43 CFS	May 23 through Oct. 31 (162 days instream)	138.4 AF

8. 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.
9. The lease will terminate on November 30, 2008. The lessor and lessee have requested to have the option of terminating the lease with written notice provided to the Department. In order to assure adequate notice of any termination of the lease, the Department will require that written notice be provided by all parties on the lease and be submitted to both the Salem office and the Watermaster's office.
10. This lease covers the same irrigated lands as those to be transferred to instream use under instream transfer application T -9687. No precedent is set by this Final Order as to whether the water right may be permanently transferred to instream use.

Preliminary Award of Deschutes Basin Mitigation Credits

11. 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.
12. The Department assigned this mitigation credit project number MP-14.
13. 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 Oregon Department of Fish and Wildlife (ODFW) on May 13, 2004. ODFW made general comments on the mitigation program but did not offer 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.
14. No modifications were made to the lease based upon any comments received.
15. As part of the notice of the mitigation project, the Department identified that the project may result in 195.8 mitigation credits. Based upon continued evaluation of the project and reduction of the number of irrigated acres that may be leased, the number of mitigation credits that may be awarded to this project have also been reduced. The Department finds that **187.4** 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 **General and Crooked River** zone(s) of impact.

16. The mitigation credits expire on December 31, 2008, unless the lease agreement is terminated earlier by the Lessor and the Lessee.
17. The use and maintenance of the mitigation credits is subject to the terms and conditions of the Deschutes Water Exchange Mitigation Bank Charter.
18. 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.
19. Instream transfer application T -9687 is also proposed to establish mitigation credits in the Deschutes Ground Water Study Area. 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 (SE 1/4 SE 1/4, Section 20, T14S, R14E, W.M.; 325 feet North and 120 feet West from the SE Corner, Section 20) on the Crooked River to Lake Billy Chinook.


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Certificate	Priority Date	Rate Instream	Period Protected Instream	Volume Instream
75556	1904/1910	0.43 CFS	May 23 through Oct. 31	138.4 AF

4. The lease will terminate on November 30, 2008. The lessor 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.
5. **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 187.4 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 General and Crooked River zone(s) of impact.
6. 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.
7. The mitigation credits shall expire on December 31, 2008, unless the lease agreement is terminated earlier by the Lessor and the Lessee.
8. 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.



Paul R. Cleary
Director