

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

In the Matter of Instream Lease IL-1508 and)
Mitigation Credit Project MP-206, Deschutes)
County)
)
)
)

**FINAL ORDER CORRECTING &
TERMINATING INSTREAM
LEASE & MITIGATION CREDIT
PROJECT**

Oregon Revised Statute (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. Oregon Administrative Rule (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

Pooled Instream Lease for several water
right holders

Lessee

Central Oregon Irrigation District (COID)
1055 SW Lake Court
Redmond, OR 97756
khamby@coid.org

Lessee

Deschutes River Conservancy and
Mitigation Bank (DRCMB)
PO Box 1560
Bend, OR 97709

Findings of Fact

1. On February 8, 2016, the COID and DRCMB filed an application to lease a portion of Certificate 83571 for instream use and to establish mitigation credits. The Department assigned the instream lease application number IL-1508 and the mitigation project MP-206.

2. The lease application requested to protect water instream for three years, terminating on October 31, 2018. A Final Order approving this lease and mitigation credit project was issued by the Department on March 9, 2016, as evidenced by Special Order Volume 98, Page 929. The mitigation credit project was awarded 74.7 mitigation credits for use in the Middle Deschutes and General Zones of Impact. These mitigation credits were assigned to the DRC Mitigation Bank and were to expire on October 31, 2018.

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.

3. On January 30, 2017, the Department received a request from the DRCMB and COID to terminate the lease and mitigation credit project prior to the 2017 instream use period.
4. While reviewing the termination request, the Department identified that the termination provision requested in the application was not included in the Final Order dated March 9, 2016. The termination provision requested in the application and incorrectly left out of the final order is as follows:

For multiyear leases, the Lessor(s) 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. The lease may be terminated at any time during a calendar year. However, if the termination request is received less than 30-days prior to the instream use period, April 1 through October 31, or after the water rights' original period of allowed use has begun, the Department may issue an order terminating the lease but use of water may not be allowed until the following calendar year, unless the Director determines that enlargement would not occur.

5. The lease was exercised during the 2016 water use period ending on October 31, 2016. Mitigation credits established by this project were not used to provide mitigation for ground water permits in 2016.


Conclusions of Law

The Department concludes that terminating the lease in advance of the 2017 instream use period is consistent with OAR 690-077.

Now, therefore it is ORDERED:

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.

Dated at Salem, Oregon this 8 day of March, 2017.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director, Oregon Water Resources Department

Mailing date: MAR 10 2017

This document was prepared by Kate Fitzgerald. If you have any questions, please call 503-986-0898.