

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

In the Matter of the Proposed Short-Term)	FINAL ORDER
Lease of Existing Water Rights for Instream)	TERMINATING INSTREAM
Use, Certificates 67706, 65091, 65090,)	LEASE & MITIGATION CREDIT
13509, 13501, 10028, and 3227, Deschutes)	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

City of Sisters
PO Box 39
Sisters, OR 97759

Lessee

Deschutes River Conservancy (DRC) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On June 2, 2010, the City of Sisters and the DRC Mitigation Bank filed an application to lease all of Certificate 67706, 65091, 65090, 13509, 13501, 10028, and 3227 for instream use and to establish mitigation credits. The Department assigned the instream lease application number IL-1079 and the mitigation project MP-137.
2. The lease application requested to protect water instream for five years, terminating on December 31, 2014. A Final Order approving this lease and mitigation credit project was issued by the Department on October 20, 2010, as evidenced by Special Order Volume 82, Page 1134. The mitigation credit project was awarded 57.8 mitigation credits for use in the Whychus Creek Zone of Impact for use only by the City of Sisters. These mitigation credits were assigned to the DRC Mitigation Bank and were to expire on December 31, 2014.
3. 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.

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. On December 12, 2011, the Department received a request from the City of Sisters and the DRC Mitigation Bank to terminate the lease and mitigation credit project prior to the 2012 instream use period.
3. The lease was exercised during the 2010 and 2011 water use periods, which will end on December 31, 2011. Mitigation credits established by this project were not used to provide mitigation for ground water permits in 2010 but were used during 2011 for the City of Sisters.


CONCLUSIONS OF LAW

The Department concludes that terminating the lease in advance of the 2012 instream use period is consistent with OAR 690-077.

ORDER

Therefore, it is ORDERED that the Instream Lease described herein is TERMINATED as of December 31, 2011 and will longer be effect. The mitigation credits awarded to the Mitigation Project described herein will expire on December 31, 2011 and will no longer be valid.

Dated at Salem, Oregon this 14 day of December, 2011.



Dwight French, Water Right Services Division, for
PHILLIP C. WARD, DIRECTOR

Mailing date: DEC 14 2011