

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

In the Matter of the Proposed Short-Term)	DETERMINATION and FINAL
Lease of Existing Water Rights for Instream)	ORDER ON PROPOSED INSTREAM
Use and Preliminary and Final Award of)	LEASE and WITHDRAW OF
Mitigation Credits, Certificate 72196,)	MITIGATION CREDIT PROJECT
Deschutes 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 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
Gordon Wanek
50825 Huntington Rd.
LaPine, OR 97739

Lessor #2
LaPine Cooperative Water Association
PO Box 97
LaPine, OR 97739

Lessee
Deschutes Water Exchange Mitigation Bank
PO Box 1560
Bend, OR 97709
Laura@deschutesrc.org

Findings of Fact

1. Gordon Wanek, LaPine Cooperative Water Association and the Deschutes Water Exchange filed an application to lease a portion of Certificate 72196 to instream use. The Department assigned the application number L-644.
2. The rights to be leased are as described in the application.
3. 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 has been modified from the lease application to prevent injury and enlargement and is as follows:

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.

Little Deschutes River

Tributary to the Deschutes River in the Deschutes Basin

Instream Reach: From POD (SW ¼ SW ¼, Section 34, T23S, R9E, W.M.; 550 feet North & 1150 feet East from the SW Corner of Section 34) to the mouth of the Little Deschutes

Certificate	Priority Date	Instream Rate (cfs)	Period Protected Instream
72196	1897	2.25	May 23 – August 19
		1.0	August 20 – October 31
	April 30, 1902	1.3	May 23 – August 19
		0.8	August 20 – October 31

5. Other conditions to prevent injury and enlargement are:

The reach has been modified to extend only as far as the mouth of the Little Deschutes River. The applicant originally requested that the reach extend beyond the Little Deschutes River and into the Deschutes River to Lake Billy Chinook. However, the quantity of water to be leased instream is not a measurable quantity in the Deschutes River. In order for water to be protected beyond the source stream, the quantity must be measurable in the receiving stream, in this case being the Deschutes River. OAR 690-077-0015 (7)

- 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, 2005.

Preliminary Award of Deschutes Basin Mitigation Credits

- 9. Upon submission of the instream lease application, the Lessee, a mitigation bank chartered by the Water Resources Commission, requested that the portion of the right to be protected instream be used to generate mitigation credits.
- 10. The Department assigned this mitigation credit project number MP-47.
- 11. 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 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 Department of State Lands, the Oregon Department of Fish and Wildlife and Oregon Parks and Recreation Department.

12. On June 9, 2005, the Deschutes Water Exchange Mitigation Bank requested that the mitigation project aspect of this instream lease be withdrawn and that no mitigation credits be awarded.

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.

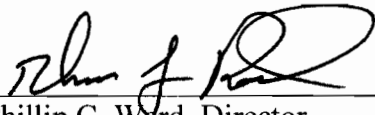
This mitigation project has been withdrawn and, therefore, does not result in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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, 2005.
4. **Final Award of Deschutes Basin Mitigation Credits:** Mitigation Project MP-47 has been withdrawn. No mitigation credits have been awarded to this project.

Dated at Salem, Oregon this 15th day of June 2005.


Phillip C. Ward, Director

Mailing date: JUN 23 2005