

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

In the Matter of Instream Lease Application ) DETERMINATION and  
 IL-1216 and Preliminary and Final Award ) FINAL ORDER ON PROPOSED  
 of Mitigation Credits, Certificate 72283, ) INSTREAM LEASE and MITIGATION  
 Jefferson County ) CREDIT PROJECT

**Authority**

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 #1**

Pooled Instream Lease for several water right holders (described in Finding of Fact #2)

**Lessor #2**

North Unit Irrigation District (NUID)  
 2024 NW Beech Street  
 Madras, OR 97741  
[nuid@northunitid.com](mailto:nuid@northunitid.com)

**Lessee**

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

**Findings of Fact**

1. On March 28, 2012, the DRC Mitigation Bank and NUID, on behalf of several water right holders, filed an application to lease a portion of Certificate 72283 for instream use. The Department assigned the application number IL-1216.
2. Certificate 72283 describes the authorized place of use by township, range, section, quarter quarter, and tax lots. The tax lot references on which a portion of the right proposed to be leased is inconsistent with the description in the Certificate. The lease application identifies a portion of the place of use located as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
11S	14E	WM	6	NW NE	200	12.2
					201	0.2

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.

Certificate 72283 identifies the entire portion of this right as being located in tax lot 200. However, the original water right map for this Certificate shows 12.4 acres in this quarter quarter and appears to show most of the water right as being located in tax lot 200 and a small portion as being located within tax lot 201. The portion of the water right to be leased is described in Finding of Fact #3 is consistent with the water right of record, including the water right map.

3. The portion of the right to be leased is as follows:

**Certificate:** 72283  
**Use:** Irrigation of 29.1 acres  
**Season of Use:** February 1 to December 1 (by Decree)  
**Priority Date:** September 18, 1968  
**Maximum Quantity (Rate) that can be applied to an acre:**  
 Limited to 1/40<sup>th</sup> cubic foot per second (CFS) per acre  
**Maximum Duty that can be applied to an acre:**  
 Not to exceed 4.0 acre-feet (AF) per acre per year  
**Source:** Crooked River, tributary of the Deschutes River  
**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Water Right Holder (Lessor #1)
12S	12E	WM	27	NE NE	100	0.3	Bureau of Land Management
				SE NE	100	0.1	
				SW NE	100	1.5	
11S	13E	WM	2	NE SE	1700 DA	5.4	Gisler Family Trust
11S	14E	WM	6	NW NE	200	12.2	Ronnie and Donna Scheller
					201	0.2	
10S	13E	WM	9	NE NE	200	9.4	Jarold W. and Dorothy A. Ramsey
<b>TOTAL:</b>						<b>29.1</b>	

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	13	SW NE	590 FEET NORTH AND 2790 FEET EAST FROM THE W ¼ CORNER OF SECTION 13

4. Certificate 72283 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #3), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the POD (described in Finding of Fact #3), the portion of the right involved in this instream lease would be limited as described in the table below. These rates and duty are also the quantities by which the diversion at the POD under Certificate 72283 shall be reduced, if this instream lease is approved.

Rate	Duty
0.66 CFS	116.4 AF

5. The lease application includes the information required under OAR 690-077-0076(3). The Department provided notice of the lease application pursuant to OAR 690-077-0077(1). No comments were received.

6. The District limits the quantity of water delivered to lands within the district to 1.0 acre-foot per acre (out of 4.0 acre-feet per acre that may be diverted) from the Crooked River.
7. The instream use is as follows:  
Crooked River, tributary to the Deschutes River

**Instream Reach:** From POD (as described in Finding of Fact #3) to Lake Billy Chinook

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Instream Volume (af)</b>	<b>Period Protected Instream</b>
72283	9/16/1968	0.133	29.1	May 15 through September 1

8. If approved, this instream lease is not reasonably expected to significantly affect land use as prescribed by ORS 197.180, OAR Chapter 660, Divisions 30 and 31, and OAR Chapter 690, Division 5.
9. 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.
10. 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.
11. The Lessors and Lessee requested that the lease terminate on October 31, 2012. An instream lease generally terminates on the last day of the authorized period of use (irrigation season). The irrigation season for Certificate 72283 is February 1 through November 30. The lease may terminate on November 30, 2012.

**Preliminary Award of Deschutes Basin Mitigation Credits**

12. 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.
13. The Department assigned this mitigation credit project number MP-169.
14. 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 (OPRD), 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 OPRD. These

comments identified that additional streamflow may benefit aquatic resources and potentially improve recreational fishery resources in this area.

15. No modifications were made to the lease based on the comments received.
16. As part of the public notice of the mitigation project, the Department identified that the project may result in up to 52.4 mitigation credits. However, since the Irrigation District limits the use of water from the Crooked River under Certificate 72283 to 1.0 AF per acre, only 29.1 AF are available to be used as mitigation. Therefore, the Department finds that 29.1 mitigation credits may be awarded to this mitigation credit project and assigned to the DRC 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 Crooked River and General Zones of Impact.
17. The mitigation credits expire on December 31, 2012.
18. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DRC Mitigation Bank Charter.
19. 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.
20. 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 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 Lease as described herein is APPROVED.
2. The former place of use will no longer receive water as part of these rights, any supplemental rights, or any other layered water rights for irrigation use, including ground water registrations during the term of the lease.
3. The lease will terminate on November 30, 2012.
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 29.1 credits, as described herein, are awarded to this mitigation project and assigned to the DRC 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 Crooked River 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, 2012.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DRC Mitigation Bank Charter.

Dated at Salem, Oregon this 21 day of June, 2012.

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

**JUN 25 2012**

Mailing date: \_\_\_\_\_

*This document was prepared by Laura Wilke and if you have any questions, please call 503-986-0884.*