

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

In the Matter of the Proposed Lease of)
Existing Water Rights for Instream Use and)
Preliminary and Final Award of Mitigation)
Credits, Certificate 72284, Jefferson County)

) DETERMINATION and
) FINAL ORDER ON PROPOSED
) INSTREAM LEASE & MITIGATION
) 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

Ingalsbe Testamentary Trust
4900 Fremont Ave. N #101
Seattle, WA 98103

Lessor #2

North Unit Irrigation District (NUID)
2024 NW Beech Street
Madras, OR 97741
nuid@palmain.com

Lessee

Deschutes Water Exchange (DWE) Mitigation Bank
P.O. Box 1560
Bend, Oregon 97709
gen@deschutesriver.org

Findings of Fact

1. On April 21, 2008, the DWE Mitigation Bank, NUID, and Ingalsbe Testamentary Trust filed an application to lease a portion of Certificate 72284 to instream use. The Department assigned the application number IL-917.
2. The portion of the right to be leased has been clarified from the lease application and is as follows:

Certificate: 72284

Season of Use: February 1 to December 1 (by Decree)

Priority Date: September 18, 1968

Use: Irrigation of 152.6 acres

Quantity: Rate: 3.461 Cubic Feet per Second (CFS) (proportioned rate)

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.

Duty: 610.4 Acre-Feet (AF)

Source: Crooked River, tributary of the Deschutes River

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
11 S	13 E	WM	8	SW NW	300	39.4
11 S	13 E	WM	8	NW SW	300	39.4
11 S	13 E	WM	8	NW SE	300	14.6
11 S	13 E	WM	8	NE SE	300	33.6
11 S	13 E	WM	8	SE SE	300	13.9
11 S	13 E	WM	8	SW SW	300	11.7

Point of Diversion:

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

- 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.
- The applicants have requested to protect water instream during the period May 20 through August 25. The applicant has also requested to limit the amount of water protected instream to 0.793 CFS and 152.6 AF (based on 1.0 AF/acre). The District limits delivery of water within the District to 1.0 AF/acre under Certificate 72284. At the requested rate and volume, water may be protected instream for a period of 97 days, which is one day less than the requested instream period.
- The instream use has been modified from the lease application to prevent injury and enlargement and is as follows:
Crooked River, tributary to the Deschutes River

Instream Reach: From the POD (as described in Finding of Fact #2) to Lake Billy Chinook

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (af)	Period Protected Instream
72284	9/18/1968	0.793	152.6	May 21 through August 25

- 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.
- 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.
- 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.

9. The lease will terminate on November 30, 2008.

Preliminary Award of Deschutes Basin Mitigation Credits

10. 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.
11. The Department assigned this mitigation credit project number MP-117.
12. 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 the additional instream flow in the Crooked River will potentially benefit aquatic resources and improve the fishery resource.
13. No modifications were made to the lease based on the comments received.
14. Based on current delivery practices within the District, water under the September 18, 1968 priority date is available at least 50% of the irrigation season.
15. Therefore, the Department finds that 152.6 mitigation credits may be awarded to this mitigation credit project and assigned to the DWE 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.
16. The mitigation credits expire on December 31, 2008.
17. The use and maintenance of the mitigation credits is subject to the terms and conditions of the DWE 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 approving the proposed instream lease shall result in completion of the project and verification that the project is complete.
19. 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.

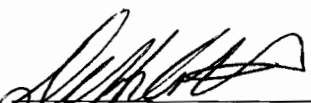
This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.

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, 2008.
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 152.6 credits, as described herein, are awarded to this mitigation project and assigned to the DWE 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, 2008.
7. The use and maintenance of the mitigation credits shall be subject to the terms and conditions of the DWE Mitigation Bank Charter.

Dated at Salem, Oregon this 22nd day of May 2008.


Phillip C. Ward, Director

Mailing date: MAY 27 2008