



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

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MEMORANDUM

TO: Water Resources Commission

FROM: Phillip C. Ward, Director

SUBJECT: Agenda Item E, November 20, 2008
Water Resources Commission Meeting

Request for Approval of Modification to the Mitigation Bank Charter for the Deschutes Water Exchange

I. Issue Statement

The Commission is asked to approve a modification to the mitigation bank charter for the Deschutes Water Exchange (DWE). The modification would change the name of the mitigation bank from the DWE Mitigation Bank to the Deschutes River Conservancy (DRC) Mitigation Bank. Attachment 1 is the proposed modification agreement.

II. Background

On February 14, 2003, the Commission approved a mitigation bank charter for the DWE pursuant to the Deschutes Mitigation Bank and Mitigation Credit Rules (OAR Chapter 690, Division 521). Mitigation banks in the Deschutes Basin facilitate transactions among holders of mitigation credits and those interested in acquiring mitigation credits. The DWE Mitigation Bank Charter provides that the charter may be modified to make needed changes and/or to address issues that are identified by the bank or by the Department. Amendments made to the charter between the Department and the DWE are not binding to either party until adopted by the Commission.

III. Discussion

Since its charter approval, the DWE Mitigation Bank has played an active role in the Deschutes Ground Water Mitigation Program. The Mitigation Bank has provided mitigation credits to a variety of persons and organizations seeking mitigation credits needed for approval of new ground water permits.

On July 30, 2008, the DRC submitted a request to change the name of the mitigation bank to the DRC Mitigation Bank. The DRC has identified that during the past five years, as it has become more specialized in flow restoration, the DWE name has become unnecessary and created some confusion. Flow restoration projects, such as instream leases and instream transfers, have been

submitted to the Department to generate mitigation credits, to restore streamflows, and, in some cases, used as both a mitigation project and a streamflow restoration project. Some projects are submitted under the name of the DRC and some under the name of the DWE.

The DRC would like to drop the DWE name and use the DRC name to represent all of its flow restoration activities.

Attached is a Modification Agreement for the DWE Mitigation Bank Charter, which modifies the name of the mitigation bank to the DRC Mitigation Bank.

IV. Alternatives

The Commission may consider the following alternative actions:

1. Approve the modification to the mitigation bank charter and rename to DRC Mitigation Bank as proposed in the Attachment.
2. Approve the modification to the mitigation bank charter in the Attachment with revisions.
3. Not approve the proposed mitigation bank charter modification and request further evaluation by the Department.

V. Recommendation

The Director and staff recommend that the Commission approve the proposed mitigation bank charter modification to change the name of the mitigation bank to DRC Mitigation Bank (as shown in the Attachment).

Attachment:

Modification Agreement to Deschutes Water Exchange Mitigation Bank Charter

**DESCHUTES WATER EXCHANGE MITIGATION BANK CHARTER
MB-1
Mitigation Bank Charter Modification Agreement**

Pursuant to Section 9.B of the Deschutes Water Exchange (DWE) Mitigation Bank Charter, approved by the Water Resources Commission on February 14, 2003, the charter may be modified to make needed changes and/or to address issues that are identified by the DWE Mitigation Bank and/or by the Department. Modifications made to the terms of the charter are binding when in writing and upon approval by the Water Resources Commission. Any modification to the charter must be approved by the Water Resources Commission. Such modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.

The Mitigation Bank Charter, as approved by the Water Resources Commission on February 14, 2003, identifies the mitigation bank charter as the Deschutes Water Exchange Mitigation Bank Charter and identifies the name of the mitigation bank as Deschutes Water Exchange throughout the charter agreement.

Effective upon approval by the Water Resources Commission and signature by the Director of the Water Resources Department and the Deschutes River Conservancy (DRC), the name of the charter agreement and mitigation bank shall be modified to:

DRC Mitigation Bank Charter and the DRC Mitigation Bank

This modification agreement is subject to all other terms and conditions of the Mitigation Bank Charter approved by the Water Resources Commission on February 14, 2003.

Approved by the Oregon Water Resources Commission on _____
(date)

DRC Mitigation Bank Authorized Representative Signature (date)

Director, Oregon Water Resources Department (date)