

MEMORANDUM

TO: Water Resources Commission

FROM: Tom Paul, Field Services Administrator

SUBJECT: Agenda Item C, March 11, 2004
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 provides the mitigation bank with greater flexibility by eliminating an annual March 1 deadline by which the bank must submit instream lease applications for consideration as mitigation credit projects. 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

The Commission's instream leasing rules under OAR Chapter 690, Division 77, require that anyone submitting a request for an instream lease submit the lease application by July 1 of each calendar year or October 1 for year-round uses.

Section 4.D.i of the DWE Mitigation Bank Charter requires that any instream lease application submitted for mitigation credits must be submitted by March 1 of each calendar year. However, it has become apparent that additional flexibility is needed within the charter to allow the bank to submit instream lease applications after the March 1 deadline. Additional flexibility is necessary

for instances where the bank may need to replace an instream lease that is denied, does not provide the amount of mitigation credits anticipated, or is later terminated due to injury to existing water rights. Flexibility is also needed to address unanticipated demands for mitigation credits that the DWE Mitigation Bank may encounter after the March 1 deadline. The instream leasing program is the most immediate means to meet unexpected demands for mitigation credits.

The Department and the DWE Mitigation Bank agree that eliminating the March 1 deadline from the charter and deferring to the Commission's submittal deadlines in the existing instream lease rules can achieve the needed flexibility.

Attached is a Modification Agreement for the DWE Mitigation Bank Charter, which modifies the charter to allow instream leases to be submitted to the Department by the deadline specified in the Commission's instream lease administrative rules.

IV. Alternatives

The Commission may consider the following alternative actions:

1. Approve the modification to the mitigation bank charter for the Deschutes Water Exchange 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 for the Deschutes Water Exchange (as shown in the Attachment).

Attachment:

Modification Agreement to Deschutes Water Exchange Mitigation Bank Charter

Laura Snedaker
February 11, 2004
(503) 986-0884

**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.

Section 4.D.i of the DWE Mitigation Bank Charter, as approved by the Water Resources Commission on February 14, 2003, includes the following requirement for instream leases:

Instream Lease applications for generation of mitigation credits must be submitted to the Department by March 1 of each calendar year. However, in the first calendar year that this charter is in effect, the mitigation bank may submit instream leases for consideration for mitigation credit by July 1.

Effective upon approval by the Water Resources Commission and signature by the Director of the Water Resources Department and the DWE Mitigation Bank, Section 4.D.i shall be modified as follows:

Instream Lease applications for generation of mitigation credits must be submitted to the Department by the deadline for instream lease applications specified in OAR Chapter 690, Division 77.

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

Approved by the Oregon Water Resources Commission on _____

(date)

DWE Mitigation Bank Authorized Representative Signature

(date)

Director, Oregon Water Resources Department

(date)