

Draft Charter May **, 2006

DESCHUTES IRRIGATION LLC MITIGATION BANK CHARTER

INTRODUCTION

This charter, dated _____, 200__ contains the details of the Deschutes Irrigation, LLC Mitigation Bank's operating plan, the accounting of mitigation credits, annual mitigation credit reports to the Oregon Water Resources Department (the Department), special conditions on the use of mitigation credits, internal monitoring and contingency plans, and enforcement and charter termination provisions. By signing this charter, the party, listed above, has agreed to the conditions described herein.

1. PURPOSE OF THE MITIGATION BANK

The purpose of the mitigation bank is to facilitate transactions among the holders of mitigation credits and persons who desire to acquire mitigation credits.

2. SERVICE AREA

The service area is the Deschutes Basin Ground Water Study Area.

3. OPERATION PLAN

A. Mitigation Bank Operation Plan

- i. The Deschutes Irrigation, LLC (DI) Mitigation Bank is wholly owned by Emmett Ranch, LLC. Emmett Ranch, LLC is comprised of three members. The operation of the mitigation bank will be supervised by the Managing member, John Short.
- ii. Emmett Ranch, LLC is a privately owned real estate investment company.
- iii. Emmett Ranch, LLC will participate in property and water right acquisitions targeted for establishment of mitigation credits. The DI Mitigation Bank will establish mitigation credits.
- iv. Mitigation Bank Goals:
Deschutes Irrigation, LLC (DI) seeks to profitably enhance the lands involved both aesthetically and environmentally while permanently protecting water instream within the Deschutes Basin Study Area and providing permanent mitigation credits for small irrigators.
- v. Mitigation Bank Customers:

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The mitigation bank will generally serve small irrigators with less than 5 acres interested in purchasing mitigation credits to satisfy a mitigation obligation but has not limited its customer size. Other customers may also include municipalities, quasi-municipalities, or flow restoration organizations.

- vi. Development of Mitigation Credit Projects and Holding of Mitigation Credits:
 - a. The mitigation bank will acquire mitigation credits from mitigation projects undertaken by Emmett Ranch, LLC and others.
 - b. Mitigation credits held by the mitigation bank will originate from permanent instream transfers.
 - c. Credits will be held until documentary evidence of available mitigation credits is requested by OWRD prior to issuance of a permit. DI then takes a copy of the draft ground water permit to the escrow company where the escrow company releases the money (Exhibit B, seller's agreement and Exhibit D, escrow instructions).
 - d. The mitigation bank will accept credits in trade or otherwise from other mitigation banks, Emmet Ranch, LLC, or water right holders that have developed permanent mitigation credits.
- vii. Mitigation Credit Transaction Size:

The mitigation bank does not intend to place any limits on the size of mitigation credit transactions it will conduct.

4. ESTABLISHMENT AND USE OF MITIGATION CREDITS

A. General Provisions for Mitigation Credits

- i. All mitigation credits are awarded by the Department and only become available for mitigation bank transactions once they have been awarded. All mitigation credits shall be awarded by the Department consistent with OAR 690-521-0300 and OAR 690-521-0400.
- ii. Mitigation credits are valid until used to satisfy a mitigation obligation by a ground water applicant, permit or certificate holder in the Deschutes Ground Water Study Area.

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- iii.* The mitigation bank may assign mitigation credits to any ground water applicant, permit and certificate holder, consistent with this charter, needing to satisfy a mitigation obligation.
- iv.* The mitigation bank may assign mitigation credits to another mitigation bank, chartered by the Water Resources Commission, or other person.
- v.* The mitigation bank shall provide notice to the Department within 30 days of any mitigation credits assigned to another mitigation bank or other mitigation credit holder. This notice shall include the number of mitigation credits assigned, the name, mailing address and phone number of the mitigation bank or other mitigation credit holder to which mitigation credits were assigned, and the unique mitigation project number assigned by the Department.
- vi.* The mitigation bank shall provide notice to the Department within 30 days of any mitigation credits assigned to the mitigation bank from another mitigation credit holder or mitigation bank. This notice shall include the number of mitigation credits assigned, the name, mailing address and phone number of the previous holder of the mitigation credits, and the unique mitigation project number assigned by the Department.
- vii.* The mitigation bank shall only hold mitigation credits generated from permanent instream transfers.

B. Documentary Evidence of Purchase of Mitigation Credits Provided to Purchaser

- i.* Upon assignment of a mitigation credit(s) to any person intending to use the mitigation credit(s) to satisfy a mitigation obligation, the mitigation bank shall also provide that person with a completed documentary evidence form. The mitigation bank shall use a documentary evidence form provided by the Department and the mitigation credit purchaser should be directed to submit the completed form to the Department. This form demonstrates to the Department that the ground water applicant, permit or certificate holder has obtained valid mitigation credits, which have been assigned to that ground water applicant, permit or certificate holder to satisfy their mitigation obligation.
- ii.* The documentary evidence form shall include, at minimum, the number of credits purchased, the application, permit, or certificate number of the ground water use, the mitigation project number(s) used to generate the mitigation credits purchased, the zone of impact in which the credits are to

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be used, and the name of the mitigation bank from which the mitigation credits were purchased.

5. MITIGATION CREDIT ACCOUNTING AND TRACKING

- A. The mitigation bank is required to maintain an accounting system to track assignments of mitigation credits to or from the mitigation bank. The mitigation bank will consist of a series of accounts. A separate account of mitigation credits shall be maintained for each of the zones of impact, as identified by the Department.
- B. This system will provide full tracking of each transaction that the mitigation bank undertakes and it will provide balance statements for each of the accounts, for the purposes of internal management and external reporting.
- C. General Mitigation Credit Accounting and Tracking Requirements
 - i. Mitigation credits, as awarded by the Department, may be available for assignment in one or more zones of impact. The Department will identify the zones of impact in which a mitigation credit is available for assignment to a ground water applicant, permit or certificate holder as part of the preliminary and final award of mitigation credits.
 - ii. The transaction register for each zone of impact account will include the following information at a minimum:
 - a. The mitigation project number that produced the mitigation credit. The mitigation project number is a unique number assigned to the project by the Department.
 - b. The number of mitigation credits held by the mitigation bank for each mitigation project.
 - c. Date of the transaction.
 - d. Type of transaction (i.e. a credit or a debit).
 - e. Number of mitigation credits (in acre-feet) transacted.
 - iii. If the transaction is a credit (i.e. a deposit of mitigation credits into an account) the following information will also be recorded:
 - a. The name of the mitigation credit holder, if other than the mitigation bank, from which the credit was obtained.
 - b. The mitigation project number that produced the mitigation credit and the number of mitigation credits assigned to the mitigation bank.

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- iv. If the transaction is a debit the following information will also be recorded:
 - a. The buyer's ground water permit application number, ground water permit, or ground water certificate number.
 - b. The name of the new mitigation credit holder.
 - c. The number of mitigation credits purchased and the mitigation project number that produced the mitigation credit.
 - d. The zone of impact in which the mitigation credit was used to satisfy a mitigation obligation if the mitigation credit credits was available in more than one zone of impact.
 - v. The mitigation bank will also maintain customer information including standard contract information.
 - vi. When a mitigation credit has been sold or transferred to another mitigation bank or ground water applicant, permit or certificate holder, the mitigation bank should adjust its accounting records accordingly.
 - a. If a mitigation credit originating in one of the local zones of impact is used to satisfy a mitigation obligation in a downstream zone of impact, then accounting records of the mitigation bank should be adjusted accordingly to show the use of the credit in the appropriate zone of impact and deduction of the credit from any other zones of impact in which the credit had been available, as appropriate.
 - vii. The mitigation bank's accounts will be maintained as part of a computerized database, with transaction records printed and maintained in a register. The Deschutes Irrigation LLC will ensure that appropriate hard and computer copy backup systems are in place to protect these records.
- D. The Department will provide notice to the mitigation bank of any changes in the status of ground water applications, permits, and certificates for which the bank provides mitigation credits. Status changes may include new water right numbers resulting from transfers and cancellation.
- E. Instream transfers involve permanent instream transfers of water rights. Credits will typically be deposited and then withdrawn. These mitigation credits do not require ongoing monitoring of their status once the mitigation credit has been assigned to a ground water application, permit and/or certificate to satisfy a mitigation obligation. The credits are effectively assigned to and belong to the ground water applicant or permit/certificate holder.
- F. The Department may, at the discretion of the Director, audit the mitigation credit accounting records of the mitigation bank.

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6. ANNUAL REPORT

- A. The mitigation bank shall annually report all mitigation credit transactions, balances and activities of the mitigation bank to the Department. This annual report shall cover the previous calendar year and be submitted to the Department by January 31 of each year. The contents of the annual report are subject to the specifications listed below.
- B. The mitigation bank is required to prepare and submit this report annually until the last mitigation credit has been assigned.
- C. The Department may require the mitigation bank to submit reports more frequently if determined necessary.
- D. Mitigation Credit Reporting Requirements
 - i. The annual report shall include a list of each account by zone of impact and mitigation project to provide a summary of each transaction in mitigation credits undertaken by the mitigation bank, and any remaining mitigation credit balances. The annual report should reflect that the amount of mitigation credit assigned to each ground water application, permit and/or certificate equals the mitigation obligation of the ground water application, permit and/or certificate. If the number of credits assigned does not equal the mitigation obligation, the report should include an explanation for the difference.
 - ii. The annual report shall include a list of the mitigation credit projects, by zone of impact, from which mitigation credits were assigned during the reporting period and their remaining credit balances, if any.
 - iii. The annual report shall include, by zone of impact, the information described in Section 5 of this charter.
 - iv. Permanent mitigation projects and their associated permanent mitigation credits and ground water permit or certificate holders do not need to be included in the annual report once mitigation credits have been fully withdrawn from the mitigation bank and those transactions reported as part of a previous annual report.
- E. Internal Monitoring Report
 - i. The mitigation bank shall also include in the annual report a detailed summary of the results of internal monitoring for the year, including any problems that arose and how those were addressed and corrected.

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7. AUTHORITY OF THE PARTY TO THIS MITIGATION BANK CHARTER TO OPERATE AS A MITIGATION BANK

- A. Deschutes Irrigation, LLC is authorized to do business in the State of Oregon. The Articles of Incorporation for Deschutes Irrigation, LLC, amendments to the Articles and current filing status are attached as Exhibit A to this mitigation bank charter.
- B. Deschutes Irrigation, LLC is authorized by its parent company, Emmett Ranch, LLC and two additional CPA principals to operate as a mitigation bank. See page 4, Section B, under Authority in the attached mitigation bank charter application (Exhibit C).

8. CONTINGENCY AND INTERNAL MONITORING PLANS

- A. A contingency plan has been developed by the Deschutes Irrigation, LLC to address failure of the mitigation bank. The contingency plan is detailed in the attached mitigation bank charter application (Exhibit C) submitted by John Short.
- B. An internal monitoring plan has been developed by the Deschutes Irrigation, LLC to determine the level of success of the mitigation bank and to identify and correct any problems as they are discovered. The internal monitoring plan is detailed in the attached mitigation bank charter application (Exhibit C) submitted by the Deschutes Irrigation, LLC.

9. MITIGATION BANKCHARTER EFFECTIVE DATE, ANNUAL REVIEW, MODIFICATION, AND ASSIGNMENT

- A. This mitigation bank charter shall be effective following approval by the Water Resources Commission and upon the date of signature by the Director and the DI mitigation bank, and shall continue in effect, unless earlier terminated by written agreement of the mitigation bank operator and the Water Resources Department.
- B. Annual Review and Modification of Mitigation Bank Charter
 - i. The charter will be subject to annual review by the Water Resources Department.
 - ii. This charter may be modified to make needed changes and/or to address issues that are identified by the Deschutes Irrigation Mitigation Bank and/or by the Department.

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- iii. No modification or change of terms of this charter shall bind any party unless in writing and approved by the Water Resources Commission. The Water Resources Commission must approve modified mitigation bank charters. Such modification or change, if made, shall be effective only in the specific instance and for the specific purpose given.
- C. The operator of the mitigation bank may not assign or transfer any portion of its interest in this mitigation bank charter or enter into subcontracts for any of the services required by this charter without prior written consent of the Water Resources Department.
- i. If the operator of the mitigation bank decides to discontinue operation as a mitigation bank, the bank may assign all valid mitigation credits to another mitigation bank chartered by the Water Resources Commission. The mitigation bank may also assign all valid mitigation credits to another person. However, prior to assignment of mitigation credits, the operator of the chartered mitigation bank must consult with the Water Resources Department to develop a plan to facilitate the transition of mitigation credits and any continuing bank responsibilities.
 - a. The Department may limit or restrict the assignment of mitigation credits, dependent upon how and where the mitigation credits are to be assigned.
 - ii. The operator of the mitigation bank shall not withdraw from this charter or terminate operation of the mitigation bank without prior consultation with the Water Resources Department.

10. ENFORCEMENT, DEFAULT, REMEDY AND REVOCATION OF MITIGATION BANK CHARTER

A. Enforcement

- i. The failure of the Water Resources Department to enforce any provision of this mitigation bank charter shall not constitute a waiver by the Water Resources Department of that or any other provision of this charter.
 - ii. The Water Resources Department is the only party to this mitigation bank charter that is entitled to enforce its terms.
 - iii. The Department is neither party to nor in any way responsible for the contractual agreements between a mitigation bank and its customers.
- B. Default, Remedy and Revocation of Mitigation Bank Charter by Water Resources Commission

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- i. If the mitigation bank fails to meet any of the provisions in this charter, including intentionally holding and assigning mitigation credits that have already been used (outside the mitigation bank) or withdrawn from the mitigation bank to satisfy a mitigation obligation or transferred to another mitigation bank or person, the Water Resources Commission may revoke this charter. (*wording?*)

- ii. Prior to revocation of the charter for any reason by the Water Resources Commission, the Department shall work with the mitigation bank to explore all reasonable and equitable remedies, including the measures identified in the mitigation bank's contingency plan.

11. SIGNATURE AND APPROVAL DATE

Mitigation Bank:

Mitigation Bank Authorized Representative Signature

(date)

Approved by the Oregon Water Resources Commission on

(date)

Director, Oregon Water Resources Department

(date)

12. ATTACHMENT

- A. Exhibit A - Articles of Incorporation for the Deschutes Irrigation, LLC
- B. Exhibit B - Sellers agreement
- C. Exhibit C - Deschutes Irrigation, LLC Mitigation Bank Charter Application
- D. Exhibit D – Seller's and buyer's escrow Instructions