



January 24, 2006

Water Resources Department
Summer St.
Salem, Oregon 97301-4172
Attention: Kyle Gorman and Laura Snedaker
(via email)

Re: Deschutes Irrigation LLC, Mitigation Bank Application

Dear Mr. Gorman and Ms. Snedaker:

Thank you for the opportunity to comment on the proposed groundwater mitigation bank submitted by Deschutes Irrigation, LLC.

As the sole existing Groundwater Mitigation Bank approved to date by the Water Resources Commission the DRC suggests that the Oregon Water Resources Department refrain from moving this application forward for the following reasons:

- The proposal as structured provides no additional services to groundwater mitigation customers in the Basin; it merely proposes to establish a 'Bank' through which the same permanent mitigation transactions currently undertaken by Deschutes Irrigation will be routed as 'Bank' transactions. According to the OARs Banks are to 'facilitate transactions among holders of mitigation credits and persons interested in acquiring mitigation credits' (OAR 690-521-0500(1)).
- The proposed 'Bank' does not propose to 'facilitate transactions' (OAR 690-521-0500(1)) in mitigation credits according to the special role and function of Mitigation Banks in the Groundwater Mitigation Program – that is to establish credits based on time-limited transfers and leases (OAR 690-521-0300(3)).

As a result the proposed 'Bank' may create confusion in the marketplace as the two banks may be confused by credit buyers and sellers, as well as the general public and media – even though they have very different approaches, objectives and methods.

The DRC has worked with Deschutes Irrigation, LLC on a number of temporary and permanent mitigation projects, instream transfers and instream leases. In the DRC's view the difficulty

experienced by Deschutes Irrigation, LLC in marketing its permanent credits is not a result of its not being accorded the status of a 'Groundwater Mitigation Bank'. Rather it is a result of two factors. These are the price at which the credits are sold for use as permanent mitigation credits by Deschutes Irrigation and the Department's untested but verbally-expressed interpretation of the Groundwater Mitigation Rules to the effect that permanent credits cannot be 'banked' and marketed as temporary mitigation credits.

The DRC has discussed this option of banking permanent mitigation credits with Deschutes Irrigation and feel that the Department should formally address this request before moving forward with Deschutes Irrigation Groundwater Mitigation Bank application. Resolution of this issue may obviate the need for this Mitigation Bank application. In the Deschutes, the DRC and its partners are pursuing a cooperative and collaborative approach to stream flow restoration and groundwater mitigation. We ask for the Department's assistance in this endeavor.

We appreciate the opportunity to comment on the proposed rules and look forward to working with the Department in the future to implement them.

Sincerely yours,

Genevieve Hubert
Deschutes Water Exchange Groundwater Mitigation Bank Manager

Cc: Bruce Aylward
Danielle MacBain