



January 24, 2006

Laura Snedaker
Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Comments, Deschutes Irrigation LLC Mitigation Bank Charter Application

Dear Ms. Snedaker,

Thank you for the opportunity to comment on Deschutes Irrigation LLC's Mitigation Bank Charter application. As you know, WaterWatch was an active participant in the Deschutes Groundwater Workgroup and has a great interest in groundwater mitigation in the Deschutes River Basin. We have been working in the Deschutes Basin for well over a decade to ensure that groundwater pumping does not impact legally protected streamflows. With that background in mind, we offer the following brief comments.

Adequacy of Operational Plan: The WRD requires the applicant to describe its Operational Plan, including a description of how the organization is organized, how the organization operates, and the mission, goal and strategies of the organization (see Mitigation Bank Charter Application page 1, question A, page 2, question B). Deschutes Irrigation LLC submitted a very brief--less than half of a page--description to address the WRD's request for this information (see attachment A). These materials are inadequate to address to the WRD's inquiry. It is impossible to adequately review this application without an understanding of all of these components of the organization requested by WRD.

Accounting: The applicant has indicated that it will account for all transactions via a "spreadsheet". If the WRD does approve this charter, it should require strict accounting of all transactions. A simple spreadsheet will likely not be adequate. In discussions leading to the legislation allowing for mitigation banks, stakeholders in the basin made clear that such a bank would need to be very organized and professional in nature. In discussions in front of the Commission the WRD represented that all mitigation credits would be subject to strict accounting. We would expect such a requirement to extend to mitigation banks as well.

Contingency Plan: The applicant appears to think that it does not need to provide a contingency plan because it is only dealing in permanent transfers (see application, page 2, Contingency Plan). This position ignores situations where a permanent instream transfer might fail as mitigation in a certain year. For instance, if the Bank has brokered a permanent instream transfer of a water right that is somewhat junior in priority and it is a dry year, the water might not be physically available to be protected instream under the transfer and thus the mitigation obligation of the buyer would not be satisfied. In such a case the Bank would need to provide "back up" mitigation. If the Bank could not provide back up mitigation then per the conditions on the permit, the WRD would have to regulate off the water right holder. Again, because this applicant has not submitted a detailed Operation Plan it is impossible to discern what the organization's strategy is with regards to permanent transfers (i.e. how are they ensuring that the proposed mitigation water will in fact be of senior enough priority to meet the buyer's mitigation obligation in dry years and wet year alike, etc). If this application is approved, the WRD should require a detailed contingency plan that will adequately address how the applicant intends to meet the mitigation obligation of the buyer if a specific instream transfer will not be met in a given year.

Monitoring Plan: The applicant represents that because it will be working only with permanent transfers, that any monitoring is a simple supply and demand issue. We are unsure of what they mean by this. Again, as outlined above, permanent transfers instream do not necessarily ensure that the water will be there in a dry year. If the Bank cannot provide the water, the user risks being shut off. Thus, the Bank should have a detailed and responsive monitoring plan to ensure that all of its customers are in fact getting "wet" water in the amounts necessary to fulfill their mitigation obligation year after year after year.

Moreover, we are concerned with the applicant's statement that "If we end up being short credits for a particular zone of impact, we've found it convenient to simply trade with other credit holders". What do they mean by this? What credit holders? In the same zone? It was our understanding with permanent transfers a buyer would "buy" the permanent mitigation credit. Is this not what the applicant is proposing? Is the applicant proposing to sell the "permanent" mitigation on a year to year basis? Again, without a detailed Operational Plan it is impossible to understand how this organization will operate in compliance with the WRD rules.

Utility of a charter: As the applicant is only proposing to deal with permanent transfers, for which a mitigation bank charter is not required under the Oregon Administrative Rules, we are unsure why they are applying for mitigation charter. And we are unclear what utility a charter will provide. It seems to us that a charter may simply lead to market confusion in the Deschutes Basin.

Conclusion: This application is devoid of the critical details necessary to truly assess Deschutes Irrigation LLC's proposal. Without a clear understanding of the applicant's Operation Plan, mission, goals, strategies, contingency plan, monitoring plan, accounting, etc. the WRD should not approve this application.

Thank you for the opportunity to comment.

Sincerely,

A handwritten signature in blue ink, appearing to read "K. Priestley", is placed over a light blue rectangular background.

Kimberley Priestley

