

MEMORANDUM

TO: Water Resources Commission

FROM: Paul R. Cleary, Director

SUBJECT: Agenda Item G, February 14, 2003
Water Resources Commission Meeting

Request for Approval of a Mitigation Bank Charter for the Deschutes Water Exchange Pursuant to the Deschutes Mitigation Bank and Mitigation Credit Rules (OAR Chapter 690, Division 521)

I. Issue Statement

The Commission is asked to approve a mitigation bank charter for the Deschutes Water Exchange substantially in the form of the draft charter in Attachment 1. The Commission is also asked to delegate responsibility for drafting the final language of the charter and to delegate final signature authority to the Director.

II. Background

On September 13, 2002, the Commission adopted the Deschutes Basin Mitigation Bank and Mitigation Credit Rules in order to implement ORS 537.746 (House Bill 2184, 2001 Legislative Session). The purpose of mitigation banks in the Deschutes Basin is to facilitate transactions among holders of mitigation credits and persons interested in acquiring mitigation credits. Without mitigation, the Department is required by law to deny ground water permit applications in the Deschutes Ground Water Study Area.

Under the Commission's rules, anyone may apply for a mitigation bank charter. The mitigation bank charter may be approved or denied by the Commission following an opportunity for public comment. On December 20, 2002, the Deschutes Water Exchange submitted an application for a mitigation bank charter; an amended application was submitted on January 31, 2003 (Attachment 2). Notice of the application was made in the Department's weekly notice on December 24, 2002. The comment period closed on January 14, 2003; no comments were received.

III. Discussion

The Deschutes Water Exchange (DWE) is a subprogram of the Deschutes Resources Conservancy (DRC). The DRC is a private nonprofit corporation formed to improve quantity and quality of water in streams and rivers in the Deschutes Basin. The goals of the DWE mitigation bank are described in the attached draft mitigation bank charter and mitigation bank application.

The draft mitigation bank charter in Attachment 1 includes the following:

1. A description of the bank operation plan and goals.
2. A provision that the Deschutes Water Exchange will provide mitigation credits to anyone needing to satisfy a mitigation obligation in the Deschutes Basin Ground Water Study Area.
3. A provision that the Deschutes Water Exchange may develop and hold mitigation credits based upon permanent instream transfers, allocation of conserved water projects, time-limited transfers, instream leases, stored water releases, artificial ground water recharge projects, and other projects that result in mitigation water.
4. A provision that the Deschutes Water Exchange does not intend to place any limitations on the size of mitigation credit transactions that it will conduct as a mitigation bank.
5. Inclusion of appropriate limitations or restrictions on the transaction, replacement, tracking and accounting, and reporting of mitigation credits; specifically those generated by instream leases, time-limited transfers, artificial ground water recharge and stored water releases.
6. Inclusion, as required by rule, of requirements for the accounting and reporting of mitigation credits by zone of impact and by credit type, including a separate account for temporary credits (instream leases and time-limited transfers) and a reserve mitigation credit account for all temporary credits.
7. Statements indicating that the Deschutes Water Exchange has authority to operate as a mitigation bank.
8. Provisions to address issues associated with a possible bank failure.
9. Provisions to allow for modification of the charter, assignment of credits to another mitigation bank, and to address enforcement and termination of the Charter.

As described above, without mitigation, the Department is required by law to deny ground water permit applications in the Deschutes Ground Water Study Area. The formation of a mitigation bank will address water supply needs and allow continued economic development in the basin by providing ground water direct access to mitigation credits. As provided in the Commission's rules, the mitigation credit and banking program also protects scenic waterway flows and senior water rights.

The draft mitigation bank charter contains provisions that allow the Department and the mitigation bank entity to modify the charter to adapt as the mitigation program evolves. After some experience with the program, changes could be made with Commission approval to modify mitigation bank operation requirements if necessary or to address any bank-related water management issues.

The draft mitigation bank charter in Attachment 1 meets the requirements of ORS 537.746 and the Commission's rules under OAR Chapter 690, Division 521.

IV. Alternatives

The Commission may consider the following alternative actions:

1. Approve the mitigation bank charter for the Deschutes Water Exchange substantially in the form of the draft charter in Attachment 1 and delegate responsibility for finalizing the language of the charter to the Director, as well as final signature authority.
2. Approve the draft mitigation bank charter in Attachment 1 with revisions and delegate finalizing the language of the charter to the Director, as well as final signature authority.
3. Not approve the proposed mitigation bank charter and request further evaluation by the Department.

V. Director's Recommendation

The Director recommends Alternative 1, that the Commission approve the proposed mitigation bank charter for the Deschutes Water Exchange substantially in the form of the draft charter in Attachment 1 and delegate responsibility to the Director for finalizing the language in the charter, as well as final signature authority.

Attachments:

1. Draft Mitigation Bank Charter for Deschutes Water Exchange
2. Mitigation Bank Charter Application for Deschutes Water Exchange

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January 28, 2003

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