

**BEFORE THE WATER RESOURCES DEPARTMENT  
OF THE  
STATE OF OREGON**

In the Matter of Transfer Application	)	ORDER APPROVING A TRANSFER,
T-9294 for a change in character of use and	)	PARTIAL CANCELLATION, AND
place of use, partial cancellation of a water	)	AWARD OF MITIGATION CREDITS
right, and Preliminary and Final Award of	)	
Mitigation Credits -- Deschutes County,	)	
Oregon	)	

**AUTHORITY**

ORS 540.505 to 540.580 and ORS 537.348 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the Commission shall enter an order canceling the water right."

OAR 690-521-0100 to 690-521-0600 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of establishing mitigation credits in the Deschutes Ground Water Study Area.

Pursuant to OAR 690-521-0400 (2), any mitigation credits awarded to a mitigation project are valid until used to fulfill a mitigation obligation of a ground water use in the Deschutes Ground Water Study Area. Valid mitigation credits may be assigned by any person or recognized mitigation bank to any person or other mitigation bank. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2).

Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-008, you may either petition for judicial review or petition the Director for reconsideration of this order.

## FINDINGS OF FACT

### Instream Transfer

1. Mount Bachelor Village Corporation filed an application to transfer the place of use and character of use under Certificate 50360. Mount Bachelor Village Corporation is the owner of the lands or authorized agent for the applicant.
2. The transfer application was received December 13, 2002 and included the required fees. The Department assigned the transfer application number T-9294.
3. Certificate 50360 allows the use of the Deschutes River, tributary to the Columbia River for irrigation of 14.05 acres. The maximum amount of water to which the right is entitled is 0.35 cubic foot per second (cfs) of continuous flow and 148.6 acre-feet (ac-ft) per season. The date of priority of the right is October 10, 1903. The authorized point of diversion is in the SW¼ SE¼, Section 6, T 18 S, R 12 E, W.M.; 980 feet north and 940 feet east of the S¼ corner of Section 6. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres
18	S	12	E	W.M.	6	SESW	5.82
18	S	12	E	W.M.	6	SWSE	0.3
18	S	12	E	W.M.	7	NENW	7.11
18	S	12	E	W.M.	7	SENW	0.82

4. Application T-9294 involves changing the character of use and place of use to instream use for fisheries enhancement in the Deschutes River. The reach is from SW¼ SE¼, Section 6, T 18 S, R 12 E, W.M.; 980 feet north and 940 feet east of the S¼ corner of Section 6 to Lake Billy Chinook.
5. The applicant proposes to replace a portion of the instream water right from the Deschutes River, evidenced by Certificate 59777, during the irrigation season from April 1 to November 1 of each year.
6. Notice of this application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
7. Water has been used under the right within the last five years and no evidence has been submitted that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change will not result in enlargement of the right.

10. The proposed change will not result in injury to other water rights.
11. The amount of the proposed instream flow and the timing of the proposed instream flow is allowable within the limits and use of the original water right.
12. The proposed reaches are appropriate, considering;
  - a. The instream water right begins at the recorded point of diversion;
  - b. The location of confluences with other streams downstream of the point of diversion; and,
  - c. There are no known areas of natural loss of streamflow to the river bed.
  - d. Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the instream water right reach.
13. By replacing a portion of Certificate 59777, the instream right will provide additional protection for streamflows previously identified as necessary to support aquatic life and minimize pollution.

**Preliminary Award of Deschutes Basin Mitigation Credits**

14. Mt. Bachelor Village Corporation has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area.
15. The Department assigned this mitigation credit project number MP-1.
16. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). Comments were received from WaterWatch of Oregon.
17. The Department consulted with representatives from Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, Oregon State Parks and Recreation Department, Oregon Division of State Lands, the Oregon Department of Agriculture, and the Department's Watermaster pursuant to OAR 690-521-0300 (7) and OAR 690-505-0630 (2).
18. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
19. This mitigation project will provide 22.9 acre-feet of mitigation water. Therefore, **22.9** mitigation credits may be awarded to this mitigation credit project and assigned to Mt. Bachelor Village Corporation. The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, providing mitigation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the **Middle Deschutes and General zones of impact**.

20. The Department shall award final mitigation credits upon completion of the approved project by the applicant and verification by the Department that the project is complete. The issuance of the certificate for the proposed instream water right shall result in completion of the project and verification that the project is complete.

**Partial Cancellation of Certificate 50360**

21. An affidavit was received from Mount Bachelor Village, owners of certain lands and the appurtenant water right, certifying that a portion of the water right has been abandoned and requesting cancellation of that portion of the water right.

22. The portion that has been abandoned is described by Certificate 50360, State Record of Water Right Certificates. The date of priority is October 10, 1903. The water use was for irrigation of 6.85 acres from the Deschutes River, a tributary of the Columbia River. The amount of water used was 0.17 cubic foot per second.

23. The abandoned portion of the water right is located as follows:

Township		Range		Meridian	Section	QQ	Acres
18	S	12	E	W.M.	6	SESW	0.38
18	S	12	E	W.M.	7	NENW	5.59
18	S	12	E	W.M.	7	SENW	0.88

**CONCLUSIONS OF LAW**

The proposed changes in character of use and place of use in application T-9294 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075 and are approved.

This mitigation project results in mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300 and 690-521-0400.


**ORDER**

It is hereby ORDERED:

1. The proposed change shall effective upon issuance of this order.
2. This instream water right shall replace a portion of the existing instream water right from the Deschutes River, evidenced by Certificate 59777, during the irrigation season from April 1 to November 1 of each year.
3. The former place of use shall no longer be irrigated as a part of this water right.

4. An instream flow of 0.35 cubic foot per second will be maintained during the period from April 1 to November 1 of each year in the Deschutes River, a tributary of the Columbia River from the authorized point of diversion, SW¼ SE¼, Section 6, T 18 S, R 12 E, W.M.; 980 feet north and 940 feet east of the S¼ corner of Section 6, to Lake Billy Chinook. The priority date is October 10, 1903.
5. The abandoned portion of the water right evidenced by Certificate 50360 requested to be canceled is hereby canceled.
6. Certificate 50360 is canceled. A new certificate confirming this water right will be issued.
7. **Final Award of Deschutes Basin Mitigation Credits:** Issuance of the attached instream water right certificate results in completion of the project and verification by the Department that the project is complete. Therefore, mitigation Credits, in the amount of 22.9 credits, described herein are awarded to this mitigation project and assigned to Mt. Bachelor Village Corporation. Mitigation Credits may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the Middle Deschutes Zone of Impact and/or General Zone of Impact.
8. Mitigation credits are valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules. Mitigation credits are used when a person submits to the Department documentary evidence that valid credits have been obtained and assigned to satisfy a mitigation obligation.

Dated at Salem, Oregon this 8<sup>th</sup> day of August, 2003.

  
Paul R. Cleary  
Director

*Requests for reconsideration should be addressed to the attention of: Juno Trump, Enforcement Manager*

*Requests for reconsideration deadline: October 7, 2003*