

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

In the Matter of Transfer Application	)	SUPERSEDING ORDER APPROVING
T-9360 for a change in character of use and	)	A TRANSFER, PARTIAL
place of use, partial cancellation of a water	)	CANCELLATION, AND AWARD OF
right, and Preliminary and Final Award of	)	MITIGATION CREDITS
Mitigation Credits -- Deschutes County,	)	
Oregon	)	

A Final Order approving transfer T-9360 was issued by the Department on January 27, 2004. Shortly following issuance of the Final Order, the Department identified that the description of the lands to be transferred to instream use and the description of the lands under the supplemental water right to be cancelled were inaccurately described. This Final order is issued to correctly describe the lands involved.

**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.

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.

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.

## FINDINGS OF FACT

### *Instream Transfer*

1. James Cowan filed an application to transfer a portion of the place of use and character of use under Certificates 74525 and 74524. James Cowan is the owner of the lands. Martha O. Pagel, attorney at law, is the authorized agent to act on the behalf of the land owner.
2. The transfer application was received February 27, 2003 and included the required fees. The Department assigned the transfer application number T-9360.
3. On January 15, 2004, the Department received a request to cancel a portion of certificate 74524, which is supplemental to certificate 74525.
4. The portion of Certificate 74525 to be transferred allows the use of the Snow Creek and Three Creeks, tributaries of Squaw Creek for Irrigation of 60.6 acres. The maximum amount of water to which the right is entitled is 0.757 cubic foot per second (cfs) of continuous flow and 151.5 acre-feet (ac-ft) per season. The date of priority of the right is 1886 and 1891. The authorized point of diversion is the Three Creek Ditch in the SE 1/4 NE 1/4, Section 17, Township 16 South, Range 10 East, W.M. The authorized place of use is as follows:

Township		Range		Meridian	Section	QQ	Acres	Priority Date
16	S	10	E	W.M.	2	NE SE	30.9	1886
16	S	10	E	W.M.	2	SE SE	17.9	1886
16	S	10	E	W.M.	2	SE NE	3.3	1891
16	S	10	E	W.M.	2	NE SE	8.5	1891

5. The applicant originally identified the rate of the water right to be transferred as 1.21 cfs, being 1/50<sup>th</sup> of a cfs for each acre. However, the Snow Creek/Three Creek Decree, under which this certificate was issued, allows a maximum of 1/80<sup>th</sup> of a cfs for each acre irrigated, being 0.757 cfs for irrigation of 60.6 acres.
6. Application T-9360 involves changing the character of use and place of use to instream use in Snow Creek and Three Creek. The reach is from the point of diversion to Snow Creek Ditch located in the NE 1/4 SW 1/4, Section 9, Township 17 South, Range 9 East, W.M.

7. 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.
8. 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.
9. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. The Watermaster indicated that water has not been diverted from Snow Creek. In addition, the Snow Creek ditch has not been maintained. Therefore, water may only be protected in Three Creek.
11. The portion of the right to be transferred will provide an instream flow of 0.757 cubic foot per second to be maintained during the period from May 1 through August 8 of each year in Three Creek, a tributary of Squaw Creek from the authorized point of diversion, Three Creek Ditch, in the SE 1/4 NE 1/4, Section 17, Township 16 South, Range 10 East, W.M, to Snow Creek Ditch located in the NE 1/4 SW 1/4, Section 9, Township 17 South, Range 9 East, W.M. The priority date is 1886 for 0.61 cfs and 1891 for 0.147 cfs.
12. The proposed change will not result in enlargement of the right.
13. The proposed change will not result in injury to other water rights.
14. 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.
15. 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.
16. There is not an existing instream water right in the proposed reach and, as a result the transfer will provide needed protection for aquatic species in the stream.

**Preliminary Award of Deschutes Basin Mitigation Credits**

17. James Cowan has requested this instream transfer application be used to establish mitigation credits in the Deschutes Ground Water Study Area.

18. The Department assigned this mitigation credit project number MP-3.
19. The Department provided notice of the mitigation credit project pursuant to OAR 690-521-0300 (6). No comments were received.
20. 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).
21. No changes were made to the instream transfer as a result of comments received or consultation with the above named agencies.
22. When the Department originally published notice of this mitigation project, it was identified that the project may generate 102.4 mitigation credits. However, based upon additional evaluation, the Department has determined that this mitigation project will provide 109.1 acre-feet of mitigation water. Therefore, **109.1** mitigation credits may be awarded to this mitigation credit project and assigned to James Cowan. 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 **General Zone of Impact**.
23. 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 74524**

24. An affidavit was received from James Cowan, owner 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.
25. The portion that has been abandoned is described by Certificate 74524, State Record of Water Right Certificates. The water use was for supplemental irrigation of 60.6 acres from the Three Creek, Snow Creek and water stored in Big Three Creek Reservoir under permit R-701, tributaries of Squaw Creek. The date of priority is March 8, 1923 for Three Creek and Snow Creek and September 12, 1936 for Big Three Creek Reservoir. The amount of water used was 0.757 cubic foot per second.

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

Township		Range		Meridian	Section	QQ	Acres
16	S	10	E	W.M.	2	SE NE	3.3
16	S	10	E	W.M.	2	NE SE	39.4
16	S	10	E	W.M.	2	SE SE	17.9

### **CONCLUSIONS OF LAW**

The proposed changes in character of use and place of use in application T-9360 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. Transfer Special Order Volume 59, Page 63, is superseded by this order. This superseding Final Order is issued to correctly describe the lands involved in the transfer and the cancellation of the supplemental water right.
2. The proposed change shall effective upon issuance of this order.
3. The former place of use shall no longer be irrigated as a part of this water right.
4. Certificate 74525 is canceled. A new certificate confirming the portion of the right NOT modified by this transfer will be issued.
5. A new instream water right certificate has been issued to replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right shall provide for an instream flow of 0.757 cubic foot per second will be maintained during the period from May 1 through August 8 of each year in Three Creek, a tributary of Squaw Creek from the authorized point of diversion, Three Creek Ditch, in the SE 1/4 NE 1/4, Section 17, Township 16 South, Range 10 East, W.M, to Snow Creek Ditch located in the NE 1/4 SW 1/4, Section 9, Township 17 South, Range 9 East, W.M. The priority date is 1886 for 0.61 cfs and 1891 for 0.147 cfs.
6. The abandoned portion of the water right evidenced by Certificate 74524 requested to be canceled is hereby canceled and a new certificate will be issued confirming that portion of the right NOT involved in the cancellation.

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 109.1 credits, described herein are awarded to this mitigation project and assigned to James Cowan. 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 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 2<sup>nd</sup> day of February, 2004.

  
For Paul R. Cleary  
Director

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

*Requests for reconsideration deadline: April 2, 2004*