

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

In the Matter of Instream Transfer)
Application T-9339 (Mitigation Project) FINAL ORDER
MP-2), Deschutes County, Oregon)

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.

OAR 690-505-0500 to 690-505-0630 establishes the process in which anyone may submit a ground water mitigation project to the Department for the purpose of providing mitigation for a ground water permit application in the Deschutes Ground Water Study Area.

Applicant

James and Judith Knapp
P.O. Box 1270
Sisters, OR 97759

Oregon Water Trust
522 SW 5th, Suite 825
Portland, OR 97204

Findings of Fact

1. James and Judith Knapp and the Oregon Water Trust filed an application to transfer the place of use and the character of use under Certificates 79703, 79702, and 79704 to instream use. Brad Nye, Deschutes Basin Land Trust, is the authorized agent to act on the behalf of the landowner. The Department assigned the application number T-9339.
2. The applicants have requested that this transfer be used to establish mitigation water for ground water permit application G-15861, filed by James and Judith Knapp. The Department assigned this mitigation project number MP-2. Proposed findings and conclusions with regard to the use of this transfer for mitigation purposes were made in a Proposed Final Order issued for Groundwater Permit Application G-15861 on January 27, 2004.

This is a final order in other than 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 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. The rights to be transferred are as follows:

Certificate: 79702 in the name of James and Judith Knapp
Use: Irrigation
Acres: 20.0 acres
Priority Date: 1882
Season of Use: Unspecified
Quantity: 0.4 cubic foot per second (cfs) (if available at the original point of diversion, Conrad Ditch out of Big Slough [aka Indian Ford Creek])
Source: Big Slough (aka Indian Ford Creek), tributary to Squaw Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	9	E	W.M.	13	SE	NW	2350 feet South and 2150 Feet East from the NW Corner, Section 13

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Lot	Acres		
14	S	10	E	W.M.	21	SW SE	2000	9.7
14	S	10	E	W.M.	21	SE SE	2000	6.3
14	S	10	E	W.M.	28	NW NE	2000	4.0

Certificate: 79703 in the name of James and Judith Knapp
Use: Irrigation
Priority Date: 1905
Season of Use: Unspecified
Quantity: 0.37 cfs (if available at the original point of diversion described as the Oliver Ditch located within the SW ¼ SW ¼, Section 16, Township 14 South, Range 10 East W.M.; 25 feet North and 790 feet East from the SW Corner of Section 16)
Acres: 18.4 acres
Source: Big Slough (aka Indian Ford Creek), tributary to Squaw Creek

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Location
14	S	9	E	W.M.	13	SE	NW	2350 feet South and 2150 Feet East from the NW Corner, Section 13

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Lot	Acres
14	S	10	E	W.M.	21	SW	NE	101	7.2
14	S	10	E	W.M.	21	SE	SE	1100	6.1
14	S	10	E	W.M.	28	NE	NE	2000 1100	3.3
14	S	10	E	W.M.	28	NW	NE	2000	0.4
14	S	10	E	W.M.	28	SE	NE	2000	1.4

Certificate: 79704 in the name of James and Judith Knapp

Use: Irrigation

Priority Date: 1871 and 1903

Season of Use: Unspecified

Quantity: 0.91 cfs with a priority date of 1871 (if available at the original point of diversion, CJ Hindman Ditches out of Big Slough [aka Indian Ford Creek])
0.41 cfs with a priority date of 1903 (if available at the original point of diversion, Ditches out of Big Slough [aka Indian Ford Creek])

Acres: 45.5 acres with a priority date of 1871
20.5 acres with a priority date of 1903

Source: Big Slough (aka Indian Ford Creek), tributary to Squaw Creek

Authorized Point of Diversion (POD):

Township		Range		Meridian	Sec	¼ ¼		Location	
14	S	9	E	W.M.	13	SE	NW	2350 feet South and 2150 Feet East from the NW Corner, Section 13	

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Lot	Priority Date	Acres
14	S	10	E	W.M.	21	NW	SE	2101 2105 2000	1871	30.8
14	S	10	E	W.M.	21	SW	SE	2000	1871	14.7
14	S	10	E	W.M.	21	NE	SE	2000	1903	1.2
14	S	10	E	W.M.	21	SE	SE	2000	1903	1.0
14	S	10	E	W.M.	28	NE	NE	2000	1903	18.3

4. An irrigation season is not specified by the above described certificates nor is one specified by decree, basin program, or order. When an irrigation season is unspecified, the Department recognizes that water for irrigation use may be exercised from March 1 through October 31 pursuant to OAR 690-250-070 (1).
5. Application T-9339 proposes to change the character of use to Instream Use for aquatic and fish life enhancement. Application T-9339 also proposes to establish mitigation water for ground water permit application G-15861.
6. Application T-9339 originally proposed to change the place of use of each of the rights to create an instream reach from:

The authorized POD (SE 1/4 NW 1/4, Section 13, T14S, R9E, W.M.; 2350 feet South and 2150 Feet East from the NW Corner, Section 13) on Indian Ford Creek to the mouth of Indian Ford Creek.

7. Indian Ford Creek is subject to significant flow losses below the point of diversion. In order to avoid injury to existing water right holders from the creation of a new instream water right(s), the Department determined that water may be protected from:

The authorized POD (SE 1/4 NW 1/4, Section 13, T14S, R9E, W.M.; 2350 feet South and 2150 Feet East from the NW Corner, Section 13) on Indian Ford Creek to the NW 1/4 SE 1/4, Section 21, Township 14 South, Range 10 East.

The end point for the reach represents the location of the next water right downstream from the subject water rights on Indian Ford Creek.

8. The applicant has consented to amendment of the application to reduce the extent of the reach in which water will be protected.
9. The Department has also determined that the following conditions with regard to regulation are necessary in order to protect other existing water rights:

The amount to which a new instream water right(s) resulting from this transfer is entitled to is limited to the amounts actually beneficially used and will be based on flow available at the original points of diversion (see finding #11 below describing the original points of diversion). Within the specified stream reach, the amount of water to which a new instream water right(s) is entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original points of diversion within the specified stream reach.

10. The applicant proposes to replace a portion of the instream water right from Indian Ford Creek, evidenced by certificate 73229, during the period June 10 through October 21 of each year.
11. The rights to be transferred will provide an instream flow as follows, as proposed by the applicants:

Certificate	Priority Date	Rate Instream	Volume Instream
79702	1882	0.2 cfs June 10 - June 30 0.4 cfs July 1 - September 30 0.2 cfs October 1 - October 21 (if available at the original POD, Conrad Ditch out of Big Slough [aka Indian Ford Creek])	90.2 AF
79703	1905	0.185 cfs June 10 - June 30 0.37 cfs July 1 - September 30 0.185 cfs October 1 - October 21 (if available at the original POD described as the Oliver Ditch located within the SW 1/4 SW 1/4, Section 16, Township 14 South, Range 10 East W.M.; 25 feet North and 790 feet East from the SW Corner of Section 16)	82.8 AF
79704	1871 1903	0.455 cfs June 10 - June 30 0.91 cfs July 1 September 30 0.455 cfs October 1 - October 21 (if available at the original POD, CJ Hindman Ditches out of Big Slough [aka Indian Ford Creek]) 0.205 cfs June 10 - June 30 0.41 cfs July 1 - September 30 0.205 cfs October 1 - October 21 (if available at the original POD, Ditches out of Big Slough [aka Indian Ford Creek])	297.0 AF

12. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notices.
13. Water has been used within the last five years according to the terms and conditions of the right and no evidence has been submitted which claims that the right is subject to forfeiture under ORS 540.610.
14. A diversion structure, ditch, pump, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.

15. The proposed change, as modified to protect flows instream, would not result in enlargement of the water rights.
16. The proposed change, as modified to protect instream flows at and below the current authorized point of diversion, would not result in injury to other water rights.
17. 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 rights.
18. The protection of flows within the modified reach is appropriate, considering;
 - a. The instream water rights begin at the recorded point of diversion;
 - b. The location of confluences with other streams downstream of the point of diversion;
 - c. There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d. Any measurable return flows resulting from the exercise of the existing water rights, subject to transfer, would re-enter the river downstream of the reach of the instream water right.
19. By replacing a portion of Certificate 73229, the instream right will provide additional protection for streamflows previously identified as necessary to support aquatic and fish life.
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) on March 3, 2004.
21. No changes were made to the instream transfer as a result of consultation with the above named agencies.
22. The proposed instream transfer, if approved as proposed and as modified, will result in 172.5 AF of mitigation water. OAR 690-505-0605 (13)
23. Mitigation water generated from this instream transfer may be used to satisfy a ground water permit application mitigation obligation within the Squaw Creek Zone of Impact.
24. This instream transfer is intended to provide mitigation for ground water permit application G-15861. This transfer if approved as proposed and modified, will establish the mitigation required for ground water permit application G-15861.

25. The amount of mitigation water described is a portion of the total volume to be transferred instream, being 470.0 AF. The remaining balance of water transferred instream, and not used for mitigation, will benefit instream flows for aquatic and fish species.

Conclusions of Law

The proposed changes in place of use and character of use in application T-9339 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

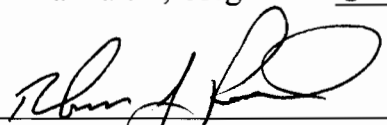
1. The change in place of use and character of use proposed in application T-9339 is approved.
2. The proposed change shall be effective upon issuance of this Final Order.
3. Certificates 79702, 79703, and 79704 are cancelled and three new instream water rights are issued.
4. The instream rights created by this transfer replace a portion of the existing instream water right from Indian Ford Creek, evidenced by Certificate 73229, during the period June 10 through October 31 of each year.
5. No further application of water and water rights for irrigation or any other purpose shall be made under Certificates 79702, 79703, and 79704.
6. The instream flows to be maintained in Indian Ford Creek, tributary to Squaw Creek under the instream rights, are as follows:

Certificate	Priority Date	Rate Instream	Volume Instream
79702	1882	0.2 cfs June 10 - June 30 0.4 cfs July 1 - September 30 0.2 cfs October 1 - October 21 (if available at the original POD, Conrad Ditch out of Big Slough [aka Indian Ford Creek])	90.2 AF
79703	1905	0.185 cfs June 10 - June 30 0.37 cfs July 1 - September 30 0.185 cfs October 1 - October 21 (if available at the original POD described as the Oliver Ditch located within the SW 1/4 SW 1/4, Section 16, Township 14 South, Range 10 East W.M.; 25 feet North and 790 feet East from the SW Corner of Section 16)	82.8 AF

Certificate	Priority Date	Rate Instream	Volume Instream
79704	1871	0.455 cfs June 10 - June 30 0.91 cfs July 1 September 30 0.455 cfs October 1 - October 21 (if available at the original POD, CJ Hindman Ditches out of Big Slough [aka Indian Ford Creek])	297.0 AF
	1903	0.205 cfs June 10 - June 30 0.41 cfs July 1 - September 30 0.205 cfs October 1 - October 21 (if available at the original POD, Ditches out of Big Slough [aka Indian Ford Creek])	

7. A description of the river reach to which these rights are appurtenant is as follows: From the SE 1/4 NW 1/4, Section 13, Township 14 South, Range 9 East, W.M.; 2350 feet South and 2150 Feet East from the NW Corner, Section 13, on Indian Ford Creek downstream to the NW 1/4 SE 1/4, Section 21, Township 14 South, Range 10 East.
8. The amount of water to which the new instream water rights are entitled to is limited to the amounts actually beneficially used and will be based on flow available at the original points of diversion. Within the specified stream reach, the amount of water to which the new instream water rights are entitled shall not exceed the quantity of water legally available at the original points of diversion. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which these rights are entitled downstream from the original points of diversion within the specified stream reach.
9. Each instream certificate created from this transfer shall be identified as a mitigation project/source for a ground water permit, issued as a result of approval of application G-15861, and any subsequent certificate(s). Within each instream certificate, the volume of mitigation water dedicated instream, the zone of impact in which the mitigation water has been generated and may be used, and the volume of water dedicated instream solely for aquatic and fish life enhancement shall also be specified.

Dated at Salem, Oregon this 31st day of January 2005.


 For Phillip C. Ward
 Director

Mailing Date: FEB 02 2005