BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

Order of Certification in the Matter of)	
Cancellation of Transfer Application)	FINAL ORDER
T-8805)	

Findings of Fact

- 1. Transfer application T-8805, in the name of James A Smejkal, was received May 15, 2001. Transfer Final Order T-8805 was approved on August 9, 2004.
- 2. Transfer Final Order T-8805 approved the change in type of use, place of use, and point of diversion. The complete application of water (C-Date) was set for October 1, 2005, and was extended to October 1, 2006.
- 3. The Department received a Claim of Beneficial Use (Claim) map and report on September 28, 2006.
- 4. The Transfer Final Order contained the below listed condition that was not complied with:
 - Prior to diverting water at the new point of diversion, the water user **shall** install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted.
- 5. In reviewing the Claim Report, it was found that an in-line flow meter or other suitable device was not installed.
- 6. The permit holder did not install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted within the period of time from when the Transfer Final Order was issued (August 9, 2005) to the C-Date (October 1, 2006).

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.482. Pursuant to ORS 183.482, ORS 536.075 and OAR 137-003-0675, you may either petition for judicial review and may 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.

7. Under the provisions ORS 537.250, after the Water Resources department has received request for issuance of a water right certificate accompanied by the survey required under ORS 537.230(4) that shows, to the satisfaction of the Department, that an appropriation has been perfected in accordance with the provisions of the Water Rights Act, the Department shall issue to the applicant a certificate of the same character as that described in ORS 539.140.

Conclusions of Law

The permit holder demonstrated to the satisfaction of the Department that no beneficial use was accomplished under the permit. The use allowed by Transfer T-8805 is lost.

Now, therefore, it is ORDERED:

Transfer Final Order T-8805 is cancelled and is of no further force or effect.

Dwight French

Water Right Services Division Administrator, for

Thomas M. Byler, Director

Oregon Water Resources Department