



Oregon

Kate Brown, Governor

June 4, 2020

Water Resources Department

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Salem, OR 97301

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www.Oregon.gov/OWRD

SHANDA ASSET MANAGEMENT, LLC
56880 VENTURE LANE SUITE 203N
SUNRIVER, OREGON 97707

RE: Award and Assignment of Mitigation Credits in the Deschutes River Basin and
Information about Mitigation Credits

On JUN 04 2020, pursuant to OAR Chapter 690, Division 521 and Division 522, the Department awarded 510.3 mitigation credits to Mitigation Project MP-120 (Instream Transfer T-10623) and assigned the mitigation credits to Ground Water Application G-16905 (Ground Water Permit G-18357) in the name of Shanda Asset Management, LLC.

As identified in the Final Order (Special Order Volume 116, Page 848), these mitigation credits may be used to satisfy the mitigation obligation of a groundwater use found to impact surface water flows in the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact pursuant to the Deschutes Ground Water Mitigation rules. Ground Water Application G-16905 (Ground Water Permit G-18357) has a mitigation obligation in the Little Deschutes Zone of Impact.

A ground water user wanting to demonstrate that mitigation credits are being used to satisfy a mitigation obligation needs to submit documentary evidence to the Department showing that mitigation credits have been obtained and assigned to them. Please see the attached documentary evidence form showing the credits have been assigned to Shanda Asset Management, LLC and the Ground Water Application G-16905 (Ground Water Permit G-18357).

If Shanda Asset Management, LLC decides to assign the mitigation credits to someone other than a ground water user (if the assigned credits are not otherwise being used), the Department would like to suggest that the attached Assignment of Mitigation Credits forms be used to assign credits. These assignment forms will help establish a chain-of-custody for the ownership of the mitigation credits. Please provide a copy of the assignment record and a blank assignment form to any new credit holders so that they may continue the mitigation credit assignment record as well.

Once the mitigation credits are assigned to a ground water user, the ground water user will need to submit documentary evidence that valid mitigation credits have been obtained to satisfy their mitigation obligation. If credits have changed hands beyond the original credit holder, the Department will ask the ground water user to demonstrate that the credits they are intending to



use are indeed valid. A complete assignment record will help demonstrate the validity of the credits being used.

If you have any questions about mitigation credits, the enclosed forms or other issues, please give me a call at (503) 986-0884 or contact me at Sarah.A.Henderson@oregon.gov.

Sincerely,



Sarah Henderson
Flow Restoration Program Coordinator

cc Jeremy Giffin, District 11 Watermaster
 Files (T-10623, MP-120, App G-16905)
 Josh Newton, Esq., Karnopp Petersen LLC (JN@karnopp.com)

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

In the Matter of Instream Transfer)	FINAL ORDER CHANGING MITIGATION
Application T-10623, AND MITIGATION)	WATER TO MITIGATION CREDIT AND
PROJECT MP-120, Deschutes and Klamath)	AWARD OF MITIGATION CREDITS
Counties)	

Authority

Oregon Revised Statute (ORS) ORS 537.746 authorizes the Department to award mitigation credits in the Deschutes Basin to approved mitigation projects. Mitigation credits may be used in the Deschutes Basin, specifically the Deschutes Ground Water Study Area, to mitigate for the impacts of ground water use on surface water flows.

Oregon Administrative Rule (OAR) 690-521-0400(2) implements the statutes and establishes that 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.

OAR 690-522-0060 establishes the process for any person to submit a written request to change mitigation water generated by a mitigation project into mitigation credits, provided the request is submitted to the Department no later than December 31, 2021.

Applicant(s)

SHANDA ASSET MANAGEMENT, LLC
56880 VENTURE LANE SUITE 203N
SUNRIVER, OREGON 97707

Findings of Fact

Background

1. On May 27, 2020, SHANDA ASSET MANAGEMENT, LLC submitted a written request to change the mitigation water generated by the previously approved mitigation project number MP-120 (Instream Transfer T-10623) into mitigation credits.

This is a final 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 137-004-0080, you may 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.

2. On January 15, 2010, the Department issued an Order approving Instream Transfer T-10623, mitigation project number MP-120. The Order was recorded at Special Order Volume 80, Pages 67-77.
3. The Order described above approved the transfer of 283.5 acres of irrigation to instream use and generated 510.3 acre-feet of Mitigation Water in the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact. The Mitigation Water was used to satisfy a portion of the mitigation obligation for Ground Water Application G-16905.
4. Instream water right certificate 86020, created pursuant to the Order approving Instream Transfer T-10623, is identified as a mitigation project/source for Ground Water Application G-16905.
5. On August 31, 2015, the Department issued Ground Water Permit G-17477 (Ground Water Application G-16905).
6. On June 3, 2020, the Department issued Ground Water Permit G-18357, which superseded Ground Water Permit G-17477.

Change of Mitigation Water to Mitigation Credits (pursuant to OAR 690-522-0060) and Award of Deschutes Basin Mitigation Credits

7. The written request described in Finding of Fact #1 above meets all requirements of OAR 690-522-0060(2) and (3), as follows:
 - a) SHANDA ASSET MANAGEMENT, LLC submitted the written request on May 27, 2020, being prior to December 31, 2021;
 - b) The written request identified the previously approved mitigation project number MP-120 (Instream Transfer T-10623) under which the mitigation water was generated and established to satisfy a portion of the mitigation obligation for Ground Water Permit G-18357 (Ground Water Application G-16905);
 - c) SHANDA ASSET MANAGEMENT, LLC is the permit holder of record of Ground Water Permit G-18357 (Ground Water Application G-16905); and
 - d) The written request included all other information requested by the Department.
8. Based upon Finding of Fact #7, the Department may issue an Order to approve the change of mitigation water generated by the previously approved mitigation project number MP-120 into mitigation credits, consistent with the Order approving the mitigation project.
9. To be consistent with the Order approving the previously approved mitigation project, the award of mitigation credits through approval of this Order will be as follows:

- a) The mitigation credits may be used to mitigate for ground water permit applications and existing conditioned ground water permits and certificates, to satisfy a mitigation obligation pursuant to the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505, within the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact; and
- b) Mitigation credits in the amount of 510.3 credits will be awarded to mitigation project number MP-120 (Instream Transfer T-10623) in the name of SHANDA ASSET MANAGEMENT, LLC and assigned to Ground Water Permit G-18357 (Ground Water Application G-16905).

Conclusion of Law

The proposed change of mitigation water to mitigation credits is consistent with the requirements of OAR 690-522-0060.

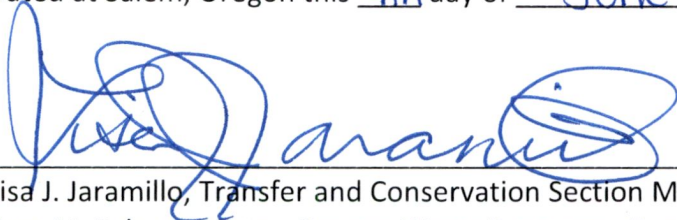
This previously approved mitigation project number MP-120 (Instream Transfer T-10623) will be awarded mitigation credits pursuant to ORS 537.746 and OAR 690-521-0300, 690-521-0400, and 690-522-0060.

Now, therefore, it is ORDERED:

1. The change of mitigation water to mitigation credits is approved.
2. Instream Water Right Certificate 86020 will be cancelled. A new instream certificate shall be issued to describe completion of mitigation project number MP-120 (Instream Transfer T-10623) and the result of this Order changing mitigation water to mitigation credits pursuant to OAR 690-522-0060 and awarding Deschutes Basin mitigation credits.
3. **Award of Mitigation Credits:** Final Award of Mitigation Credits are approved. Mitigation credits in the amount of **510.3 credits**, as described herein, are awarded to mitigation project number MP-120 (Instream Transfer T-10623) in the name of SHANDA ASSET MANAGEMENT, LLC and assigned to Ground Water Permit G-18357 (Ground Water Application G-16905).
4. Mitigation credits awarded may be used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder in the **Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact**.
5. 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 Basin 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.

6. The instream certificate created as a result of the approval to change mitigation water to mitigation credits shall be identified as a mitigation credit project for a ground water permit applicant and/or ground water permit/certificate holder. Within each instream certificate, the number of mitigation credits, the zone(s) of impact in which the mitigation credits were generated and may be used, and the volume of water dedicated instream solely for instream benefits shall also be specified.

Dated at Salem, Oregon this 4th day of June 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Tom M. Byler, Director, Oregon Water Resources Department

STATE OF OREGON

COUNTY OF DESCHUTES AND KLAMATH

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

STATE OF OREGON
WATER RESOURCES DEPARTMENT

confirms the right to use the waters of the Little Deschutes River, tributary to the Deschutes River, for instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.

This right was confirmed by decree of the Circuit Court of the State of Oregon for Deschutes County. The decree is of record at Salem in the Order Record of the Water Resources Director, in Volume 16, at Page 185. The date of priority is 1897 and April 30, 1902. The amount of water to which this right is entitled is limited to an amount actually beneficially used, and shall not exceed:

Reach	Priority Date	Instream Period and Instream Rate	
		July 1 through August 19	August 20 through October 31
Reach #1	1897	0.05 Cubic Foot per Second (CFS)	0.02 CFS
	April 30, 1902	7.04 CFS	3.52 CFS
	Total	7.09 CFS	3.54 CFS
Reach #2	1897	0.02 CFS	0.02 CFS
	April 30, 1902	2.18 CFS	2.18 CFS
	Total	2.2 CFS	2.2 CFS
Reach #3	1897	0.01 CFS	0.01 CFS
	April 30, 1902	2.03 CFS	2.03 CFS
	Total	2.04 CFS	2.04 CFS

or its equivalent in case of rotation, measured at the point of diversion, during the specified instream period.

The description of the stream reach in which flows are to be maintained is as follows:

Reach #1: From the location of the diversion authorized previously under Certificate 83653, located approximately at:

Township	Range	Meridian	Sec	¼ ¼	Measured Distance
23	S	9 E	34	SW SW	550 FEET NORTH AND 1150 FEET EAST FROM THE SW CORNER OF SECTION 34

To the Little Deschutes River gage near LaPine, located approximately at River Mile 27

Reach #2: From the Little Deschutes gage near LaPine (approximately River Mile 27) to the mouth of the Little Deschutes River

Reach #3: From the confluence of the Little Deschutes River and the Deschutes River to Lake Billy Chinook (River Mile 120)

This is a final 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 137-004-0080, you may 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.

Mitigation Credit Award

Mitigation Project: MP-120
Mitigation Credits Awarded: 510.3
Zone of Impact: These mitigation credits may be used to satisfy a mitigation obligation within the Little Deschutes, Upper Deschutes, Middle Deschutes and General Zones of Impact

Each mitigation credit equals 1.0 AF of mitigation water, as determined by the Department.

The number of mitigation credits awarded is a portion of the total volume transferred instream, being 1131.33 AF. The remaining balance of water dedicated to instream use, and not used to satisfy the mitigation obligation of a ground water permit (and subsequent certificate(s)), will benefit instream flows.

The mitigation credits or mitigation water established by this instream water right may be used to satisfy a mitigation obligation of a ground water permit application(s) and/or a ground water permit(s)/certificate(s) within the Deschutes Ground Water Study Area pursuant to the Deschutes Ground Water Mitigation Rules.

Mitigation credits valid until used to satisfy a mitigation obligation of a ground water permit applicant and/or ground water permit/certificate holder.

Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.

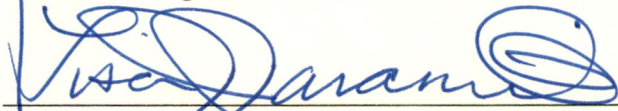
The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and shall be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by a subsequent order establishing a new instream water right.

The right to the use of the water for the above purpose is restricted to beneficial use in the place of use described and is subject to all other terms and conditions of Certificate 83653, and any related decree.

Certificate 86020 was issued to confirm a change in character of use and place of use approved by an order of the Water Resources Director recorded in Special Order Volume 80, Pages 67-77, approving Transfer T-10623 and, together with Certificates 86021 and 86022, supersedes Certificate 83653, State Record of Water Right Certificates.

This certificate is issued to confirm the change of mitigation water to mitigation credits approved by an order of the Water Resources Director recorded in Special Order Volume 116, Pages 848 - 851, and supersedes Certificate 86020, State Record of Water Right Certificates.

WITNESS the signature of the Water Resources Director, affixed JUN 04 2020.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M. BYLER, Director
Oregon Water Resources Department



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

**OREGON WATER RESOURCES DEPARTMENT
ASSIGNMENT RECORD FOR MITIGATION CREDITS
CHAIN-OF-CUSTODY**

Mitigation Credit Project: MP-120 Mitigation Credits: 510.3

Mitigation Credit Holder: Shanda Asset Management, LLC

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date

Mitigation Credit Holder: _____

_____ Mitigation credits have been assigned to (Name): _____

Mailing Address: _____

Phone Number: _____

Current Mitigation Credit Holder Signature

Date

New Mitigation Credit Holder Signature

Date



**DESCHUTES BASIN MITIGATION CREDIT
DOCUMENTARY EVIDENCE FORM**

This form is to be completed when mitigation credits are obtained from a mitigation credit holder, other than a mitigation bank, by a ground water application/permit/certificate holder to satisfy a mitigation obligation under the Deschutes Ground Water Mitigation rules. Please print in ink or type all information. If there are any questions about this form, please contact the Department.

Phone: (503) 986-0884

Ground Water User Information:

Name: Shanda Asset Management, LLC

Mailing Address (Street, City, State, Zip): 56880 Venture Lane Suite 203N, Sunriver, OR 97707

Phone Number (Home and Work-including area code): _____ E-Mail (optional): _____

Ground Water Application, Permit, or Certificate #: App G-16905, Permit G-18357

Mitigation Obligation (amount) (see Notice of Mitigation Obligation or Initial Review for this information): 510.3 AF

Zone of Impact (see Notice of Mitigation Obligation or Initial Review for this information): Little Deschutes Zone of Impact

Mitigation Credit Holder Information:

Mitigation Credit Holder Name: Shanda Asset Management, LLC

Mailing Address: 56880 Venture Lane Suite 203N, Sunriver, OR 97707

Phone Number (including area code): _____ E-Mail (optional): _____

If mitigation credits have changed hands beyond the original credit holder, a complete assignment record should be included with this documentary evidence form to help demonstrate that the credits are valid. This information may be obtained from the mitigation credit holder.

Mitigation Credit Information:

In the following table, identify the mitigation project identification number(s), the number of credits assigned from each mitigation project, the zone of impact in which the credits are to be used (note - many credits may be used within more than one zone of impact) and the type of mitigation project upon which the credits are based.

Project Type Codes: Allocation of Conserved Water = ACW Permanent Instream Transfers = PT Storage Release = SR
Aquifer Recharge = AR Other = Other (if other, please describe under project type in space provided below)

<u>Mitigation Project ID</u>	<u># Mitigation Credits Assigned</u>	<u>Zone of Impact</u>	<u>Mitigation Project Type Code (see above)</u>
<u>MP-120</u>	<u>510.3</u>	<u>Little Deschutes</u>	<u>PT</u>

Add additional mitigation projects and credits, using above format, by attaching additional pages if necessary.

Mitigation Project Operator (if other than original credit holder): _____ (for example, name of storage project or aquifer recharge project operator)

Mailing Address: _____

Phone Number (including area code): _____

For Stored Water Releases (if applicable):

Name of Reservoir: _____

Reservoir Permit/Certificate: _____ Contract Number(s): _____

The above described mitigation credits have been transferred from Shanda Asset Management, LLC, mitigation credit holder, to Shanda Asset Management, LLC, ground water application/permit/certificate holder.

ASSIGNED BY ORDER OF THE WATER RESOURCES DEPT JUNE ____, 2020

Mitigation Credit Holder Signature

Date

Ground Water Application/Permit/Certificate Holder Signature

Date