

MEMORANDUM

TO: Files 36-16113, 36-16114, 36-16116 & 36-16124
FROM: Pam Skaggs
SUBJECT: Stepped Mitigation/Irrigation Use Condition
DATE: 01-03-2012

Del Kohtz called to discuss the possibility of purchasing the portions of Rights 36-1613, 36-16114, 36-16116 & 36-16124 no longer required for mitigation use as described below in the condition of approval of Transfer 69053 on Rights 36-15637, 36-15639 & 36-15641. Mr. Daniel L. Willie currently owns both the transferred & mitigation rights referenced.

Transfer 69053 approved 02-10-2003	The water right holder shall maintain control of the necessary portion of Rights 36-16113, 36-16114, 36-16116 and 36-16124 for mitigation purposes under Transfer 69053 . The mitigation rights when combined are limited to the following schedule of allowed use which begins on the date of approval of the transfer. Water shall not be diverted under this right if the necessary portion of the mitigation rights are sold, transferred, leased or used on any place of use.
2003-2004	Years 1 through 2 the diversion and use of water under the rights are limited to 0.00 cfs, 0.0 afa and 0.0 acres (30.2 acres left unirrigated).
2005-2008	Years 3 through 6 the diversion and use of water under the rights are limited to 0.11 cfs, 36.0 afa and 9.0 acres (21.2 acres left unirrigated).
2009-2014	Years 7 through 12 the diversion and use of water under the rights are limited to 0.26 cfs, 86.4 afa and 21.6 acres (8.6 acres left unirrigated).
2015 -----	Years 13 and beyond the diversion and use of water under the rights are limited to 0.27 cfs, 89.6 afa and 22.4 acres (7.8 acres left unirrigated).

A right or portion of right designated for mitigation use is not subject to forfeiture. Irrigation use described in the stepped release condition that is not used for a period of 5 or more years is subject to possible forfeiture.

- No irrigation was authorized under these rights during 2003 & 2004 irrigation season.
- 9 acres irrigation use was authorized beginning 2005.
- 21.6 acres total irrigation use was authorized beginning 2009 to current time.

Review of the partial decrees associated with these mitigation rights must also be accounted for when assessing these rights for possible forfeiture. It appears that the rights were decreed in 2004 and 2005 for enlargement right 36-16124. Authorized irrigation was available in 2005 per the stepped condition. The forfeiture clock was restarted by the partial decrees in 2005 & 2006. Irrigation use should have been resumed or other action taken to protect the rights primarily in 2010 and at latest 2011 irrigation seasons. The next increment of an additional 12.6 acres irrigation authorized in 2009 does not appear to be in jeopardy at this time.

I recommended Del discuss this matter with his attorney to see if there were any appropriate defenses to forfeiture applicable to these rights. Michael Creamer & Jason Helms called the following day on Mr. Kohtz behalf to discuss this same condition. I explained that the stepped condition authorizes specific amounts of irrigation by year, and to make the appropriate application providing documentation of any appropriate forfeiture defenses for further consideration.