

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

In the Matter of Transfer Application                                    )  
T-9761, Josephine County    )                    **FINAL ORDER APPROVING A  
CHANGE IN POINT OF DIVERSION**

ORS 540.505 to 540.580 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.

**Applicant**  
EDITH A.R. SOWELL (deceased)  
6446 HOLLAND LOOP RD  
PO BOX 192  
CAVE JUNCTION OR 97523

**Agent**  
JANIE & GARY POPE  
6446 HOLLAND LOOP ROAD  
CAVE JUNCTION OR 97523

**Findings of Fact**

1. On July 14 2004, Edith A.R. Sowell filed a transfer application to change the point of diversion under Certificate 67869. The Department assigned the application number T-9761.
2. The portion of the right to be transferred is as follows:

**Certificate:** 67869 in the name of ALTON & EDITH SOWELL (perfected under Permit 4167)  
**Use:** IRRIGATION of 4.52 ACRES  
**Priority Date:** APRIL 8, 1919  
**Rate:** 0.06 CUBIC FEET PER SECOND  
**Limit:** ONE-EIGHTIETH cfs per acre  
**Source:** SUCKER CREEK, tributary to the ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	29	NW SE	1450 FEET NORTH & 1500 FEET WEST FROM SE CORNER, SECTION 29

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

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 137-004-0080, 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.

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	32	S½ NE NW	4.52

3. Application T-9761 proposes to move the authorized point of diversion approximately 1/2 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	32	NE NW	672 FEET SOUTH AND 519 FEET WEST OF THE NORTH 1/4 CORNER, SECTION 32

4. On June 3 2005, an affidavit for partial cancellation of a water right was received from Janie and Gary Pope as follows:

**Certificate:** 67869 in the name of ALTON & EDITH SOWELL (perfected under Permit 4167)

**Use:** IRRIGATION of 5.48 ACRES

**Priority Date:** APRIL 8, 1919

**Rate:** 0.07 CUBIC FEET PER SECOND

**Limit:** ONE-EIGHTIETH cfs per acre

**Source:** SUCKER CREEK, tributary to EAST FORK ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	29	NW SE	1450 FEET NORTH & 1500 FEET WEST FROM THE SE CORNER, SECTION 29

**Authorized Place of Use to be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	32	NE NW	5.48

5. 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 notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
6. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. No comments were received in response to notice of the Preliminary Determination.

## Conclusions of Law

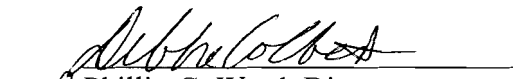
The proposed change in point of diversion in application T-9761 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

### Now, therefore, it is ORDERED:

The change and subsequent use of water shall be subject to the following conditions:

1. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificate 67869 and any related decree.
2. The water rights proposed for cancellation by the applicant via affidavit are cancelled.
3. Certificate 67869 is cancelled.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.

Dated at Salem, Oregon this 19<sup>th</sup> day of September 2005.

  
FOR Phillip C. Ward, Director

Mailing date: SEP 19 2005