

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-10681, Jackson County	)	CHANGE IN PLACE OF USE

**Authority**

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**

BRIAN AND RENELDA BOOTHBY  
759 MATHER RD  
PROSPECT OR 97536

**Findings of Fact**

***Background***

1. On July 23, 2008, BRIAN BOOTHBY and RENELDA BOOTHBY filed an application to change a portion of the place of use under Certificate 13972. The Department assigned the application number T-10681.
2. The portion of the right to be transferred is as follows:

<b>Certificate:</b>	13972 in the name of NELSON M NYE; ELSIE PHIPPS; C.W., C.D., and CLEM CLARK (perfected under Permit S-6119)
<b>Use:</b>	IRRIGATION of 3.0 ACRES
<b>Priority Date:</b>	OCTOBER 22, 1923
<b>Rate:</b>	0.04 CUBIC FOOT PER SECOND (cfs)
<b>Limit/Duty:</b>	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall also be limited to the water available at the proposed point of diversion and shall not carry with it the right to compel the continuance of the waste water.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

**Sources:** NORTH FORK ROGUE RIVER, tributary to the ROGUE RIVER  
WASTE WATER, from C.O.P.C.O. FLUME, tributary to the ROGUE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Other
32 S	3 E	WM	29	NW SW	NONE GIVEN
33 S	3 E	WM	6	NW NW	FROM C.O.P. CO FLUME

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	2 E	WM	9	NW SE	2.85
33 S	2 E	WM	9	SW SE	0.15

- Certificate 13792 does not describe the exact location of the points of diversion, however information received from the Certified Water Right Examiner indicates that the points of diversion are located as follows:

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	3 E	WM	29	NW SW	SOUTH 21 DEGREES EAST 1010 FEET FROM THE WEST ¼ CORNER OF SECTION 29
33 S	3 E	WM	6	NW NW	SOUTH 13 DEGREES 30 SECONDS EAST 930 FEET FROM THE NW CORNER OF SECTION 6

- Application T-10681 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
33 S	2 E	WM	11	NE NW	3.0

- Notice of the application for transfer was published on August 5, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On September 8, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10681 to the applicants. The draft Preliminary Determination letter set forth a deadline of October 9, 2009, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- On October 13, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-10681 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 20, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

8. Water has been within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10681.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

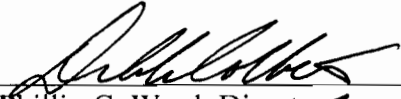
The change in place of use proposed in Transfer Application T-10681 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The change in place of use proposed in application T-10681 is approved.
2. Water right certificate 13972 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 13972 and any related decree.
4. Water use measurement conditions:
  - a. Before water use may begin under this order, the water user shall install a suitable measuring device, at the point of diversion.
  - b. The water user shall maintain the measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former 3.0 acre place of use of the transferred right shall no longer receive water under the right.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.

7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 24<sup>th</sup> day of November 2009.

  
Phillip C. Ward, Director

Mailing Date: DEC 11 2009