

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-9781, Josephine County) CHANGE IN POINT OF DIVERSION

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

PAUL W. COOTS, JR.
6418 HOLLAND LOOP RD
CAVE JUNCTION OR 97523

Findings of Fact

Background

1. On September 9, 2004, PAUL W. COOTS, JR. filed an application to change the point of diversion under Certificate 79996. The Department assigned the application number T-9781.
2. On March 17, 2010, the applicant requested the Department proceed forward with the transfer application. Additionally, the applicant requested additional time, until October 1, 2015, to complete the change and apply water to beneficial use under the right due to economic circumstances.

3. The portion of the first right to be transferred is as follows:

Certificate: 79996 in the name of THE ESTATE OF MARY ELLEN LEONARD
(confirmed by Sucker Creek Decree)
Use: IRRIGATION OF 32.0 ACRES, DOMESTIC AND LIVESTOCK
Priority Date: 1865
Rate: 0.64 CUBIC FOOT PER SECOND
Period of Use: IRRIGATION: APRIL 1 to OCTOBER 31

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.

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

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	29	NW SE	1580 FEET NORTH AND 100 FEET EAST FROM THE S¼ CORNER OF SECTION 29

Authorized Place of Use:

IRRIGATION, DOMESTIC AND LIVESTOCK TRACT #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	32	SW NW	18.0
39 S	7 W	WM	32	NW SW	14.0

4. Certificate 79996 contains a scrivener’s error in the description of the point of diversion location. The Order Approving Application of a change in point of diversion issued May 10, 1954, indicates the point of diversion is located “1580 feet north and 1000 feet east from the south quarter corner of Section 29, and being within the NW¼ SE¼, Section 29, Township 39 South, Range 7 West, W.M.” (Spec. Order Volume 8, Page 169).

5. Transfer Application T-9781 proposes to move the authorized point of diversion approximately 4500 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	32	SW NW	1017 FEET NORTH AND 456 FEET EAST FROM THE W¼ CORNER OF SECTION 32

6. Notice of the application for transfer was published on October 12, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

7. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

8. On March 23, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9781 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 23, 2010, for the applicant to respond. The applicant 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.

9. On April 13, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9781 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 April 20, 2010, and in the Illinois Valley News newspaper on May 5, 12, and 19, 2010, 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)]

10. Water has been used 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.
11. 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-9781.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in point of diversion proposed in Transfer Application T-9781 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

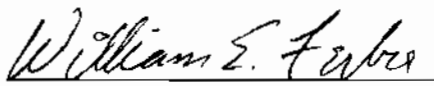
Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in Transfer Application T-9781 is approved.
2. 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 79996 and any related decree.
3. Water right certificate 79996 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.

c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.

6. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23rd day of JUNE 2010.


By Phillip C. Ward, Director

Mailing date: JUN 24 2010