

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10307, Jackson 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

HARRY EDWIN COOPER
70 DION CT. #1
SHADY COVE, OR 97539

Findings of Fact

Background

1. On February 2, 2007, Harry E. Cooper filed an application to change the point of diversion under Certificate 17221. The Department assigned the application number T-10307.
2. On August 24, 2007, the applicant submitted a revised application and map, identifying 6.55 acres for transfer.
3. The portion of the right to be transferred is as follows:

Certificate: 17221 in the name of R. E. TUCKER (confirmed by Little Butte Creek Decree)

Use: IRRIGATION of 6.55 ACRES, ASSIGNED AS FOLLOWS:

TRACT 1	3.75 ACRES
TRACT 2	2.80 ACRES

Priority Dates: 1875 for TRACT 1 and 1908 for TRACT 2

Rate: 0.087 CUBIC FOOT PER SECOND (CFS) WITH PRIORITY DATE 1875 AND 0.072 CFS WITH PRIORITY DATE 1908

Source: LITTLE BUTTE CREEK, tributary to the ROGUE RIVER

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.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
36 S	1 E	WM	5	SW NE	0.90	2
36 S	1 E	WM	5	NE SE	3.75	1
36 S	1 E	WM	5	NW SE	1.90	2

4. Certificate 17221 does not describe the location of the authorized point of diversion, however, information is available from the Little Butte Creek Decree map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
36 S	1 E	WM	4	NE SW

5. Transfer Application T-10307 proposes to move the authorized point of diversion approximately 0.85 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	5	NW SE	510 FEET SOUTH AND 1840 FEET WEST FROM THE E1/4 CORNER OF SECTION 5

6. Notice of the application for transfer was published on February 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. This application is being processed concurrently with T-10305 and T-10308, which also propose changes to Certificate 17221.
8. On September 18, 2007, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10307 to the applicant. The cover letter with the *draft* Preliminary Determination set forth a deadline of October 19, 2007, for the applicant to respond. No comments were received by the deadline, but the applicant's agent 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 June 26, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10307 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 July 1, 2008, and in the Upper Rogue Independent newspaper on August 26, September 2 and 9, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
10. 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.

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

11. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. 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-10307.
13. The proposed change would not result in enlargement of the right.
14. 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-10307 appears to be 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 application T-10307 is approved.
2. Water Right Certificate 17221 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer nor involved in T-10305 or T-10308.
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 17221 and any related decree.
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. 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.
6. Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning

construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.

7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. 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 changes 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 31ST day of October, 2008.



PC
Phillip C. Ward, Director

Mailing date: NOV 03 2008