

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-10140, Linn County	)	CHANGE IN POINT OF DIVERSION
	)	AND 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**

ROBERT M. COOK  
32041 CARTNEY DRIVE  
HARRISBURG OR 97446

**Findings of Fact**

***Background***

1. On April 17, 2006, Robert M. Cook filed a transfer application to change the place of use and point of diversion under Certificate 76691. The Department assigned the application number T-10140.
2. On July 22, 2008, Robert M. Cook filed a revised transfer application to change the place of use and point of diversion under Certificate 76691.

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

**Certificate:** 76691 in the name of MUDDY CREEKS IRRIGATION PROJECT (perfected under Permit S-17510)

**Use:** IRRIGATION of 54.0 ACRES

**Priority Date:** FEBRUARY 9, 1939

**Rate:** 0.67 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre during the irrigation season of each year

**Source:** MCKENZIE RIVER AND MUDDY CREEK, tributaries of the WILLAMETTE 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 Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	4 W	WM	35	NW SE	3150 FEET SOUTH AND 1610 FEET WEST FROM THE NE CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	35	NE NE	1.8
14 S	4 W	WM	35	SW NE	28.7
14 S	4 W	WM	35	SE NE	16.4
14 S	4 W	WM	35	NE SE	0.2
14 S	4 W	WM	35	NW SE	6.9

4. Transfer Application T-10140 proposes to move the authorized point of diversion approximately 2.2 miles in a northeasterly direction from Muddy Creek to Little Muddy Creek. A Muddy Creeks Irrigation Project ditch will be utilized to convey water to the Little Muddy Creek channel to a point described as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
14 S	3 W	WM	30	NW NW	40 FEET SOUTH AND 1120 FEET EAST FROM THE NW CORNER OF SECTION 30

5. Transfer Application T-10140 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	25	NE NE	0.8
14 S	4 W	WM	25	SE NE	9.5
14 S	3 W	WM	30	NE NW	0.9
14 S	3 W	WM	30	NW NW	15.7
14 S	3 W	WM	30	SW NW	27.1

6. Notice of the application for transfer was published on May 2, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On August 13, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10140 to the applicant. The cover letter with the draft Preliminary Determination set forth a deadline of September 22, 2008, 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.
8. On September 8, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10140 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 September 9, 2008, and in the Albany Democrat-Herald newspaper on September 18 and 25 and October 2, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

9. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

10. 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.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10140.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would result in the routing of water from Muddy Creek and the McKenzie River by Muddy Creeks Irrigation Project through its irrigation canals and into the channel of Little Muddy Creek to satisfy this right at the proposed point of diversion on Little Muddy Creek. Therefore, the changes would not result in additional regulation of junior rights on Little Muddy Creek. The changes, as proposed, would not result in injury to other water rights.

**Conclusions of Law**

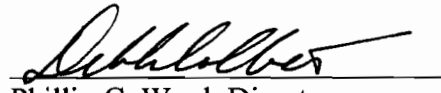
The changes in place of use and point of diversion proposed in Transfer Application T-10140 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in place of use and point of diversion proposed in Transfer Application T-10140 are approved.
2. Water right certificate 76691 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 76691 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. The former place of use of the transferred right shall no longer receive water under the right.

6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
7. When required by the Department, the water user shall install, maintain and operate 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.
8. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 6<sup>th</sup> day of November, 2008.

  
Phillip C. Ward, Director

*Mailing date:* NOV 10 2008