

- b. The transfer application map does not list the number of acres of water right involved in the transfer. The transfer application does list 4.2 acres as being affected. The transfer application map also mislabels the NE¼ NW¼ quarter as being the NE¼ NE¼ quarter.

5. The portion of the right to be transferred is correctly described as follows:

Certificate: 79834 in the name of Dennis K. and Kathleen G. Cooper (confirmed by Rogue River (F) decree)
Use: Irrigation of 4.2 acres
Priority Date: 1876
Rate: 0.11 cubic foot per second
Source: Applegate River, tributary to the Rogue River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	3 W	WM	5	SW SW	Comstock Ditch - 1000 feet North and 1190 feet East from the SW Corner of Section 5.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	3 W	WM	33	SE NW	4.2

6. Transfer Application T-6902 proposes to move the authorized point of diversion approximately 1.25 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	3 W	WM	33	NE NW	1312 feet South from the N¼ Corner of Section 33

- 7. Notice of the application for transfer was published pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 8. On July 1, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-6902 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of August 3, 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 applicants are authorized to pursue the transfer.
- 9. On July 21, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6902 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 28, 2009, and in the Medford Mail Tribune newspaper on August 8, 15, and 22, 2009, 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 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.
12. 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 Transfer Application T-6902.
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-6902 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-6902 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 79834 and any related decree.
3. Water Right Certificate 79834 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 devices are 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, 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 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 September 2009.



Phillip C. Ward, Director #

Mailing Date: SEP 28 2009