

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10890, Grant County	)	PROPOSING APPROVAL OF A
	)	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

Southworth Brothers, Inc.
P.O. Box 9
Seneca, Oregon 97873

Agent

Jack Southworth
P.O. Box 9
Seneca, Oregon 97873

Findings of Fact

Background

1. On June 1, 2009, Southworth Brothers, Inc. filed an application to change the place of use under Certificate 400. The Department assigned the application number T-10890.
2. The portion of the right to be transferred is as follows:

Certificate: 400 in the name of Florence I. Klink (perfected under Permit S-17)

Use: IRRIGATION 23.5 ACRES

Priority Date: MAY 10, 1909

Rate: 0.29 CUBIC FOOT PER SECOND

Source: DIAMOND CREEK, tributary to the SILVIES RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	31 E	WM	30	NE NE	10.0
16 S	31 E	WM	30	NW NE	13.5

3. There is a scrivener's error on Certificate 400. The source is listed incorrectly as Diamond Creek. Information from drainage basin, tax lot and USGS quadrangle maps indicate that the correct name for the source is DAMON Creek.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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4. Certificate 400 does not describe the location of the point of diversion, however information is available from Certified Water Right Examiner indicating that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
16 S	31 E	WM	30	NE NW

5. Application T-10890 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	31 E	WM	28	SW NW	7.0
16 S	31 E	WM	28	SE NW	16.5

6. Notice of the application for transfer was published on June 16, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On June 22, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10890 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 22, 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.

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

8. Water has been used within the last five years 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 was present within the five-year period prior to submittal of Transfer Application T-10890.
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.

Determination and Proposed Action

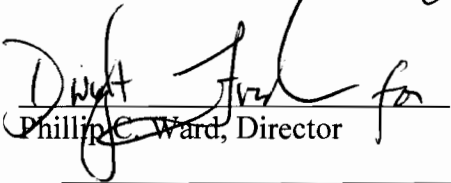
The change in place of use proposed in Transfer Application T-10890 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If application T-10890 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-10890 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 400 and any related decree.*
3. *Water right certificate 400 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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.*
5. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate 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 the headgate as required by the Department.*
6. *The former place of use of the transferred right shall no longer receive water under the right.*
7. *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 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 6 day of August 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.