

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11077, Deschutes County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

BROOKS CAPPS
P.O. BOX 2109
SISTERS, OR 97759

Findings of Fact

Background

1. On May 18, 2010, BROOKS CAPPS filed an application to change the point of appropriation under Certificate 75982. The Department assigned the application number T-11077.
2. The right to be transferred is as follows:

Certificate:	75982 in the name of BROOKS CAPPS (perfected under Permit G-11364)
Use:	IRRIGATION of 13.4 ACRES
Priority Date:	MAY 16, 1991
Rate:	0.168 CUBIC FOOT PER SECOND
Limit/Duty:	The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source:	A WELL in the DESCHUTES RIVER BASIN

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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Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	21	SW SW	914 FEET NORTH AND 912 FEET EAST FROM THE SW CORNER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	11 E	WM	21	SW SW	13.4

3. Transfer Application T-11077 proposes to move the authorized point of appropriation approximately 50 feet northwesterly from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	11 E	WM	21	SW SW	964 FEET NORTH AND 889 FEET EAST FROM THE SW CORNER OF SECTION 21

4. Notice of the application for transfer was published on May 25, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On July 26, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11077 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 27, 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 and indicated that a totalizing flowmeter has been installed on the well.

Transfer Review Criteria (OAR 690-380-4010)

6. 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.
7. 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-11077.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.

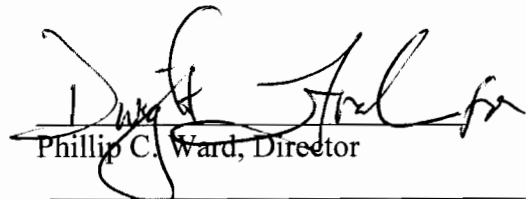
Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11077 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11077 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-11077 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 75982 and any related decree.*
3. *Water right certificate 75982 is cancelled.*
4. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
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 the point of appropriation.*
 - 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. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
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 27 day of August 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@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.