

4. Notice of the application for transfer was published pursuant to ORS 540.520 in the Department's Weekly Notice April 27, 1999. No comments were filed in response to the notice.
5. The applicant has not provided sufficient evidence to allow the Department to determine whether water has been used under the right within the last five years according to the terms and conditions of the water right and that the right is not subject to forfeiture under ORS 540.610.
6. No evidence was provided to enable the Department to determine whether the water user is ready, willing and able to use the full amount of water allowed under the existing right.
7. The Department mailed a letter dated September 16, 1999 to Jackson Farms LLC, requesting submission within 30 days of a signed notarized affidavit of use and a written description of the authorized water delivery system and an estimate of its capacity. No response was received to the letter. Another letter was sent to the applicant February 8, 2002, requesting that the same two items be submitted with 30 days or the transfer application may be rejected. No response was received to the letter. A third letter was sent to the applicant January 13, 2003, requesting the affidavit of use and system capacity information to be submitted within 30 days or the transfer application may be rejected. No response was received to the letter. The applicant was sent a draft Preliminary Determination February 24, 2004, proposing to reject T-8249, unless by April 1, 2004 the deficiencies were resolved or the application was withdrawn. No timely response was received.
8. T-8249 proposes to transfer a primary irrigation water right onto land to which another primary irrigation right under Permit G-13263 is appurtenant. OAR 690-380-5120 provides that the right with the oldest priority date shall be considered the primary water right unless the applicant designates another right as the primary right. All other water rights shall be diminished to supplemental water rights on the lands where the rights overlap.
9. Without the documentation needed to determine whether the water right is subject to transfer and to what extent it has been exercised within the five-year period prior to filing of the transfer application, the Department cannot determine whether the proposed change would result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. Notice of the Preliminary Determination was published as per ORS 540.520 and OAR 690-380-4020. A statement was filed May 10, 2004 by Glenn Ford, on behalf of Jackson Farms LLC, indicating that rejection of the transfer would result in economic hardship, and offering to make the information needed for processing the transfer available in a timely manner. However, the statement was not accompanied by the fee required by OAR 690-380-4030 for protests.

Conclusions of Law

Transfer application T-8249 does not meet the requirements for completeness as contained in ORS 540.520 and OAR Chapter 690 Division 15, the Administrative Rules that were in force at the time the application was received, nor the requirements of OAR Chapter 690 Division 380 rules under which the transfer is being processed.

The statement filed by Glenn Ford did not meet the protest requirements of OAR 690-380-4030, and cannot be considered as a duly filed protest.

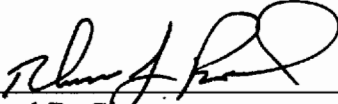
The Department is unable to make a positive finding that the right is subject to transfer and that the proposed changes to the right would not result in enlargement of the right.

The transfer application cannot be processed and should be rejected.

Now, therefore, it is ORDERED:

Transfer Application 8249, in the name of Jackson Farms LLC, is REJECTED and of no further force or effect.

Dated at Salem, Oregon this 27th day of May, 2004.



Paul R. Cleary
Director