

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

In the Matter of Transfer Application) FINAL ORDER REJECTING CHANGES
T-6644,) IN CHARACTER OF USE AND PLACE
Tillamook County, Oregon) OF USE OF WATER

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

Fairview Water District
403 Marolf Loop Road
Tillamook, Oregon 97141

Findings of Fact

1. Fairview Water District filed an application to transfer the place of use and character of use under Certificate 8073. The Department assigned the application number T-6644.
2. The right to be transferred is as follows:

Certificate: 8073 in the name of Fairview Water District
Use: Domestic
Priority Date: February 12, 1925
Quantity: 0.23 cfs
Rate/Duty: N/A
Acres: N/A
Source: Donaldson Creek, tributary to Wilson River

Authorized Point of Diversion:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Location |
|----------|---|-------|---|----------|-----|-------|---|
| 1 | S | 9 | W | W.M. | 26 | SW NE | South 52° 54' East 3366.4 feet from the NW corner of Section 26 |

Authorized Place of Use:

| Township | | Range | | Meridian | Sec | ¼ ¼ |
|----------|---|-------|---|----------|-----|-------|
| 1 | S | 9 | W | W.M. | 26 | NE SW |

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

3. Application T-6644 proposes to change the place of use of the right to:

| Township | | Range | | Meridian | Sec | ¼ ¼ | Acres |
|----------|---|-------|---|----------|-----|-------|-------|
| 1 | S | 9 | W | W.M. | 26 | SE NW | 14.0 |

4. Application T-6644 proposes to change the character of use to irrigation.
5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. The right is held by a legally incorporated municipal corporation (Fairview Water District) and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
7. The receiving landowner is to be Marlin V. Clark, 10905 Hughey Lane, Tillamook, Oregon 97141.
8. Department records show existing irrigation rights from Donaldson Creek for 10.0 acres under Certificate 2164 (priority date April 5, 1917) and for 6.4 acres under Certificate 30030 (priority date April 28, 1954) appurtenant to the land to which the water is proposed to be transferred. Permit 52328 for domestic use for two households (priority date November 8, 1991) also is appurtenant to the same property.
9. The rate and duty generally recognized as beneficial for irrigation use in Tillamook County are 1/80 cfs per acre, and 2½ acre-feet per acre during the irrigation season each year.
10. The proposed changes would not result in enlargement of the right, however, the quantity of water that could be applied to irrigate 14.0 acres at the normal rate and duty is only 0.175 cfs, whereas the right allows 0.23 cfs. The remaining 0.055 cfs under the right will need to be applied to beneficial use or cancelled.
11. The proposed changes could result in injury to other water rights on the same land unless the potential conflicts with Certificate 30030 and Certificate 2164 are resolved.
12. A letter was sent March 23, 2000 to Fairview Water District, explaining various options for making beneficial use of the full quantity of water and requesting a response in 30 days. No response was received.
13. A draft Preliminary Determination and cover letter were sent to Fairview Water District April 8, 2004, identifying deficiencies that needed to be resolved, and indicating that the transfer application might be rejected unless by July 1, 2004 the district removed the deficiencies or requested to withdraw the application. No response was received by July 1, 2004.
14. Subsequent phone conversations with the Fairview Water District manager Ed Donahue on 7/15/04 and 10/14/04, and 8/26/04 with Board Chairman Jim Hurliman indicated that the district wished to pursue the transfer and intended to authorize cancellation of the 0.05 cfs

not proposed for transfer. An affidavit of partial cancellation with cover letter was sent to Fairview Water District October 15, 2004. No written response was received.

15. October 21, 2004 receiving landowner Marlin Clark phoned, stating that he does not wish to receive the irrigation water as proposed by T-6644, but instead wishes to retain his other domestic and irrigation rights.
16. October 22, 2004 District Supervisor was informed of Marlin Clark's desire not to pursue the transfer, and that the District needed to inform the Water Resources Department of their decision whether to amend the transfer to propose a different change, or to withdraw the transfer and either retain the right under Certificate 8073 in its original form, or authorize cancellation of the right. No response has been received to date.
17. December 16, 2004 a letter was sent to Fairview Water District, proposing to reject the transfer application due to unresolved deficiencies, unless a request to withdraw or amend the transfer was received by January 14, 2005. No written response was received.
18. August 2, 2005 a Preliminary Determination was issued, proposing rejection of application T-6644 due to the unresolved deficiencies. Notice of the Preliminary Determination was posted on the Water Resources Department Public Notice August 9, 2005. No protests or comments were filed during the 30 day period following the notice.
19. Based on available information, the Department cannot make a determination that the proposed change would not result in injury to other water rights.

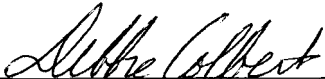
Conclusions of Law

The changes in place of use and character of use as proposed in application T-6644 are NOT consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

Transfer 6644, in the name of Fairview Water District, is rejected.

Dated at Salem, Oregon this 27 day of September, 2005.

FOR 
Phillip C. Ward
Director

Mailing date: SEP 29 2005