

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

In the Matter of Transfer Application            )     RECONSIDERATION AND  
T-9374, Wasco County, Oregon                 )     MODIFICATION OF FINAL ORDER  
  )

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. OAR 137-044-0080 describes the process for reconsideration of an order in other than contested case.

**Applicant**

June Ashley  
79828 Dodson Road  
Wamic, OR 97063

Rex Davis  
28425 SE Orient Dr  
Gresham, OR 97080

**Findings of Fact**

1. The Department issued an order approving a change in point of diversion under application T-9374 on April 8, 2004. The order is entered at Special Order Volume 59, Pages 560 to 564.
2. The conditions prescribed in the order include the following requirement:

“7. The water users shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.

“The water users may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.”
3. Subsequent to issuance of the order, the Department received a letter from the Oregon Department of Fish and Wildlife indicated that the request for inclusion of the fish screening condition was a result of a misunderstanding regarding the location of the diversion and that inclusion of the condition was inappropriate.

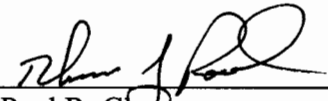
This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

4. The period in which the Department may, on its own initiative, reconsider a final order has not yet closed.

**Now, therefore, it is ORDERED:**

1. The order approving application T-9374 and entered at Special Order Volume 59, Pages 560 to 564 is withdrawn and modified to delete condition 7 requiring a fish screen or by-pass device.
2. All remaining portions of the order approving application T-9374 are affirmed and the order, as modified, issues. The change in point of diversion may be made provided that conditions 1 through 6 are met by the water user.

Dated at Salem, Oregon this 12<sup>th</sup> day of May, 2004.

  
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For Paul R. Cleary  
Director

Mailing date: MAY 14 2004