

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

In the Matter of Transfer Application) FINAL ORDER DENYING A CHANGE
T-9490, Lane County) IN CHARACTER 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

WILLIAM ROBINSON
PO BOX 2709
FLORENCE OR 97439

Findings of Fact

Background

1. On July 1, 2003, WILLIAM ROBINSON filed an application to change the character of use of the storage right under Certificate 31076. The Department assigned the application number T-9490.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 31076 in the name of A.E. BARNUM; C/O COAST BUSINESS BROKERS (perfected under Permit R-2685)
 - Use:** STORAGE FOR RECREATION
 - Priority Date:** SEPTEMBER 15, 1961
 - Rate:** 45.0 ACRE FEET
 - Source:** UNNAMED STREAM, tributary to WOAHINK LAKE

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

Authorized Place of Use:

STORAGE FOR RECREATION				
Twp	Rng	Mer	Sec	Q-Q
19 S	12 W	WM	11	NE SE
19 S	12 W	WM	11	NW SE
19 S	12 W	WM	11	SE SE

3. Certificate 31076 does not identify the point of diversion; however, the best information available indicates that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
19 S	12 W	WM	11	NW SE

4. Transfer Application T-9490 proposes to change the character of use to storage for multi-purpose.
5. Notice of the application for transfer was published on July 22, 2003, pursuant to OAR 690-380-4000. On February 6, 2006, comments to the notice were received from MJK, LLC asserting that MJK, LLC is the owner of the Little Woahink Lake storage water right under Certificate 31076 and the accompanying reservoir “maintenance” right under Certificate 31077.
6. On August 18, 2006, the Department received a letter from the City of Dunes Planning Department requesting the Department address the questions of title to the water rights represented by Certificates 31076 and 31077.
7. On August 23, 2006, the Department replied to the City of Dunes’ letter stating that there is insufficient information in the application file to demonstrate that Mr. Robinson is authorized to seek the transfer.
8. On December 8, 2008, a concurrent water right application for the same property (S-84581) was assigned to Melvin Panter. Application S-85481 was amended to remove the use of stored water; therefore, Transfer Application T-9490 may no longer be necessary. Transfer Application T-9490 was not assigned to Mr. Panter.
9. On August 11, 2010, the Department sent a letter Mr. William Robinson requesting the applicant to notify the department of his intent to proceed with or withdraw Transfer Application T-9490. No response has been received to the letter.
10. On September 10, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-9490 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 30, 2010, for the applicant to respond. No response has been received from the applicant.

11. On October 1, 2010, the Department issued a Preliminary Determination proposing to deny Transfer Application T-9490 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 5, 2010, pursuant to ORS 540-520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

12. Water has been used within the five-year period prior to submittal of the transfer application 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.
13. A dam and reservoir capable of storing the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-9490
14. The proposed change would not result in enlargement of the right.
15. The proposed change could result in injury to the instream water right under Certificate 59892.
 - a. Instream water right under Certificate 59892 is currently not being met during the months of April and June through November.
 - b. Transfer Application T-9590, if approved, would allow the use of the water stored in Little Woahink Lake to change from a non-consumptive use (recreation) to a consumptive use (multi-purpose).
 - c. If stored water in Little Woahink Lake is used consumptively, there will be less live flow available to leave the reservoir and provide flow to Woahink Creek and the State's instream water right.


Conclusions of Law

The change in character of use of the storage right proposed in Transfer Application T-9490 is not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The applicant has not provided sufficient information to determine the ownership of the lands underlying the reservoir nor has applicant provided the necessary documentation that he has consent from the owner of the reservoir to pursue the proposed changes. Therefore, Transfer Application T-9590 does not meet the requirements of ORS Chapter 540, OAR 690-15-0060 or OAR 690-380-3000 for completeness. Without the above documentation, the Department cannot perform the necessary analysis required, to determine if in fact, the proposed transfer would injure the existing instream water right under Certificate 59892.

Now, therefore, it is ORDERED:

Transfer Application T-9490 is denied.

Dated at Salem, Oregon this 4 day of November, 2010.



Dwight French for
Phillip C. Ward, Director

Mailing date: NOV 08 2010