

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

In the Matter of Transfer Application) FINAL ORDER DENYING A CHANGE
T-9712, Douglas County) IN PLACE 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

JAMES E. HALL
2320 NORTH MYRTLE
MYRTLE CREEK OR 97457

Findings of Fact

Background

1. On May 5, 2004, James E. Hall filed an application to change the place of use under Certificate 72452. The Department assigned the application number T-9712.
2. On May 5, 2004, the owner of record, Clem Tavenner concurrently submitted a notarized affidavit assigning James and Jacqueline Hall the authority to submit an application for a place of use change modifying Certificate 72452.
3. The portion of the right to be transferred is as follows:

Certificate 72452 in the name of CLEM TAVENNER (perfected under Permit S-51358)

Use: DOMESTIC USE FOR ONE FAMILY INCLUDING THE IRRIGATION OF LAWN AND NON-COMMERCIAL GARDEN NOT TO EXCEED ONE-HALF ACRE.

Priority Date: JULY 23, 1990

Rate: 0.01 CUBIC FOOT PER SECOND

Limit/Duty: THE RIGHT SHALL BE LIMITED TO HUMAN CONSUMPTION, LIVESTOCK CONSUMPTION FOR SUCH ANIMALS AS ARE

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.

ESSENTIAL TO THE PROPER SUSTENANCE OF THE FAMILY AND
IRRIGATION OF A NON-COMMERCIAL GARDEN NOT TO
EXCEED ½ ACRE IN AREA

Period of Use: JULY 15 THROUGH SEPTEMBER 30 OF EACH YEAR

Source: NORTH MYRTLE CREEK, tributary to the MYRTLE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
29 S	5 W	WM	23	NW NW	933 FEET SOUTH AND 1007 FEET EAST FROM THE NW CORNER OF SECTION 23

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
29 S	5 W	WM	23	NW NW

4. Application T-9712 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q
29 S	5 W	WM	14	NW NW

5. Notice of the application for transfer was published on May 24, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On September 29, 2005, the Department accessed Douglas County Assessor's website and found both properties have been sold.
7. On September 30, 2005, the Department attempted to contact James Hall by telephone and found the number had been taken out of service. In addition, the department sent an email to Mr. Hall requesting him to indicate whether he wanted to pursue, assign or withdraw application T-9712. There was no response.
8. On December 23, 2008, the Department again sent a letter requesting Mr. Hall to indicate his intentions. The letter was returned by the postal service as "Not Deliverable".
9. On January 20, 2009, a draft Preliminary Determination was issued proposing denial of the application. The document was mailed to the applicant, James Hall with copies to current owners of the lands involved in the transfer. The draft Preliminary Determination letter set forth a deadline of February 20, 2009, for the applicant to respond. The applicant did not respond by the deadline.
10. On January 20, 2009, the Department received a letter from David and Sarah Becker, the current owners of the place of use described in Certificate 72452. The letter requested that the application be withdrawn.
11. On November 2, 2009, the Department issued a Preliminary Determination proposing to deny Transfer T-9712 and mailed a copy to the applicant and the current owners of the property. Additionally, notice of the Preliminary Determination for the transfer application

was published on the Department's weekly notice on November 3, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

12. The applicant has not provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer because he does not have consent from the current owners of the land to which the water right is appurtenant. Additionally, the current landowners have indicated they do not wish to pursue the proposed change.

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

13. Water had been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. 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 Application T-9712.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

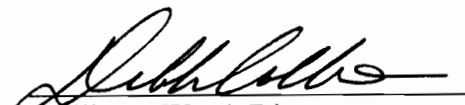
Conclusions of Law

The change in place of use proposed in application T-9712 is not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-9712 is denied.

Dated at Salem, Oregon this 7th day of December 2009.


Phillip C. Ward, Director

Mailing Date: DEC 11 2009