

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

In the Matter of Transfer Application) RECONSIDERATION AND
T-8249, Linn 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

Jackson Farms LLC, Glenn Ford
P.O. Box 10163
Portland, OR 97210

Findings of Fact

1. The Department issued an order rejecting application T-8249 for a change in place of use on May 27, 2004. The order is entered at Special Order Volume 60, Pages 144 to 146.
2. The application was rejected on the basis that it did 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 was being processed.
3. The application lacked sufficient evidence 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, therefore the Department could not determine whether the proposed change would result in enlargement of the right.
4. The application also proposes to transfer water to lands to which Permit G-13263 for primary irrigation is appurtenant and the applicant had not indicated which water would be diminished to supplemental on the lands of overlap, should T-8249 be approved.
5. Subsequent to issuance of the order, on June 16, 2004 the applicant submitted a notarized affidavit attesting to the use of water under Certificate 36656, a 1994 aerial photo from FSA showing the irrigated lands to be transferred, irrigation system capacity information and a

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.

statement that if T-8249 is approved, Application G-14344/Permit G-13263 will be considered supplemental to the transferred right on the acres where the two rights overlap.

6. The above documentation submitted by the applicant remedies the application deficiencies, so that the application now meets the requirements for completeness as contained in ORS 540.520 and OAR 690-380-5000.
7. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. The period in which the Department may, on its own initiative, reconsider a final order has not yet closed.

Conclusions of Law


The change in place of use proposed in application T-8249 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The order rejecting application T-8249 and entered at Special Order Volume 60, Pages 144 to 146 is withdrawn and modified to approve the change in place of use proposed in application T-8249.
2. The descriptions of the proposed changes in Special Order Volume 60, Pages 144 to 146 are affirmed, with the correction that the quantity of water transferred is 0.13 cfs, and the order, as modified, issues.
3. Water right certificate 36656 is cancelled. A new certificate will be issued to confirm that portion of the right not involved in this transfer.
4. The right to use of the water is restricted to beneficial use at the place of use described in Special Order Volume 60, Pages 144 to 146, and is subject to all other conditions and limitations contained in Certificate 36656 and any related decree.
5. The proposed change shall be completed on or before October 1, 2005.
6. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2006.

7. Permit G-13263 is diminished to supplemental irrigation on the lands to which T-8249 transfers the water right under Certificate 36656.
8. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 17th day of JUNE, 2004.



For Phillip C. Ward
Acting Director

Mailing date: JUN 23 2004