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

In the Matter of Transfer Application	)	FINAL ORDER <b>DENYING</b>
T-9928, Washington County, Oregon	)	TEMPORARY CHANGES IN PLACE
	)	OF USE AND POINT OF
		APPROPRIATION

ORS 537,705 and 540,505 to 540,580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion or appropriation 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**

**David Bany** 5442 SW Kruse Road Wilsonville, Oregon 97070

### **Findings of Fact**

- David Bany filed an application to temporarily transfer the place of use and point of appropriation under Certificate 76590 for a period of two years. The Department assigned the application number T-9928.
- The portion of the right to be transferred is as follows:

Certificate:

76590 in the name of William J. Curtis

Use:

Irrigation of 4.8 acres

Priority Date: October 1, 1957

Quantity:

0.02 cubic foot per second (cfs)

Rate/Duty:

1/80 cfs per acre, not to exceed 2.5 acre-feet per acre

Source:

A Well in the Willamette River Basin

## **Authorized Point of Appropriation:**

Town	nship	Rai	nge	Meridian	Sec	1/4 1/4	Location
3	S	1	W	W.M.	2	NW NW	19 Chains South & 2 Chains East from NW Corner, Section 2

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.

#### **Authorized Place of Use:**

Town	Township Range		Meridian	Sec	1/4 1/4	Acres	
3	S	1	W	W.M.	2	NW NW	2.1
3	S	1	W	W.M.	2	SW NW	2.7

3. Application T-9928 proposes to change the place of use of the right to:

Town	nship	ip Range		Meridian	Sec	Sec 1/4 1/4		Lot	Acres
3	S	1	Е	W.M.	18	SE	SW	3100	2.7
3	S	1	E	W.M.	18	SW	SE	3100	2.1

4. As is necessary to convey the water to the proposed temporary place of use, Application T-9928 also proposes to move the authorized point of appropriation to:

Township		ownship Range		Meridian	Sec	1/4	1/4	Lot	Location
3	S	1	Е	W.M.	18	sw	SE	3100	790 Feet North & 2765 Feet East from SW Corner, Section 18

- 5. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- 6. 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.
- 7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- 8. The proposed change would not result in enlargement of the right.
- 9. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.
- 10. Department staff examined the transfer application and found that the proposed point of appropriation is **not** producing water from the same ground water source as the authorized point of appropriation. ORS 540.523 allows for a change in place of use and point of appropriation; however it does not authorize a change to a different source of water.

#### **Conclusions of Law**

The temporary changes in place of use and point of appropriation proposed in application T-9928 are **not** consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

# Now, therefore, it is ORDERED:

11. Temporary transfer 9928, in the name of David Bany, is **denied** and of no further force or effect.

Dated at Salem, Oregon this \_\_\_\_day of July, 2005.

Phillip C. Ward, Director

Mailing date: 7-25-2005