

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

In the Matter of Transfer Application) FINAL ORDER REJECTIING A
T-9648, Umatilla County, Oregon) CHANGE IN POINT OF DIVERSION

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.

Applicant

Maura Q. McCabe
1314 Davis Street
Milton-Freewater, Oregon 97862

Findings of Fact

1. Maura Q. McCabe filed a transfer application to change the point of diversion under a portion of Certificate 1771. The Department assigned the application number T-9648.
2. The portion of the right to be transferred is as follows:

Certificate: 1771 in the name of Mrs. Etta Metsker
Use: Irrigation, Domestic and Stock
Priority Date: 1890
Quantity: 0.49 cfs
Source: West Prong of Little Walla Walla River

Authorized Point of Diversion:

| Township | Range | Meridian | Sec | ¼ ¼ | Location |
|----------|-------|----------|-----|------|--|
| 6 | N | 35 | E | W.M. | 15 SW SE Metsker Lateral (ditch, per Adjudication map) |

Authorized Place of Use:

| Township | Range | Meridian | Sec | ¼ ¼ | Acres |
|--------------|-------|----------|-----|------|----------------|
| 6 | N | 35 | E | W.M. | 15 SE NW 17.70 |
| 6 | N | 35 | E | W.M. | 15 NE SW 1.30 |
| TOTAL | | | | | 19.00 |

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.

- Application T-9648 proposes to change the point of diversion (POD) from the authorized POD on the West Prong of Little Walla Walla River downstream approximately ½ mile and 720 feet from the river to a shallow well located:

| Township | | Range | | Meridian | Sec | ¼ | ¼ | Location |
|----------|---|-------|---|----------|-----|----|----|---|
| 6 | N | 35 | E | W.M. | 15 | NE | SW | 55 Feet South & 500 Feet West from the Center, Section 15 |

- Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
- The application was filed under ORS 540.531, allowing the transfer of a surface water point of diversion to groundwater (a hydraulically connected shallow well), provided certain criteria are met. The application was accompanied by a groundwater hydrologist’s report asserting the well is constructed in an unconfined aquifer that is hydraulically connected to that surface water source and that use of the well will affect surface water source “similarly” to use of the authorized surface water point of diversion. The report was needed because the location of the well exceeded the statutory requirements of being within 500 feet of the surface water source and within 1000 feet upstream or downstream of the authorized POD.
- The applicant has provided no documentation to demonstrate that water has been used from the authorized source described on the certificate, being the West Prong of the Little Walla Walla River, according to the terms and conditions of the right. Instead, the applicant has provided information that groundwater has been used on the subject lands within the last five years. No evidence has been submitted that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- The affidavit and all supporting evidence attesting to the use of water demonstrate that the lands identified under a portion of Certificate 1771 have been exercised from pumping the well. There is no water right, permitted or otherwise from the well.
- An application for a groundwater permit was submitted to the Department in October of 2003 for use of the well for irrigation, however, the application was denied due to substantial interference with the surface water source.
- On February 26, 2004, Department staff determined that the landowner has been using water from the well.
- On September 29, 2005, the Department contacted the current owner and the applicant by telephone to advise the applicant that evidence of use from the authorized surface water source was required pursuant to OAR 690-380-3000(12).
- On September 30, 2005, the Department mailed a written request to the applicant for evidence that the right had been exercised using water from the West Prong of the Little Walla Walla River within the last five years. The Department requested that the evidence of use be provided by October 14, 2005.

12. On January 3, 2006, the applicant contacted Department staff to review the September 30, 2005 letter and to obtain additional information concerning the application requirement. Staff reiterated the need for evidence of use from the West Prong of the Little Walla Walla River (the authorized source for the right) within the last five years.
13. On January 17, 2006, the applicant called the Department concerning the evidence of use and indicated that she did not intend to provide the information necessary to comply with the application requirements.
14. On January 18, 2006, Department staff contacted the applicant by telephone to notify the applicant that, given the failure of the applicant to provide evidence of use of water under the terms and conditions of the right to be transferred as required under OAR 690-380-3000(12), the Department intended to proceed with rejection of the application.
15. The application does not meet the minimum application requirements as set forth in OAR 690-380-3000. Despite numerous requests and discussions with the applicant regarding the necessity of providing the evidence of use, the information has not been forthcoming. As a result, the application is not complete.
16. On March 14, 2003, the Department sent a letter to the applicant requesting information as to the use of water from the authorized point of diversion described on Certificate 76760. The letter raised concerns regarding "measuring in and measuring out" of the water available at the original POD. In addition, the proposed transporting of any amount of water downstream using the Umatilla River would have to endure any conveyance losses as well. No written response was received from the applicant as to the issues identified.
17. On March 1, 2006, the Department mailed a copy of the draft Preliminary Determination proposing to reject application T-9648 to the applicant and provided the applicant with a 30-day period to respond. The draft Preliminary Determination described items needed to make the application complete under ORS 540.520 (2)(g). The applicant did not respond to the Department's draft Preliminary Determination deadline of April 4, 2006 to submit evidence of use requested.
18. Notice of the Preliminary Determination was published on the Department's Weekly Public Notice on April 25, 2006. No protests were filed in response to the notice.

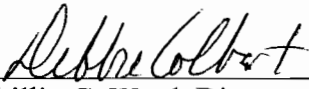
Conclusions of Law

The proposed change in point of diversion to a shallow well proposed in application T-9648 is NOT consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-3000.

Now, therefore, it is ORDERED:

1. The change in point of diversion to a shallow well proposed in application T-9648 is rejected.

Dated at Salem, Oregon this 15th day of June 2006.



P.C.W. Phillip C. Ward, Director

Mailing date: JUN 13 2006