

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Gov Lot	DLC	Acres
4 S	4 W	W.M.	34	SE NE	5		2.8
4 S	4 W	W.M.	34	SE SW		72	8.8
4 S	4 W	W.M.	34	NE SE	4		24.2
4 S	4 W	W.M.	34	NE SE		72	10.4
4 S	4 W	W.M.	34	SW SE		72	4.5
4 S	4 W	W.M.	35	SW NW	3		0.1
4 S	4 W	W.M.	35	NW SW	2		0.3
4 S	4 W	W.M.	35	NW SW		72	1.7
4 S	4 W	W.M.	35	SW SW		72	0.9
5 S	4 W	W.M.	3	NE NW		64	0.1
Total							53.8

3. The portion of the second right to be transferred is as follows:

Certificate: 40066 in the name of Raymond C. Kauer
Use: Irrigation
Priority Date: April 28, 1965
Quantity: 0.19 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 2½ acre-feet per acre
Acres: 32.4
Source: South Yamhill River, tributary to Yamhill River
Authorized Point of Diversion:

Township	Range	Meridian	Sec	¼ ¼	Location
4 S	4 W	W.M.	34	SE NE	5040 feet North and 3090 feet West from the SE corner of Armstrong DLC 64

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Gov Lot	DLC	Acres
5 S	4 W	W.M.	3	NE SW	3		0.6
5 S	4 W	W.M.	3	SE SW	3		0.8
5 S	4 W	W.M.	3	SE SW		62	8.5
5 S	4 W	W.M.	3	SW SE		62	18.3
5 S	4 W	W.M.	10	NW NE		62	4.2
Total							32.4

4. Application T-6884 proposes to change the place of use of the rights to:

Township	Range	Meridian	Sec	¼ ¼	Gov Lot	DLC	Acres
5 S	4 W	W.M.	3	SW NE		61	11.2
5 S	4 W	W.M.	3	SW NW			5.2

Township	Range	Meridian	Sec	¼ ¼	Gov Lot	DLC	Acres
5 S	4 W	W.M.	3	SE NW	5	62	3.4
5 S	4 W	W.M.	3	SE NW		61	11.8
5 S	4 W	W.M.	3	NE SW	3		4.9
5 S	4 W	W.M.	3	NE SW		61	6.0
5 S	4 W	W.M.	3	NW SW			4.4
5 S	4 W	W.M.	3	NW SE		61	1.9
5 S	4 W	W.M.	4	SW NE		39	10.6
5 S	4 W	W.M.	4	SE NE		39	17.8
5 S	4 W	W.M.	4	NE SE		39	4.9
5 S	4 W	W.M.	4	NW SE		39	2.1
Total							84.2

5. The application and map included several discrepancies, including:
- a. The application lacks a signed, notarized statement from Barbara M. Kauer (land co-owner), and a signed statement from Farm Credit System (lien holder), indicating that they consent to the changes to the water right proposed by T-6884, as required by OAR 690-380-3000.
 - b. The map has the following errors:
 1. The map is not printed true to scale as required by OAR-690-380-3100.
 2. GLO survey map and Land Patent and deed records indicate that the DLC labeled 64 should be DLC 61.
 3. The map identifies 86.2 acres of land from which the rights are to be moved, but only shows 84.2 acres in the proposed place of use.
 4. The application indicates 22.4 acres of water right are to be transferred to SE and SW of the NW quarter, Section 3, T5S, R4W, WM. However, the map only shows 20.4 acres in that area. The map and application need to match.
 5. The map does not show by separate hatchuring patterns where the 53.8 acres of Certificate 40065 are to be transferred, and where the 32.4 acres of Certificate 40066 are to be located.
 - c. Department records show that Permit 31104/Certificate 40064 is a supplemental irrigation right appurtenant to lands under Certificate 40065 being transferred from Sections 34 and 35. However, this supplemental right is not included in the proposed transfer. As per OAR 690-380-2250 the applicant must, within 30 days of notification, either amend the transfer application to move this supplemental right with the primary right, or withdraw the transfer application. If the Department were to approve T-6884, the portion of the supplemental right under Certificate 40064 would be cancelled upon issuance of the order. If T-6884 is not approved, there will be no change to the supplemental right.
 - d. Department records show that Certificate 15575 (priority date January 24, 1939) is appurtenant to 10.4 acres of the lands to which the rights (priority February 21, 1964 and April 28, 1965) are proposed to be transferred. If T-6884 were to be approved, and the later-priority date rights transferred onto those lands, the transferred right would become supplemental to the earlier right unless the applicant designates otherwise. The potential conflict may be avoided by amending the transfer to move the rights to other lands, diminishing the transferred right to supplemental status where the rights overlap, or by authorizing cancellation of the portion of Certificate 15575 existing on those lands.
6. T-6884, as submitted, does not meet the requirements of OAR 690-380-3000 and is considered incomplete unless the above listed deficiencies are remedied.

7. On May 24, 2004 a letter was sent to the applicant, requesting the applicant to contact the Department by June 23, 2004 to set up a timeline for correcting the deficiencies in the T-6884 application and map. No timely response was received.
8. On July 15, 2004 Raymond Kauer was reached by phone. He requested to have until September 1, 2004 to consider whether to remedy the deficiencies or to withdraw T-6884. No response was received by September 1, 2004.
9. On September 2, 2004 and again on October 14, 2004 phone messages were left on Mr. Kauer's answering machine, requesting him to respond to indicate whether he wished to pursue the transfer by remedying the deficiencies, or to withdraw the transfer. No response was received to the messages.
10. On November 2, 2004 Raymond Kauer was reached by phone and he indicated that he intended to withdraw the transfer and would send a written request to withdraw T-6884. No letter was received.
11. On December 10, 2004 a letter was sent to Mr. Kauer, requesting that he send a written response by January 10, 2005 either requesting to withdraw the application or stating his intent to pursue remedying the deficiencies. No letter was received by January 10, 2005.
12. On May 20, 2005 the Department again attempted to reach Mr. Kauer by phone, but was unsuccessful.
13. 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.
14. Water has been used within the five years prior to filing the transfer application, 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.
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.
17. A draft of the Preliminary Determination proposing to reject the application was mailed to the applicant July 21, 2005 for review, with a request that any comments be sent to the Department by August 22, 2005. No timely response was received.
18. A Preliminary Determination proposing to reject the application was issued October 1, 2005, and a notice of the Preliminary Determination was posted on the Department's Public Notice November 22, 2005. No protests were received.

Conclusions of Law

Application T-6884 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-6884 is rejected and application T-6884 is of no further force or effect.

Dated at Salem, Oregon this 6th day of January, 2006.

FOR *Phillip C. Ward*
Phillip C. Ward
Director

Mailing date: JAN 10 2006