

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

In the Matter of Transfer Application) FINAL ORDER DENYING CHANGES
T-6872, Marion 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

D.E.W.W. Farms
5357 St. Paul Highway
St. Paul, Oregon 97137

Findings of Fact

Background

1. On January 6, 1993, D.E.W.W. Farms filed an application to change the place of use under Certificate 19469 and Permit 43135. The Department assigned the application number T-6872.
2. The portion of the first right proposed to be transferred is as follows:

Certificate: 19469 in the name of Burnell Olson
Use: Irrigation of 25.0 acres
Priority Date: October 28, 1947
Quantity: 0.31 cubic foot per second
Rate/Duty: One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year
Source: Willamette River, tributary to the Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	DLC
4	S	3	W	W.M.	1	NW SE	70

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.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	3	W	W.M.	1	SW NE	70	7.0
4	S	3	W	W.M.	1	SE NE	70	2.4
4	S	3	W	W.M.	1	NE SE	70	3.0
4	S	3	W	W.M.	1	NW SE	70	12.6

3. Application T-6872 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	2	W	W.M.	6	NE SW	37	14.5
4	S	2	W	W.M.	6	NW SW	37	10.5

4. The second right proposed to be transferred is as follows:

Permit: S-43135 in the name of D.E.W.W. Inc. (no certificate issued)
Use: Irrigation of 25.0 acres
Priority Date: April 14, 1978
Quantity: 0.32 cubic foot per second
Rate/Duty: One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year
Source: Willamette River, tributary to the Columbia River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	DLC	Survey Coordinates
4	S	3	W	W.M.	1	NW SE	70	350 feet South and 2000 feet West from the E¼ corner of Section 1

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	2	W	W.M.	6	NE SW	37	14.5
4	S	2	W	W.M.	6	NW SW	37	10.5

5. Application T-6872 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	DLC	Acres
4	S	3	W	W.M.	1	SW NE	70	7.0
4	S	3	W	W.M.	1	SE NE	70	2.4
4	S	3	W	W.M.	1	NE SE	70	3.0
4	S	3	W	W.M.	1	NW SE	70	12.6

6. Notice of the application for transfer was published on January 13, 1993, pursuant to OAR 690-380-4000. WaterWatch of Oregon filed comments in response to the notice, questioning the effect on instream flows and requesting the Department to condition the transfer to require fish screens and bypass devices, measurement devices and records, and compliance with state policies and local comprehensive plans. WaterWatch stated their understanding that only water right certificates, not permits, were subject to transfer.

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

7. No evidence was provided, to document that water has been used within the last five years according to the terms and conditions of the rights, or to demonstrate that the rights are not subject to forfeiture under ORS 540.610.
8. No request for issuance of a water right certificate has been received or approved by the Commission for Permit S-43135. Thus the permit does not qualify as a water use subject to transfer under OAR 690-380-0100(11)(c).
9. No documentation was provided to show that a diversion structure and ditch, or pump, pipe and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
10. Without documentation of use of the water rights within the five years prior to filing the transfer application, and of the capacity of the system, the Department is unable to conclude that the proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.
12. The applicant was notified by letter dated October 7, 2004 of the deficiencies listed in Finding Nos. 7, 8 and 9, and given the opportunity to respond by November 8, 2004 to indicate intent to remedy the deficiencies and to set a mutually agreeable timeline for doing so. No response was received. A phone message was left with the applicant's residence December 9, 2004, for Mr. Bill Gooding to call the Department to discuss his intentions regarding T-6872.
13. On December 17, 2004, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-6872 to the applicant. The draft Preliminary Determination set forth a deadline of January 17, 2005, for the applicant to respond. The applicant did not respond by the deadline.
14. On April 7, 2005, at the request of Mr. Gooding, the Department sent a letter to Mr. Gooding outlining options for continuing with the transfer application. A response date of May 6, 2005 was given in the letter. No response to the letter has been received by the department as of October 11, 2007.

15. On October 17, 2007, the Department issued a Preliminary Determination proposing to deny Transfer Application T-6872 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 23, 2007 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Conclusions of Law

The changes in place of use proposed in Transfer Application T-6872 are not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 because the water use under Permit S-43135 is not subject to transfer, and the application does not meet completeness standards.

Now, therefore, it is ORDERED:

Transfer Application T-6872, in the name of D.E.W.W. Farms, is denied.

Dated at Salem, Oregon this 2nd day of September 2008.


Phillip C. Ward, Director *pcw*

Mailing Date: SEP 11 2008