

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

In the Matter of Transfer Application) FINAL ORDER REJECTING A
T-7558, Yamhill County) CHANGE IN POINT OF DIVERSION

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.

Applicants

Roger M. and Patricia L. Lawson
Larry J. and Barbara A. Hofenbredl
25100 Loganberry Lane
Sheridan, OR 97378

Findings of Fact

1. On May 6, 1996, Margaret and Ray Brudnok filed an application to transfer the point of diversion for irrigation use under Certificate 42868. The statutory fees for the transfer application were received on May 13, 1996, and the Department assigned the application number T-7558.
2. On June 25, 2004, Certificate 42868 was cancelled by Special Order Volume 60, Pages 373 through 375, and remaining right Certificate 80783 was issued.
3. The portion of the right to be transferred is as follows:

Certificate: 80783 in the name of Dennis and Debra Wagner, Roger M. and Patricia L. Lawson, and Larry L. and Barbara H. Hofenbredl

Use: Irrigation

Priority Date: April 28, 1972

Quantity: UNKNOWN because of incomplete transfer application

Acres: UNKNOWN because of incomplete transfer application

Source: South Yamhill River, tributary to Yamhill River

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 Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Lot	Location
5	S	6	W	W.M.	36	NW	SE	2	2430 feet north and 1730 feet west from the SE Corner of Section 36

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
5	S	6	W	W.M.	36	NE	SW	3		1.7
5	S	6	W	W.M.	36	NE	SW		48	2.7
5	S	6	W	W.M.	36	NW	SE	2		UNKNOWN because of incomplete transfer application
5	S	6	W	W.M.	36	NW	SE		48	UNKNOWN because of incomplete transfer application

4. Application T-7558 proposes to move the authorized point of diversion approximately 800 feet upstream in the South Yamhill River to:

Township		Range		Meridian	Sec	¼ ¼		Lot	Location
5	S	6	W	W.M.	36	NW	SE	2	570 feet from the corner of the subject property

5. 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 notices.
6. The application does not meet the standards in OAR 690-15-060(8) requiring the proposed point of diversion location to be accurately identified in reference to a public land survey corner.
7. The application does not meet the standards in OAR 690-15-060(9) requiring the authorized place of use that will be affected by the proposed change to be identified by its location within the public land survey.
8. Sufficient evidence, as required by OAR 690-15-060(10), has not been supplied to allow the Department to determine whether water has been used according to the terms and conditions of the right within the five years prior to filing the application, and that the right is not subject to forfeiture under ORS 540.610.
9. The application did not include a map meeting current mapping standards, or the standards which were in effect at the time the application was filed, being OAR 690-15-060(15).
10. A completed land use information form reviewed by the local planning department, as required by OAR 690-15-060(16), was not submitted with the transfer application.
11. On January 21, 2004, the Department mailed a letter to Ray and Margaret Brudnok, with a copy of the transfer application and map enclosed. The letter requested the applicant to clarify the proposed change and make clerical corrections to the application. The letter also

requested submittal of a map prepared by a CWRE, a copy of the deed to the subject land, affidavits from other holders of the water right and any encumbrance holders, evidence of water use, and a description of the pumping and delivery system.

12. The January 21, 2004, letter referenced in Finding #11 was returned by the U. S. Postal Service as undeliverable. An attempt to reach the applicants by telephone was unsuccessful because no current telephone number was found. An inquiry to the Yamhill County Assessor's office indicated the current landowners of the subject property were Roger M. and Patricia L. Lawson and Larry J. and Barbara A. Hofenbredl, all at mailing address: 25100 SW Loganberry Lane, Sheridan, OR 97378.
13. A copy of the letter referenced in Finding #11 was sent to the new landowners on January 26, 2004. A cover letter to the new owners offered an opportunity for them to submit a "Request for Assignment" and requested a response by March 1, 2004, if they wished to pursue the transfer. No timely response to the letter was received. Efforts to reach the new landowners by telephone failed as phone numbers could not be found at that time.
14. On March 4, 2004, the current landowners were provided with a draft of the Preliminary Determination for Transfer T-7558 and offered an opportunity to request assignment of the application by April 15, 2004, so that they could remedy application deficiencies and pursue the transfer. Patricia Lawson inquired about the transfer by telephone on March 15, 2004, however, no timely request for assignment or submittal of requested materials were received.
15. A letter was sent to the Lawsons and Hofenbredls on April 20, 2004, explaining how appurtenance and forfeiture of water rights would impact their decision to pursue the transfer. The letter requested a reply by May 20, 2004, if they wished to submit a "Request for Assignment" in order to pursue T-7558. No response to the letter was received.
16. On May 25, 2004, Watermaster Bill Ferber stopped by the subject property and found no one home. Mr. Ferber left a business card asking the landowner to call Dorothy Pedersen at the Department. No response was received.
17. Watermaster Bill Ferber visited the property again on June 11, 2004, and found Patricia Lawson at home. Mr. Ferber telephoned the Department so that Dorothy Pedersen could speak with Mrs. Lawson directly. Mrs. Lawson indicated that she had completed the assignment request and would be sending it to the Department.
18. The Department received the "Request for Assignment" and the appropriate statutory fee on July 6, 2004. Transfer T-7558 was assigned to Roger and Patricia Lawson and Larry and Barbara Hofenbredl on July 9, 2004.
19. A copy of the recorded deed meeting the requirements of OAR 690-15-060(11) was submitted with the assignment request described in Finding #18, however, none of the other requested information or materials needed to remedy the deficiencies of the transfer application were submitted.

20. The recorded deed indicated that an encumbrance against the subject property exists. However, a notarized statement from the encumbrance holder (Washington Federal Savings) indicating they have no objection to the proposed change, as required by OAR 690-15-060(12), was not submitted.
21. On July 20, 2005, the Department sent a letter requesting the applicants to submit the items necessary to remedy the deficiencies of the transfer application. The letter requested a response from the applicants by October 20, 2005, if they wished to pursue the transfer. No timely response to the letter was received.
22. The Department telephoned the Lawsons twice (on March 17, 2006, and April 6, 2006) in an attempt to discuss and remedy the deficiencies of the transfer application. There was no answer, so a phone message was left each time requesting the applicants to return the Department's phone call. No response to either phone message was received.
23. On May 10, 2006, the Department issued a preliminary determination proposing to reject Transfer T-7558 and mailed a copy to the applicants. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on May 16, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the Department's weekly notice.
24. As identified in Findings #6, #7, #8, #9, #10 and #20 above, the transfer application does not meet standards for completeness as per ORS 540.520 and OAR Chapter 690, Division 15 which were in effect at the time of filing, nor does it meet OAR Chapter 690, Division 380 completeness standards currently in effect.

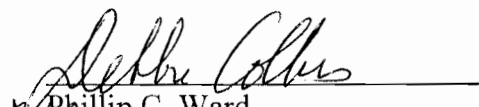
Conclusions of Law

Transfer application T-7558 does not meet the requirements of ORS Chapter 540, OAR 690-15-060 or OAR 690-380-3000 for completeness, and cannot be processed. Therefore, the change in point of diversion proposed in Transfer Application T-7558 is NOT consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

Transfer Application T-7558, in the name of Roger M. and Patricia L. Lawson and Larry J. and Barbara A. Hofenbredl, is rejected.

Dated at Salem, Oregon this 22nd day of June, 2006.


Phillip C. Ward
Director

Mailing Date: JUL 11 2006