

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

In the Matter of Exchange Application) FINAL ORDER DENYING EXCHANGE
T-10030, Deschutes and Jefferson Counties) APPLICATION

Authority

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.

ORS 540.533 establishes the process in which a water right holder may apply for permission to use stored, surface or ground water from another source in exchange for supplying replacement water in an equal amount to satisfy prior appropriations from the other source.

Applicant

THREE SISTERS IRRIGATION DISTRICT
PO BOX 2230
SISTERS, OR 97759

Agent

DESCHUTES RIVER CONSERVANCY
PO BOX 1560
BEND, OR 97709

Findings of Fact

Background

1. On December 2, 2005, THREE SISTERS IRRIGATION DISTRICT filed an application to exchange a flow augmentation groundwater right (application G-16558) for a surface water right (Certificate #74135). The Department assigned the application number T-10030.
2. Notice of the application for exchange was published on March 14, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. ORS 540.533(1) establishes the criteria for applying for an exchange, as follows:.

Any person holding a water right established by court decree, a water right certificate or a water right for which proof of beneficial use has been approved by the Water Resources Director or Water Resources Commission or any person applying for or holding a permit issued under ORS 537.211 for use of water for an instream purpose

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.

4. The flow augmentation groundwater right proposed to be exchanged in the T-10030 application is not a water right subject to transfer. It is only a water right permit application; it is not a permit, and therefore, does not meet the criteria established under ORS 540.533.
5. The exchange application is incomplete because groundwater application G-16558 is not a water right subject to transfer or exchange.
6. Because Exchange Application T-10030 is incomplete, notice required under OAR 690-380-2260(2)(b) was not published.
7. On February 22, 2011, the Department issued a Proposed Order Denying Exchange Application and mailed a copy to the applicant. The Proposed Order cover letter set forth a deadline of March 24, 2011, for the applicant to respond or to request an opportunity for hearing pursuant to OAR 690-380-2260(5). No response or request for hearing was received from the applicant.

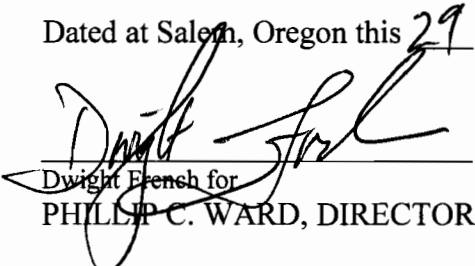
Conclusions of Law

The exchange proposed in Application T-10030 is not consistent with the requirements of ORS 540.533, 537.705, and 540.505 to 540.580 and OAR 690-380-5000. The flow augmentation groundwater application G-16558 is not a water right subject to transfer.

Therefore, it is ORDERED:

Exchange Application T-10030 is denied.

Dated at Salem, Oregon this 29 day of March 2011.


Dwight French for
PHILLIP C. WARD, DIRECTOR

mailing Date APR 01 2011