

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9490, Lane County) PROPOSING DENIAL OF A CHANGE
) IN CHARACTER OF USE OF
) STORAGE RIGHT

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

WILLIAM ROBINSON
PO BOX 2709
FLORENCE OR 97439

Findings of Fact

Background

1. On July 1, 2003, WILLIAM ROBINSON filed an application to change the character of use of the storage right under Certificate 31076. The Department assigned the application number T-9490.
2. The portion of the right to be transferred is as follows:

Certificate: 31076 in the name of A.E. BARNUM; C/O COAST BUSINESS BROKERS (perfected under Permit R-2685)

Use: RECREATION

Priority Date: SEPTEMBER 15, 1961

Rate: 45.0 ACRE FEET

Source: UNNAMED STREAM, tributary to WOA HINK LAKE

Authorized Place of Use:

RECREATION				
Twp	Rng	Mer	Sec	Q-Q
19 S	12 W	WM	11	NE SE
19 S	12 W	WM	11	NW SE
19 S	12 W	WM	11	SE SE

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

- Certificate 31076 does not identify the point of diversion; however, the best information available indicates that the point of diversion is located as follows:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
19 S	12 W	WM	11	NW SE

- Transfer Application T-9490 proposes to change the character of use to multi-purpose.
- Notice of the application for transfer was published on July 22, 2003, pursuant to OAR 690-380-4000. On February 6, 2006, comments to the notice were received from MJK, LLC asserting that MJK, LLC is the owner of the Little Woahink Lake storage water right under Certificate 31076 and the accompanying reservoir “maintenance” right under Certificate 31077.
- On August 18, 2006, the Department received a letter from the City of Dunes Planning Department requesting the Department address the questions of title to the water rights represented by Certificates 31076 and 31077.
- On August 23, 2006, the Department replied to the City of Dunes’ letter stating that there is insufficient information in the application file to demonstrate that Mr. Robinson is authorized to seek the transfer.
- On December 8, 2008, a concurrent water right application for the same property (S-84581) was assigned to Melvin Panter. Application S-85481 was amended to remove the use of stored water; therefore, Transfer Application T-9490 may no longer be necessary. Transfer Application T-9490 was not assigned to Mr. Panter.
- On August 11, 2010, the Department sent a letter Mr. William Robinson requesting the applicant to notify the department of his intent to proceed with or withdraw Transfer Application T-9490. No response has been received to the letter as of this date.
- On September 10, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-9490 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 30, 2010, for the applicant to respond. No response has been received from the applicant.

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

- Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A dam and reservoir capable of storing the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-9490
- The proposed change would not result in enlargement of the right.


14. The proposed change could result in injury to the instream water right under Certificate 59892.
- a. Instream water right under Certificate 59892 is currently not being met during the months of April and June through November.
 - b. Transfer Application T-9590, if approved, would allow the use of the water stored in Little Woahink Lake to change from a non-consumptive use (recreation) to a consumptive use (multi-purpose).
 - c. If stored water in Little Woahink Lake is used consumptively, there will be less live flow available to leave the reservoir and provide flow to Woahink Creek and the State's instream water right.

Determination and Proposed Action

The change in character of use of the storage right proposed in Transfer Application T-9490 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, with the exception that **applicant has not provided sufficient information to determine the ownership of the lands underlying the reservoir nor has applicant provided the necessary documentation that he has consent from the owner of the reservoir to pursue the proposed changes.** Therefore, Transfer Application T-9590 does not meet the requirements of ORS Chapter 540, OAR 690-15-0060 or OAR 690-380-3000 for completeness. Without the above documentation, the Department cannot perform the necessary analysis required, to determine if in fact, the proposed transfer would injure the existing instream water right under Certificate 59892.

The Department intends to deny Transfer Application T-9590.

Dated at Salem, Oregon this 1 day of October, 2010.


Dwight French for
Phillip C Ward, Director

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wr.d.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

