

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-6731, Coos County) PROPOSING DENIAL OF AN
) ADDITIONAL POINT OF DIVERSION

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

LOSHBAUGH INC.
PO BOX 857
BANDON OR 97411

Findings of Fact

Background

1. On May 11, 1992, Loshbaugh Inc., filed an application to add a point of diversion under Certificates 28411 and 64857. The Department assigned the application number T-6731.

2. The portion of the first right to be transferred is as follows:

Certificate: 28411 in the name of ENNIS AND VIOLA JANE LOSHBAUGH, W. A. PANTER, MARY E. PANTER, LEANDER A. AND LELAND T. PANTER AND CHARLES W. PANTER (perfected under Permit S-18068)

Use: IRRIGATION of 4.4 ACRES

Priority Date: NOVEMBER 20, 1947

Rate: 0.06 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: If for the irrigation of cranberries, shall be limited to 1/10 of one cfs or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 0.75 af for each acre irrigated in any 30 day period and shall be still further limited to a diversion of not to exceed 6 af during the irrigation season of each year.

Source: GREEN GULCH CREEK, tributary to FOURMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
30 S	15 W	WM	1	SW SE
30 S	15 W	WM	12	NW NE

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	12	NW NE	3.0
30 S	15 W	WM	12	NE NW	1.4

3. Transfer Application T-6731 proposes to add a point of diversion approximately 0.75 mile in a northwesterly direction to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	15 W	WM	1	SE SW	1240 FEET NORTH AND 1180 FEET WEST FROM THE N1/4 CORNER OF SECTION 12

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

Certificate: 64857 in the name of WILLIAM S. AND IRIS A. LOSHBAUGH (perfected under Permit S-41306)

Use: IRRIGATION, TEMPERATURE CONTROL AND FLOOD HARVESTING OF 0.81 ACRE OF CRANBERRIES AND TEMPERATURE CONTROL AND HARVESTING OF 2.8 ACRES OF CRANBERRIES.

Priority Date: OCTOBER 18, 1974

Rate: 0.29 CUBIC FOOT PER SECOND, BEING 0.02 CFS FOR IRRIGATION, 0.17 CFS FROM CRANBERRY HARVESTING AND 0.29 CFS FOR TEMPERATURE CONTROL

Limit/Duty: If for the irrigation of cranberries 1/40 of one cfs not to exceed 3.0 af for each acre irrigated during the irrigation season of each year. The irrigation of any other crop is limited to a diversion of 1/80 of one cfs (or its equivalent) and 2.5 af for each acre irrigated during the irrigation season of each year.

Source: GREEN GULCH CREEK, tributary to FOURMILE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	15 W	WM	12	NW NE	850 FEET SOUTH AND 1070 FEET EAST FROM THE N1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION, TEMPERATURE CONTROL AND HARVESTING					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	12	NW NE	0.53
30 S	15 W	WM	12	NE NW	0.28

TEMPERATURE CONTROL AND HARVESTING					
Twp	Rng	Mer	Sec	Q-Q	Acres
30 S	15 W	WM	12	NW NE	1.40
30 S	15 W	WM	12	NE NW	1.40

- Transfer Application T-6731 proposes to add an additional point of diversion approximately 0.75 mile in a northwesterly direction to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
30 S	15 W	WM	1	SE SW	1240 FEET NORTH AND 1180 FEET WEST FROM THE N1/4 CORNER OF SECTION 12

- Notice of the application for transfer was published on May 21, 1992, pursuant to OAR 690-15-080. No comments were filed in response to the notice.
- On February 6, 2007, the Department sent a letter to the applicant explaining that there are some indications that the source for the additional point of diversion is different than the authorized source for Certificates 28411 and 64857 (Green Gulch Creek). This letter requested that either the application be withdrawn or clarification of the requested source be submitted and set forth a date of March 15, 2007 for a response. To date, no response from the applicant has been received.
- On March 14 and again on March 19, 2007, Department staff attempted to contact the applicant via telephone. No contact was established.
- On March 20, 2007, a letter was sent to the applicant, along with a draft Preliminary Determination, outlining the deficiencies in the transfer application and illustrating the potential enlargement of the right since information in the record indicated that the source of the proposed point of diversion was different than the authorized source for Certificates 28411 and 64857. The Department requested that the missing items be submitted to the Department within 30 days of the date of the letter.
- On March 27, 2007, Department staff contacted Earl Lang, the new land owner, by telephone and informed him of the submission of the transfer application on property he now owns and suggested that Mr. Lang could request assignment of the application to him so that he would be authorized to make decisions regarding this application. Department staff followed up the telephone conversation with a letter outlining the process for requesting an assignment and describing the deficiencies in the application.
- On April 2, 2007, the local Watermaster, Mitch Lewis, met with Mr. Lang and discussed this transfer application, the assignment process and other water related issues.
- To date, the landowner has not requested an assignment of this transfer application to him and the deficiencies in the application have not been addressed.

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


- The application does not contain evidence that the water has been used in accordance with the terms and conditions of the certificates during the five years, prior to submittal of the transfer application.

14. The transfer application does not provide evidence that the proposed changes are compatible with local land uses.
15. The application does not contain a general description of the current water delivery system, including capacity that provides evidence that a system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-6731.
16. The proposed change would result in enlargement of the rights. The Department has made a finding that the proposed point of diversion does not divert water from the same source. It appears that the proposed point of diversion is located on an unnamed stream that is **not** a tributary of Green Gulch Creek. OAR 690-380-2110(2) restricts a change in point of diversion to the same source of surface water. Absent any additional information supplied by the applicant, the Department cannot make a finding that the proposed use would not enlarge Certificates 28411 and 64857.
17. The proposed change would not result in injury to other water rights.
18. As identified in Findings #13, #14 and #15 above, the transfer application does not meet standards for completeness as per ORS 540.520 and OAR 690, Division 15 which were in effect at the time of filing nor does it meet OAR 690, Division 380 completeness standards currently in effect.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-6731 appears NOT to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be denied.

Dated at Salem, Oregon this 31st day of May 2007.


Phillip C. Ward, Director *PCW*

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrdd.state.or.us.

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