# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-11384, Deschutes County	)	ADDITIONAL POINT OF
	)	APPROPRIATION

### **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.

Applicant Agent
KEN & CAROL FACKLER MICHELE SIMS, FRED AST & ASSOC.
PO BOX 316 P.O. BOX 751
MORA, MINNESOTA 55051 SISTERS, OR 97759

## **Findings of Fact**

- 1. On March 27, 2012, Ken and Carol Fackler filed an application to add an additional point of appropriation under a portion of Certificate 83456. The Department assigned the application number T-11384.
- 2. Notice of the application for transfer was published on April 3, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On April 11, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11384 to the applicants and agent. The draft Preliminary Determination cover letter set forth a deadline of May 10, 2013, for the applicant to respond. On April 17, 2013, Michele Sims, agent for the applicant, requested via e-mail, for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate the applicants are authorized to pursue the transfer.
- 4. On April 29, 2013, the Department discovered the measurement device condition requirement was missing from the draft of the Preliminary Determination. On April 30,

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.

2013, the Department notified the applicant and agent of the needed condition to be incorporated into any approval of the transfer. On May 1, 2013, the applicants contacted the Department by phone and approved the needed condition for installation of a totalizing flowmeter at the new point of appropriation, and requested to move forward.

- 5. On May 17, 2013, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11384 and sent 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 28, 2013, and in the Bend Bulletin newspaper on May 24 and 31, 2013, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the right to be transferred is as follows:

Certificate: 83456 in the name of JAYMIE KACZMAREK, JERRY & JEANNIE

FREUND, JOSEPH ANGEL, LEON & LYNN DENSE, NORTHWEST FARM CREDIT SERVICES, H. RICHARD & PAMALYNN STEINFELD,

DONALD NEIL THOMAS AND THOMAS K. & JANICE E.

WINDER WALL THOMAS AND THOMAS IS A STA

WIMBERLY, (perfected under Permit G-12705)
:: IRRIGATION of 45.5 ACRES

Use: IRRIGATION of 45
Priority Date: AUGUST 31, 1992

Priority Date: AUGUST 31, 1992

Rate: 0.57 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of

ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each

year.

Source: WELL #4 within the DESCHUTES RIVER BASIN

**Authorized Point of Appropriation:** 

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	11 E	WM	9	NW NE	WELL #4 - 120 FEET SOUTH AND 300 FEET EAST FROM THE N1/4 CORNER OF SECTION 9

#### **Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	
16 S	11 E	WM	4	NE SW	0.4	
16 S	11 <b>E</b>	WM	4	SE SW	21.3	
16 S	11 E	WM	4	NW SE	2.1	
16 S	11 E	WM	4	SW SE	15.5	
16 S	11 E	WM	9	NW NE	2.1	
16 S	11 E	WM	9	NE NW	4.1	

 Transfer Application T-11384 proposes to add an additional point of appropriation north of Well #4 approximately 1400 feet:

**Proposed Additional point Appropriation:** 

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	11 E	WM	4	NW SE	WELL #3 - 1331 FEET NORTH AND 516 FEET
					EAST FROM THE N1/4 CORNER OF SECTION 9

## Transfer Review Criteria (OAR 690-380-4010)

- 8. Water has been used within the last five years 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.
- 9. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11384.
- 10. The proposed change would not result in enlargement of the right.
- 11. The proposed change would not result in injury to other water rights.
- 12. The proposed, additional point of appropriation produces water from the same source (aquifer) as the original Well#4 and complies with the requirements of OAR 690-380-2110 (2).
- 13. All other application requirements are met.

#### **Conclusions of Law**

The additional point of appropriation proposed in Transfer Application T-11384 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

## Now, therefore, it is ORDERED:

- 1. The change in additional point of appropriation proposed in application T-11384 is approved.
- The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 83456 and any related decree.
- 3. Water right certificate 83456 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 6. Water use measurement conditions:
  - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at the new point of appropriation.
  - b. The water user shall maintain the meter or measuring device in good working order.
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 2 day of July, 2013.

Dwight French, Water Right Services Administrator, for

PHILLIP/C. WARD, DIRECTOR

Mailing date: JUL 2 9 2013