

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

In the Matter of Transfer Application            )  
T-11433, Benton County                            )  
  )  
  )    FINAL ORDER APPROVING A  
  )    CHANGE IN POINT OF  
  )    APPROPRIATION AND  
  )    REDESCRIPTION OF WATER RIGHT

**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**

FINLEY REVOCABLE LIVING TRUST  
2025 SE POWELLS RD  
CORVALLIS, OR 97333

**Findings of Fact**

***Background***

1. On June 15, 2012, FINLEY REVOCABLE LIVING TRUST filed an application to change the point of appropriation under Certificate 47253. The Department assigned the application number T-11433.
2. The water right associated with Certificate 47253 is now in two separate ownerships; Lot 3 (TL 800) and Lot 4 (TL 802 & 803) of Island Acres Subdivision. A recent survey conducted by a professional land surveyor and Certified Water Right Examiner indicates Certificate 47253 requires a redescription of the place of use and point of appropriation.
3. Based on a more accurate survey using GPS, including determination of the 1/16 section corner locations and measurements to the brass cap at the northwest corner of Section 24, Certificate 47253 should be redescribed as follows:

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.

**Authorized Point of Appropriation (as re-surveyed):**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2360 FEET SOUTH AND 3130 FEET EAST FROM THE NW CORNER OF SECTION 24

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Original Acres	Redescribed Acres	Redescribed Lot
12 S	5 W	WM	24	SW NE	10.6	9.4	3
12 S	5 W	WM	24	SW NE		1.5	4
12 S	5 W	WM	24	SE NW	4.6	0.5	3
12 S	5 W	WM	24	SE NW		3.8	4
12 S	5 W	WM	24	NE SW	3.5	3.4	4
12 S	5 W	WM	24	NW SE	1.1	1.2	4
Totals					19.8	19.8	

4. The portion of the redescribed right to be transferred is as follows:

**Certificate:** 47253 in the name of LESLIE AND MARGARET WHEELER (perfected under Permit G-6196)

**Use:** IRRIGATION OF 9.9 ACRES

**Priority Date:** AUGUST 2, 1974

**Rate:** 0.125 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the WILLAMETTE RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2360 FEET SOUTH AND 3130 FEET EAST FROM THE NW CORNER OF SECTION 24

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	5 W	WM	24	SW NE	1.5
12 S	5 W	WM	24	SE NW	3.8
12 S	5 W	WM	24	NE SW	3.4
12 S	5 W	WM	24	NW SE	1.2
Total					9.9

5. Transfer Application T-11433 proposes to move the authorized point of appropriation approximately 225 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	5 W	WM	24	SW NE	2540 FEET SOUTH AND 2950 FEET EAST FROM THE NW CORNER OF SECTION 24

6. Notice of the application for transfer was published on June 19, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On November 21, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11433 to the applicant. Additionally, a copy of the draft Preliminary Determination was sent to the neighboring landowner affected by the redescription of the Certificate. The draft Preliminary Determination cover letter set forth a deadline of November 21, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. On December 4, 2012, the neighboring landowner also concurred with the proposed action and conditions set forth in the draft Preliminary Determination.
9. On December 6, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11433 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 11, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

10. 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.
11. A 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-11433.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

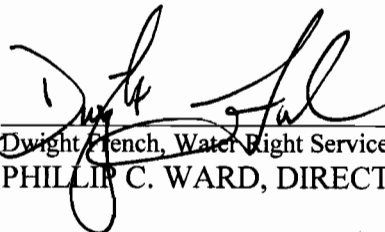
**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-11433 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 point of appropriation proposed in application T-11433 is approved.
2. The right to the use of the water is restricted to beneficial use at the place of use as redescribed, and is subject to all other conditions and limitations contained in Certificate 47253 and any related decree.
3. Water right certificate 47253 is cancelled. A new certificate will be issued describing that portion of the right as redescribed not affected by this transfer.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. 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 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
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 21 day of January, 2013.

  
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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date JAN 25 2013