

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

In the Matter of Transfer Application)
T-8806, Tillamook County)
) **FINAL ORDER APPROVING A**
) **CHANGE IN POINT OF DIVERSION**
) **AND PLACE OF USE**

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

KENNETH MAACK
P. O. BOX 441
TILLAMOOK, OREGON 97141

Findings of Fact

1. On 5-15-2001, Kenneth Maack filed a transfer application to change the place of use and point of diversion under Certificate 21929. The Department assigned the application number T-8806.
2. The right to be transferred is as follows:

Certificate: 21929 in the name of FRANK PORTMANN (perfected under Permit S-19519)
Use: IRRIGATION of 20.4 ACRES
Priority Date: MAY 24, 1950
Rate: 0.26 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: SIMMONS CR, tributary to TILLAMOOK R

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	9 W	WM	21	SW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	9 W	WM	21	SW SW	19.4
2 S	9 W	WM	21	SE SW	1.0

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-080 and OAR 690-01-005 you may either 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.

- Application T-8806 proposes to move the authorized point of diversion approximately 3.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
2 S	9 W	WM	17	NW NW	455 FEET SOUTH AND 615 FEET WEST FROM NW CORNER SECTION 17.
2 S	9 W	WM	17	NW NW	PORTABLE PUMP WITHIN NW NW.

- Application T-8806 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	9 W	WM	7	SE SE	9.65
2 S	9 W	WM	8	SW SW	3.66
2 S	9 W	WM	17	NW NW	5.45
2 S	9 W	WM	18	NE NE	1.64

- Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
- Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
- The proposed changes, as conditioned, would not result in enlargement of the right..
- The proposed changes would not result in injury to other water rights.

Conclusions of Law:

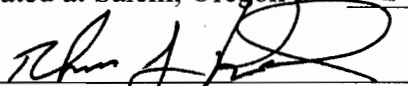
The changes in place of use and point of diversion in application T-8806 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- The changes in point of diversion and place of use proposed in application T-8806 are approved.
- Water right certificate 21929 is cancelled.

3. 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 21929 and any related decree.
4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
6. The quantity of water diverted at the proposed points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion on Simmons Creek.
7. The former place of use of the transferred water shall no longer receive water as part of these rights.
8. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25th day of July 2005.


Phillip C. Ward, Director

Mailing date: JUL 27 2005