

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

In the Matter of Transfer Application                    )     **FINAL ORDER DENYING**  
T-9744, Tillamook County, Oregon                    )     **TEMPORARY CHANGES IN PLACE**  
  )     **OF USE AND POINT OF DIVERSION**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion or appropriation 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**

Patrick Zweifel  
9455 Kilchis River Rd.  
Tillamook, OR 97141

**Findings of Fact**

1. Patrick Zweifel filed an application to temporarily transfer the place of use and point of diversion under Certificate 21634 for a period of 5-years. The Department assigned the application number T-9744.

2. The right to be transferred is as follows:

- Certificate:** 21634 in the name of Martha Pigman
- Use:** Irrigation
- Priority Date:** June 5, 1953
- Quantity:** 0.34 Cubic Foot per Second (CFS)
- Rate/Duty:** 1/80 CFS per acre, not to exceed 2.5 acre-feet per acre
- Acres:** 29.1 acres
- Source:** Kilchis River, tributary to Tillamook Bay
- Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Location
1	S	9	W	W.M.	7	NW	SW	N/A

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.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
1	S	9	W	W.M.	7	NW SW	1300	19.7
1	S	9	W	W.M.	7	NE SW	1300	9.4

3. Application T-9744 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Tax Lot	Acres
1	N	9	W	W.M.	31	SE SE	1100	11.0
1	N	9	W	W.M.	32	SW SW	600	13.1
1	N	9	W	W.M.	32	SE SW	600	5.0

4. As is necessary to convey the water to the proposed temporary place of use, Application T-9744 also proposes to move the authorized point of diversion approximately 2.5 miles upstream in the source to:

Township		Range		Meridian	Sec	¼ ¼	Lot	DLC	Location
1	N	9	W	W.M.	31	SE SE			200 feet North and 200 feet West from SE 1/4 Corner, Section 31
1	N	9	W	W.M.	32	SE SW			800 feet North and 1700 feet East from SE 1/4 Corner, Section 31

5. Notice of the application for temporary transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. 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.
7. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
8. The proposed change would not result in enlargement of the right.
9. The reach of the river in which the authorized point of diversion would be moved upstream is within an instream water right and streamflows within the reach are frequently below the levels allocated under the instream water right. Thus, the instream water right would be injured as a result of the proposed change in point of diversion.

**Conclusions of Law**

The temporary changes in place of use and point of diversion proposed in application T-9744 are not consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

**Now, therefore, it is ORDERED:**

1. The changes in place of use and point of diversion proposed in application T-9744 are denied.

Dated at Salem, Oregon this 30<sup>th</sup> day of September, 2004.

  
Phillip C. Ward  
Acting Director

Mailing date: OCT 08 2004

*Requests for Reconsideration should be addressed to the attention of Field Services Division,  
Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271*