BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER
T-10416, Hood River County)	APPROVING A DISTRICT PERMANENT
)	TRANSFER AND THE PARTIAL
)	CANCELLATION OF CERTAIN
)	WATER RIGHTS

Authority

ORS 540.570 and 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

EAST FORK IRRIGATION DISTRICT P.O. BOX 162 ODELL, OR 97044

Findings of Fact

- On June 26, 2007, East Fork Irrigation District filed a district transfer application to
 permanently change the place of use under a portion of Certificates 81340 and 80929. The
 Department assigned the application number T-10416. On October 29, 2007, East Fork
 Irrigation District submitted an amended application and map to better reflect the water
 rights involved.
- 2. Notice of the application for transfer was published on July 3, 2007, pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
- 3. The portion of the first right to be transferred is as follows:

Certificate:

81340, issued in the name of EAST FORK IRRIGATION DISTRICT (confirmed by decree of the Circuit Court of the State of Oregon for Hood River County, recorded in the Order Record of the Water Resources Director in Vol. 17, Page 333)

This is a final order in other than a 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 137-004-0080, 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.

Use:

IRRIGATION (IR) of 11.45 ACRES

Priority Date: NOVEMBER 25, 1895

Rate:

0.14 CUBIC FOOT PER SECOND (CFS), which is equivalent to

ONE-EIGHTIETH of one cubic foot per second per acre

Source:

EAST FORK HOOD RIVER, tributary of HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Lot	Survey Coordinates
1 S	10 E	WM	4	NW SW	1	3750 feet South and 430 feet East from the NW Corner of Section 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Lot	Tax Lot	Acres	User	Notice#
2 N	10 E	WM	25	NE SW	11	100	0.10	CASTANEDA	2007-01
2 N	10 E	WM	25	NE SW	11	200	0.40	CASTANEDA	2007-01
1 N	10 E	WM	15	SW NE	7	2800	0.35	WESEMAN	2007-02
2 N	10 E	WM	22	SE SE	16	300	0.30	ENRIQUEZ	2007-02
2 N	10 E	WM	25	SE NW	6	1301	10.0	CARDINAL IG CO.	2007-02
2 N	10 E	WM	35	NW NE	2	900	0.30	COOPER	2007-02
						TOTAL:	11.45		

4. Application T-10416 proposes to change the place of use for the above described right to:

Twp	Rng	Mer	Sec	Q - Q	Lot	Tax Lot	Acres	User	Notice#
2 N	10 E	WM	29	SW SW	13	700	0.50	CASTENEDA	2007-01
1 N	10 E	WM	10	NW SE	10	701	2.00	ACHZIGER	2007-02
1 N	10 E	WM	10	NW SE	10	708	1.60	McCAW	2007-02
1 N	10 E	WM	11	SE NW	6	1100	0.40	BERTY	2007-02
1 N	10 E	WM	15	SW NE	7	2800	1.45	WESEMAN	2007-02
1 N	10 E	WM	15	SE NW	6	905	1.50	LUCAS	2007-02
2 N	10 E	WM	25	SE NW	6	1301	0.30	CARDINAL IG CO.	2007-02
2 N	10 E	WM	36	SE SE	16	800	1.40	DUNN	2007-02
3 N	11 E	WM	31	NE NW	3	200	2.00	PETERSON	2007-02
3 N	11 E	WM	31	NW SW	12	1001	0.30	HASEGAWA	2007-02
						TOTAL:	11.45		

5. The portion of the second right to be transferred is as follows:

Certificate:

80929, issued in the name of EAST FORK IRRIGATION DISTRICT

(perfected under Permit 29617)

Use:

IRRIGATION (IR) of 0.2 ACRE

Priority Date:

MARCH 13, 1964

Rate:

0.0025 CUBIC FOOT PER SECOND (CFS), which is equivalent to

ONE-EIGHTIETH of one cubic foot per second per acre

Source:

EAST FORK HOOD RIVER, tributary of HOOD RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
1 S	10 E	WM	4	NW SW	3750 feet South and 430 feet East
					from the NW Corner of Section 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Lot	Tax Lot	Acres	User	Notice #
1N	10 E	WM	15	sw sw	13	1403	0.20	JENKINS	2007-02

6. Application T-10416 proposes to change the place of use for the above described right to:

Twp	Rng	Mer	Sec	Q-Q	Lot	Tax Lot	Acres	User	Notice #
1N	10 E	WM	22	NW NW	4	1112	0.20	JENKINS	2007-02

- 7. Research revealed that a portion of water use Permit 43395 is appurtenant to the proposed "TO" lands. A Claim of Beneficial Use report and map have been submitted on Permit 43395 but no water right certificate has been issued. On November 23, 2007, the Department received an affidavit from Mr. Buckley, Manager for East Fork Irrigation District, stating that the District does not intend to prove up on any of the land under Permit 43395 that is situated in the same location as the place of use proposed in this transfer.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.
- The district transfer application satisfies the criteria of ORS 540.580 and OAR 690-385-4000, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
- 10. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
- 11. The proposed change in place of use would not result in enlargement of the rights.
- 12. The proposed change in place of use would not result in injury to other water rights.

Partial Cancellation of Certain Water Rights

- 13. On November 13, 2007, Felipe Castaneda and Karalyn Johnson (P.O. Box 65, Odell, Oregon 97044) submitted affidavits authorizing cancellation of a portion of water right Certificates 1668 and 3846 found to be in conflict with an incoming District water right, thus resolving the conflict.
- 14. Pursuant to OAR 690-017-0100(2), the Department determined that the affiants (Castaneda and Johnson) are the record owners, as established by county deed records, of land to which the portions of the water rights evidenced by Certificates 1668 and 3846 (described in Findings of Fact #15 and #16) are appurtenant.

15. The portion of the first right to be cancelled is as follows:

Certificate: 1668, in the name of WILLIAM ASHLEY SUNDAY, c/o L.C. HEIZER

(perfected under Permit 2389)

Use: IRRIGATION of 0.4 ACRE
Priority Date: APRIL 20, 1915

Rate: 0.0052 CUBIC FOOT PER SECOND (CFS)

Source: SHELLEY SPRINGS AND CREEK, a tributary of NEAL CREEK

Authorized Place of Use to be Cancelled:

PC	PORTION OF WATER RIGHT TO BE CANCELLED – CERTIFICATE 1668										
Twp	Rng	Sec	Q – Q	Tax Lot	Acres	Affiants					
2 N	10 E	25	NE SW	200	0.4	CASTANEDA & JOHNSON					

16. The portion of the second right to be cancelled is as follows:

Certificate: 3846 in the name of WILLIAM A. SUNDAY (confirmed by decree of the

Circuit Court of the State of Oregon for Hood River County, recorded in the Order Record of the Water Resources Director in Vol. 17, Page 469)

Use: IRRIGATION of 0.1 ACRE, DOMESTIC & STOCK

Priority Date: MARCH 1901

Rate: 0.0012 CUBIC FOOT PER SECOND (CFS), and shall be subject to all

other conditions and limitations contained in said decree

Source: NEAL CREEK, a tributary of HOOD RIVER

Authorized Place of Use to be Cancelled:

PC	PORTION OF WATER RIGHT TO BE CANCELLED – CERTIFICATE 3846										
Twp Rng Sec Q-Q Tax Lot Acres Affiants											
2 N	10 E	25	NE SW	100	0.1	CASTANEDA & JOHNSON					

Conclusions of Law

The change in place of use proposed in Transfer Application T-10416 satisfies the requirements of ORS 540.574(3) and 540.580, and the rights abandoned will be cancelled.

Now, therefore, it is ORDERED:

- 1. The proposed change in place of use to the water rights evidenced by Certificates 80929 and 81340 is approved.
- 2. The right to the use of water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in the District's water right Certificates 80929 and 81340, any related decree, and this Final Order.
- 3. The former place of use shall no longer be irrigated as part of these water rights.
- 4. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

- 5. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
- 6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
- 7. The portions of the water rights evidenced by Certificates 1668 and 3846, as described in Findings of Fact #15 and #16, are cancelled. New certificates will be issued confirming the balance of the rights not modified by this Final Order.
- 8. The proposed change shall be completed on or before **October 1, 2009**.
- 9. A Claim of Beneficial Use and Final Proof Map shall be submitted by East Fork Irrigation District to the Department by October 1, 2010.
- 10. Certificates 80929 and 81340 are modified. The Department will issue superseding certificates describing the rights when it is determined that it is necessary for record keeping.

Dated at Salem, Oregon this <u>13</u> day of <u>December</u>	, 2007.
Sellelotte	
Phillip C. Ward, Director	

Mailing date: _____ DEC 1 7 2007