

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

In the Matter of Transfer Application	)	FINAL ORDER
T-14054, Tillamook County	)	APPROVING A CHANGE IN POINT OF
	)	DIVERSION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

ERICK AND JESSICA FINNELL  
21975 BLAINE RD  
BEAVER, OR 97108

**Findings of Fact**

1. On July 26, 2022, ERICK AND JESSICA FINNELL filed an application to change the point of diversion under Certificate 43689. The Department assigned the application number T-14054.
2. Notice of the application for transfer was published on August 2, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 23, 2023, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-14054 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 22, 2023, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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.

4. On March 26, 2024, the Department issued a Preliminary Determination proposing to approve Transfer Application T-14054 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 2, 2024, and in the Tillamook Headlight Herald newspaper on April 2, 2024, and April 9, 2024, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 43689 in the name of KENNETH W CECIL; ELMER & MABEL LUNDBERG  
(perfected under Permit S-35148)

**Use:** DOMESTIC USE FOR ONE FAMILY

**Priority Date:** MAY 18, 1970

**Rate:** 0.005 CUBIC FOOT PER SECOND

**Source:** AN UNNAMED STREAM, a tributary of NESTUCCA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 W	WM	29	SE NE	POD #1 - 830 FEET NORTH AND 100 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

**Authorized Place of Use:**

DOMESTIC USE FOR ONE FAMILY				
Twp	Rng	Mer	Sec	Q-Q
3 S	9 W	WM	28	NW SW

6. Transfer Application T-14054 proposes to change the point of diversion approximately 2200 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	9 W	WM	28	NW SW	POD #2 - LATITUDE: 45.27749, LONGITUDE: -123.80419

7. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

**Transfer Review Criteria [OAR 690-380-0100(14), 690-380-4010(2) and 690-380-2110(2)]**

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 water delivery system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-14054.
10. The water right is subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
11. The proposed point of diversion diverts water from the same source of surface water as the authorized point of diversion, as required by OAR 690-380-2110(2).
12. The proposed change, as conditioned, would not result in enlargement of the right.
13. The proposed change, as conditioned, would not result in injury to other existing water right.
14. All other application requirements are met.

#### **Conclusions of Law**

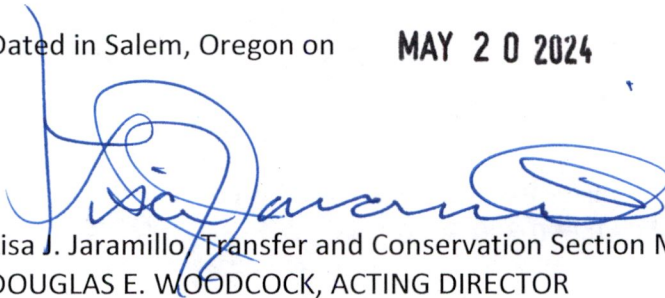
The change in point of diversion proposed in Transfer Application T-14054 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

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

1. The change in point of diversion proposed in Transfer Application T-14054 is approved.
2. 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 43689 and any related decree.
3. Water right Certificate 43689 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 new point of diversion (POD #2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD #1).
5. Water shall be acquired from the same source of surface water as the original point of diversion.
6. Water must be available from the original source of surface water as the original point of diversion.
7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed fish screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

8. The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request the OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.
10. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **MAY 20 2024**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
DOUGLAS E. WOODCOCK, ACTING DIRECTOR  
Oregon Water Resources Department

Mailing Date:           **MAY 21 2024**