BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11533, Tillamook County)	CHANGE IN POINT OF DIVERSION
)	AND PLACE OF USE

Authority

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

PHILIP AND MARILYN HANKINS 1675 MAKINSTER RD TILLAMOOK, OR 97141

Findings of Fact

- 1. On February 13, 2013, PHILIP AND MARILYN HANKINS filed an application to change the point of diversion and to change the place of use under Certificate 2458. The Department assigned the application number T-11533.
- 2. Notice of the application for transfer was published on February 19, 2013, pursuant to OAR 690-380-4000.
- 3. On December 5, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11533 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of January 10, 2014, 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 applicant is authorized to pursue the transfer.
- 4. On January 29, 2014, the Department issued a Preliminary Determination proposing to approve Transfer T-11533 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 4, 2014, and in the Tillamook Headlight Herald newspaper on February 5 and 12, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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.

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

Certificate:

2458 in the name of W. R. SIMMONS (perfected under Permit S-3087)

Use:

IRRIGATION of 16.0 ACRES

Priority Date: AUGUST 18, 1916

Rate:

0.28 CUBIC FOOT PER SECOND

Source:

SIMMONS CREEK AND WASTE WATER FROM H. & J. L.

SIMMONS WATER RIGHT, tributary of TILLAMOOK RIVER

Authorized Place of Use:

		IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	9 W	WM	20	NE SE	16.0

6. Certificate 2458 does not describe the location of the point of diversion; however, information is available from the survey map and Watermaster, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	9 W	WM	21	SW SE	POD NO. 1 – NORTH 320 FEET AND EAST 440 FEET FROM THE SOUTH ¹ / ₄ CORNER OF SECTION 21

7. Transfer Application T-11533 proposes to move the authorized point of diversion approximately 4148 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	9 W	WM	20	NE SE	POD NO. 2 - SOUTH 1300 FEET AND WEST 1070 FEET FROM THE EAST 1/4 CORNER OF SECTION 20

8. Transfer Application T-11533 also proposes to change the place of use of the right to:

		IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	9 W	WM	20	NE SE	15.5
2 S	9 W	WM	20	SE SE	0.5

9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

10. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right.

- 11. A diversion structure and ditch 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-11533.
- 12. The proposed changes would not result in enlargement of the right.
- 13. The proposed changes would not result in injury to other water rights

Conclusions of Law

The change in point of diversion and change in place of use proposed in Transfer Application T-11533 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 and change in place of use proposed in Transfer Application T-11533 are 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 2458 and any related decree.
- 3. Water right certificate 2458 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, shall not exceed the quantity of water lawfully available at the original point of diversion.
- 5. 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 screen meets the state's criteria, or that ODFW has determined a screen is not necessary.
 - 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 that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
- 6. The former place of use of the transferred right shall no longer receive water under the right.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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 changes 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 day of March, 2014.
Dwight Frenck, Water Right Services Administrator, for PHILLIP C. WARD, DIRECTOR
Mailing Date: MAR 2 4 2014