

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-6783, Umatilla County)	CHANGES IN PLACE OF USE, POINTS
)	OF DIVERSION, and DIMINUTION OF
)	A WATER USE PERMIT

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

J. R. SIMPLOT CO.
Attn: VIC CONRAD
PO BOX 27
BOISE, ID 83707-0027

Findings of Fact

Background

1. On July 16, 1992, J.R. Simplot filed a transfer application to change the place of use and points of diversion under Certificates 52677, 52678, 52679, 52680, 67322, 68761, 68762 and 68763. The Department assigned the application number T-6783.
2. Certificate 67322 was superseded by Certificate 76249.
3. On January 16, 1998, and May 24, 2007, amendments to the application and maps were submitted clarifying the authorized and proposed places of use.
4. The applicant has requested that existing water right Permit S-53063, appurtenant to the "TO" lands as described in Findings of Fact #7, #19, #27 and #30, be diminished to supplemental.
5. The entirety of the FIRST PRIMARY right to be transferred is as follows:

Certificate: 52677 in the name of J. R. Simplot Company (perfected under Permit G-5040)

Use: Primary Irrigation of 66.8 acres

Priority Date: November 14, 1972

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.

Quantity: 0.84 cubic foot per second (cfs)
Rate/Duty: 1/80 cfs per acre and 3.0 acre-feet per acre per irrigation season
Source: Wood #2 Well, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	28	SW SE	1660 feet South and 20 feet East from the Center of Section 28

6. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate 52677 to be transferred are as follows:

Certificate: 52678 in the name of J. R. Simplot Company
Use: SUPPLEMENTAL IRRIGATION of 66.8 acres (perfected under Permit G-8298)

Priority Date: March 22, 1978

Quantity: 366 gallons per minute (gpm)
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	1660 feet South and 20 feet East from the Center of Section 28

Certificate: 52679 in the name of J. R. Simplot Company (perfected under Per. G-9009)
Use: SUPPLEMENTAL IRRIGATION of 66.8 acres

Priority Date: April 23, 1980

Quantity: 375 gallons per minute (gpm)
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from S¼ corner of Section 26

Certificate: 52680 in the name of J.R. Simplot Company (perfected under Permit S-39381)

Use: SUPPLEMENTAL IRRIGATION of 66.8 acres

Priority Date: October 7, 1975

Quantity: 1.10 cubic feet per second (cfs)
Rate/Duty: 1/40th cfs per acre, 4.5 acre-feet per acre per irrigation season
Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	33	NW NE	240 feet South and 2260 feet West from NE corner of Section 33

Authorized Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#52677(IR)	C#52678(IS)	C#52679(IS)	C#52680(IS)
4 N	28 E	WM	28	NE SE	5.2	5.2	5.2	5.2
4 N	28 E	WM	28	NW SE	15.0	15.0	15.0	15.0
4 N	28 E	WM	28	SW SE	18.4	18.4	18.4	18.4
4 N	28 E	WM	28	SE SE	28.2	28.2	28.2	28.2
TOTALS:					66.8	66.8	66.8	66.8

7. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#52677(IR)	C#52678(IS)	C#52679(IS)	C#52680(IS)
3 N	28 E	WM	4	NE NW	2.2	2.2	2.2	2.2
3 N	28 E	WM	4	NW NW	1.4	1.4	1.4	1.4
3 N	28 E	WM	4	SW NW	5.6	5.6	5.6	5.6
3 N	28 E	WM	4	SE NW	22.4	22.4	22.4	22.4
3 N	28 E	WM	4	NE SW	2.8	2.8	2.8	2.8
3 N	28 E	WM	4	SW SW	32.4	32.4	32.4	32.4
TOTALS:					66.8*	66.8*	66.8*	66.8*

Note: * Existing water right Permit S-53063 is requested to be diminished to supplemental irrigation for the incoming Simplot rights.

8. Transfer Application T-6783 also proposes to change the point of diversion for the supplemental water right Certificate 52680 upstream approximately $\frac{3}{4}$ mile to points located:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	27	SE SE	POD #1 – 140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NW	POD #2 – 800 feet South and 650 feet West from the N $\frac{1}{4}$ Corner of Section 34

9. The entirety of the SECOND PRIMARY right to be transferred is as follows:

Certificate: 68760 in the name of J. R. Simplot Company (perfected under Permit S-37853)

Use: PRIMARY IRRIGATION of 29.7 acres

Priority Date: May 7, 1974

Quantity: 0.58 cubic foot per second (cfs)

Rate/Duty: 1/40th cfs per acre, 4.5 acre-feet per acre per irrigation season

Source: Umatilla River, a tributary of the Columbia River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Change in POD	Measured Distances
4 N	28 E	WM	34	NW NW	ABANDON	POD #1 – 750 feet South and 50 feet East from the NW Corner of Section 34
4 N	28 E	WM	27	SE SE	RETAIN	POD #2 – 140 feet North and 710 feet West from the SE Corner of Section 27

10. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate 68760 to be transferred are as follows:

Certificate: 52678 in the name of J. R. Simplot Company (perfected under Permit G-8298)

Use: SUPPLEMENTAL IRRIGATION of 24.4 acres

Priority Date: March 22, 1978

Quantity: 134 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner of Section 26

Certificate: 52679 in the name of J. R. Simplot Company (perfected under Permit G-9009)

Use: SUPPLEMENTAL IRRIGATION of 24.4 acres

Priority Date: April 23, 1980

Quantity: 137 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner of Section 26

Certificate: 76249 (T-5779 and T-6416, supersedes C#67322) in the name of J. R. Simplot Company

Use: SUPPLEMENTAL IRRIGATION of 29.5 acres

Priority Date: December 2, 1975

Quantity: 0.37 cubic foot per second

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Three wells within the Umatilla River Basin. The source of water allowed herein is limited to the alluvium water bearing aquifer overlying the basalt formation estimated to be 200 feet below land surface.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	28	NW SE	Well #1R - 2120 feet North and 2400 feet West from the SE Corner of Section 28
4 N	28 E	WM	28	SW SE	Well #2R - 1650 feet. West from the SE Corner of Section 28
4 N	28 E	WM	27	SW SW	Well #3 (WRD #2) - 1030 ft. North and 360 ft. East from the SW Corner of Section 27

Authorized Places of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68760(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	27	SW SW	0.2	0.2	0.2	--
4 N	28 E	WM	27	SE SW	2.8	2.7	2.7	2.8
4 N	28 E	WM	34	NE NW	9.8	6.5	6.5	9.8
4 N	28 E	WM	34	NW NW	16.9	15.0	15.0	16.9
TOTALS:					29.7	24.4	24.4	29.5

11. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68760(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	27	SW SW	2.3	2.3	2.3	2.3
4 N	28 E	WM	27	SE SW	8.9	3.6	3.6	8.9
4 N	28 E	WM	34	NE NW	0.3	0.3	0.3	0.1
4 N	28 E	WM	34	NW NW	18.2	12.9	12.9	18.2
TOTALS:					29.7	24.4	24.4	29.5

12. Transfer Application T-6783 also proposes to add additional points of diversion for water right Certificate 68760 to points located:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	27	SE SE	POD #1 – 140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NW	POD #2 – 800 feet South and 650 feet West from the N¼ Corner of Section 34

13. The entirety of the THIRD PRIMARY right to be transferred is as follows:

Certificate: 68761 in the name of J.R. Simplot Company (perfected under Permit S-32631)

Use: PRIMARY IRRIGATION of 15.0 acres

Priority Date: May 25, 1967

Quantity: 0.20 cubic foot per second
Rate/Duty: 1/40th cfs per acre, 4.5 acre-feet per acre per irrigation season
Source: Umatilla River, tributary to Columbia River
Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Change in POD	Measured Distances
4 N	28 E	WM	34	NW NW	ABANDON	POD #1 - 750 feet South and 50 feet East from the NW Corner of Section 34
4 N	28 E	WM	27	SE SE	RETAIN	POD #2 – 140 feet North and 710 feet West from the SE Corner of Section 27

14. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate 68761 to be transferred are as follows:

Certificate: 52678 in the name of J.R. Simplot Company (perfected under Per. G-8298)
Use: SUPPLEMENTAL IRRIGATION of 8.1 acres
Priority Date: March 22, 1978
Quantity: 44 gallons per minute
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner of Section 26

Certificate: 52679 in the name of J.R. Simplot Company (perfected under Permit G-9009)
Use: SUPPLEMENTAL IRRIGATION of 8.1 acres
Priority Date: April 23, 1980
Quantity: 45 gallons per minute
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner of Section 26

Certificate: 76249 in the name of J. R. Simplot Company (perfected under Permit G-7077)
Use: SUPPLEMENTAL IRRIGATION of 6.5 acres
Priority Date: December 2, 1975
Quantity: 0.081 cubic foot per second (cfs)
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Three wells within the Umatilla River Basin. The source of water allowed herein is limited to the alluvium water bearing aquifer overlying the basalt formation estimated to be 200 feet below land surface.

Authorized Points of Appropriation:

Twtp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	28	NW SE	Well #1R - 2120 feet North and 2400 feet West from the SE Corner of Section 28
4 N	28 E	WM	28	SW SE	Well # 2R - 1650 feet West from the SE Corner of Section 28
4 N	28 E	WM	27	SW SW	Well #3 - (WRD #2) 1030 feet North and 360 feet East from the SW Corner of Section 27

Authorized Place of Use: Primary (IR) and Supplemental (IS)

Twtp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68761(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	34	NE NW	13.8	6.9	6.9	5.4
4 N	28 E	WM	34	NW NW	1.2	1.2	1.2	1.1
TOTALS					15.0	8.1	8.1	6.5

15. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use:

Twtp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68761(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	26	SW SW	15.0	8.1	8.1	6.5
TOTALS					15.0	8.1	8.1	6.5

16. Transfer Application T-6783 also proposes to add additional points of diversion for water right Certificate 68761 for the place of use described in table above to points located:

Proposed Points of Diversion:

Twtp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	27	SE SE	POD #1 – 140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NW	POD #2 – 800 feet South and 650 feet West from the N¼ Corner of Section 34

17. The entirety of the FOURTH PRIMARY right to be transferred is as follows:

Certificate: 68762 in the name of J.R. Simplot Company (perfected under Permit S-18659)
Use: PRIMARY IRRIGATION of 15.2 acres
Priority Date: March 23, 1949
Quantity: 0.29 cubic foot per second (cfs)

Rate/Duty: 1/40th cfs per acre, limited to a diversion of 4.0 acre-feet per acre for each acre irrigated during the irrigation season

Source: Umatilla River, tributary to Columbia River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Change in POD	Measured Distances
4 N	28 E	WM	27	SE SE	RETAIN	140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	33	NW NE	ABANDON	405 feet South and 800 feet East from the N¼ Corner of Section 33
4 N	28 E	WM	34	NW NW	ABANDON	750 feet South and 50 feet East from the NW Corner of Section 34

18. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate 68762 to be transferred are as follows:

Certificate: 52678 in the name of J.R. Simplot Company (perfected under Permit G-8298)

Use: SUPPLEMENTAL IRRIGATION of 12.4 acres

Priority Date: March 22, 1978

Quantity: 68.0 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner of Section 26

Certificate: 52679 in the name of J.R. Simplot Company (perfected under Permit G-9009)

Use: SUPPLEMENTAL IRRIGATION of 12.4 acres

Priority Date: April 23, 1980

Quantity: 70.0 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner of Section 26

Authorized Places of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage		
					C# 68762(IR)	C# 52678(IS)	C# 52679(IS)
4 N	28 E	WM	28	SW SE	4.0	3.9	3.9
4 N	28 E	WM	33	NW NE	11.2	8.5	8.5
TOTALS					15.2	12.4	12.4

19. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Places of Use:

Twp	Rng	Mer	Sec	Q - Q	Acreage		
					C# 68762(IR)	C# 52678(IS)	C# 52679(IS)
4 N	28 E	WM	27	SE SW	2.7	2.7	2.7
3 N	28 E	WM	4	NE SW	8.6*	8.6*	8.6*
3 N	28 E	WM	4	NW SW	3.9*	1.1*	1.1*
TOTALS					15.2	12.4	12.4

Note: * Existing water use Permit S-53063 is requested to be diminished to supplemental irrigation for the incoming Simplot rights.

20. Transfer Application T-6783 also proposes to add additional points of diversion for water right Certificate 68762 at place of use described in table above to points located:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	27	SE SE	POD #1 - 140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NW	POD #2 - 800 feet South and 650 feet West from the N¼ Corner of Section 34

21. The entirety of the FIFTH PRIMARY right to be transferred is as follows:

Certificate: 68763 in the name of J.R. Simplot Company (perfected under Permit S-30078)

Use: PRIMARY IRRIGATION of 72.5 acres

Priority Date: October 1, 1964

Quantity: 1.14 cubic feet per second (cfs)

Rate/Duty: 1/40th cfs per acre, 4.5 acre-feet per acre per irrigation season

Source: Umatilla River, tributary to Columbia River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Change in POD	Measured Distances
4 N	28 E	WM	27	SE SE	RETAIN	140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NE	ABANDON	2490 feet North and 1050 feet West from the W¼ Corner of Section 35

Twtp	Rng	Mer	Sec	Q - Q	Change in POD	Measured Distances
4 N	28 E	WM	34	NW NE	ABANDON	2040 feet North and 2240 feet West from the W¼ Corner, Section 35
4 N	28 E	WM	35	NE NE	ABANDON	2610 feet North and 1050 feet West from the W¼ Corner, Section 36
4 N	28E	WM	35	NE NW	ABANDON	2580 feet North and 1680 feet East from the W¼ Corner, Section 35
4 N	28 E	WM	35	NW NW	ABANDON	1920 feet North and 630 feet East from the W¼ Corner, Section 35
4 N	28 E	WM	36	NE NW	ABANDON	1650 feet North and 2380 feet East from the W¼ Corner, Section 36

22. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate #68763 to be transferred are as follows:

Certificate: 52678 in the name of J.R. Simplot Company (perfected under Per. G-8298)
Use: SUPPLEMENTAL IRRIGATION of 61.9 acres
Priority Date: March 22, 1978
Quantity: 340 gallons per minute
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twtp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner, Section 26

Certificate: 52679 in the name of J.R. Simplot Company (perfected under Per. G-9009)
Use: SUPPLEMENTAL IRRIGATION of 61.9 acres
Priority Date: April 23, 1980
Quantity: 347 gallons per minute
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twtp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner, Section 26

Certificate: 76249 in the name of J. R. Simplot Company
Use: SUPPLEMENTAL IRRIGATION of 52.5 acres
Priority Date: December 2, 1975
Quantity: 0.66 cubic foot per second
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Three wells within the Umatilla River Basin. The source of water allowed herein is limited to the alluvium water bearing aquifer overlying the basalt formation estimated to be 200 feet below land surface.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	28	NW SE	Well #1R – 2120 feet North and 2400 feet West from the SE Corner of Section 28
4 N	28 E	WM	28	SW SE	Well #2R – 1650 feet West from the SE Corner of Section 28
4 N	28 E	WM	27	SW SW	Well #3 – (WRD #2) 1030 feet North and 360 feet East from SW Corner of Section 27

Authorized Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68763(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	26	SW SW	11.2	11.2	11.2	7.3
4 N	28 E	WM	26	SE SW	10.6	9.1	9.1	--
4 N	28 E	WM	27	SW SE	13.4	12.8	12.8	13.3
4 N	28 E	WM	27	SE SE	12.5	11.2	11.2	11.2
4 N	28 E	WM	34	NE NE	3.6	2.0	2.0	2.7
4 N	28 E	WM	34	NW NE	11.0	7.7	7.7	8.0
4 N	28 E	WM	35	NE NW	0.2	--	--	--
4 N	28 E	WM	35	NW NW	10.0	7.9	7.9	10.0
TOTALS					72.5	61.9	61.9	52.5

23. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage			
					C#68763(IR)	C#52678(IS)	C#52679(IS)	C#76249(IS)
4 N	28 E	WM	26	SW SW	2.8	2.8	2.8	--
4 N	28 E	WM	27	SE SW	1.3	0.3	0.3	--
4 N	28 E	WM	27	SW SE	15.0	15.0	15.0	15.0
4 N	28 E	WM	27	SE SE	19.6	19.6	19.6	19.6
4 N	28 E	WM	34	NE NE	4.4	4.4	4.4	4.4
4 N	28 E	WM	34	NW NE	10.7	10.7	10.7	4.9
4 N	28 E	WM	34	NE NW	10.1	0.5	0.5	--
4 N	28 E	WM	35	NW NW	8.6	8.6	8.6	8.6
TOTALS					72.5	61.9	61.9	52.5

24. Transfer Application T-6783 also proposes to add additional points of diversion for water right Certificate 68763 located:

Proposed Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	27	SE SE	POD #1 - 140 feet North and 710 feet West from the SE Corner of Section 27
4 N	28 E	WM	34	NE NW	POD #2 - 800 feet South and 650 feet West from the N¼ Corner of Section 34

25. The entirety of the SIXTH PRIMARY right to be transferred is as follows:

Certificate: 52678 in the name of J.R. Simplot Company (perfected under Permit G-8298)

Use: PRIMARY IRRIGATION of 18.2 acres

Priority Date: March 22, 1978

Quantity: 100 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner of Section 26

26. The portion of the SUPPLEMENTAL water right layered with primary water right Certificate 52678 to be transferred is as follows:

Certificate: 52679 in the name of J.R. Simplot Company (perfected under Permit G-9009)

Use: SUPPLEMENTAL IRRIGATION of 18.2 acres

Priority Date: April 23, 1980

Quantity: 102 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner of Section 26

Authorized Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage	
					C#52678 (IR)	C#52679 (IS)
4 N	28 E	WM	26	SW SW	11.4	11.4
4 N	28 E	WM	26	SE SW	1.8	1.8
4 N	28 E	WM	27	SE SE	2.4	2.4
4 N	28 E	WM	34	NE NE	0.4	0.4
4 N	28 E	WM	34	NW NE	1.1	1.1
4 N	28 E	WM	34	NE NW	0.6	0.6
4 N	28 E	WM	35	NW NW	0.5	0.5
TOTALS					18.2	18.2

27. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acreage	
					C#52678(IR)	C#52679 (IS)
3 N	28 E	WM	4	NE NW	12.8*	12.8*
3 N	28 E	WM	4	NW NW	5.4	5.4
TOTALS					18.2	18.2

Note: * Existing water right Permit S-53063 is requested to be diminished to supplemental irrigation for the incoming Simplot rights.

28. The entirety of the SEVENTH PRIMARY right to be transferred is as follows:

Certificate: 76249 in the name of J.R. Simplot Company (perfected under Permit G-7077)
Use: PRIMARY IRRIGATION of 37.9 acres
Priority Date: December 2, 1975
Quantity: 0.47 cubic foot per second (cfs)
Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season
Source: Three wells within the Umatilla River Basin. The source of water allowed herein is limited to the alluvium water bearing aquifer overlying the basalt formation estimated to be 200 feet below land surface.

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28 E	WM	28	NW SE	Well #1R - 2120 feet North and 2400 feet West from the SE Corner of Section 28
4 N	28 E	WM	28	SW SE	Well #2R - 1650 feet West from the SE Corner of Section 28
4 N	28 E	WM	27	SW SW	Well #3 - (WRD #2) 1030 feet North and 360 feet East from the SW Corner of Section 27

29. The portions of the SUPPLEMENTAL water rights layered with primary water right Certificate #76249 to be transferred are as follows:

Certificate: 52678 in the name of J.R. Simplot Company (perfected under Permit G-8298)

Use: SUPPLEMENTAL IRRIGATION of 26.2 acres

Priority Date: March 22, 1978

Quantity: 144 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #4, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28E	WM	26	SW SE	600 feet North and 220 feet East from the S¼ corner of Section 26

Certificate: 52679 in the name of J.R. Simplot Company (perfected under Permit G-9009)

Use: SUPPLEMENTAL IRRIGATION of 26.2 acres

Priority Date: April 23, 1980

Quantity: 147 gallons per minute

Rate/Duty: 1/80th cfs per acre, 3.0 acre-feet per acre per irrigation season

Source: Well #6, within the Umatilla River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	28E	WM	26	SW SE	400 feet North and 200 feet East from the S¼ corner of Section 26

Authorized Place of Use: Primary (IR) and Supplemental (IS)

Twp	Rng	Mer	Sec	Q - Q	Acreage		
					C#76249 (IR)	C# 52678 (IS)	C# 52679 (IS)
4 N	28 E	WM	26	SW SW	0.4	0.3	0.3
4 N	28 E	WM	27	SW SW	5.8	1.1	1.1
4 N	28 E	WM	27	SE SW	15.3	14.6	14.6
4 N	28 E	WM	27	SW SE	8.3	6.2	6.2
4 N	28 E	WM	27	SE SE	4.4	1.2	1.2
4 N	28 E	WM	34	NE NE	0.3	0.3	0.3
4 N	28 E	WM	34	NW NE	2.5	2.5	2.5
4 N	28 E	WM	35	NW NW	0.9	--	--
TOTALS					37.9	26.2	26.2

30. Transfer Application T-6783 proposes to change the place of use for the above described rights to:

Proposed Place of Use:

Twp	Rng	Mer	Sec	Q - Q	Acreage		
					C#76249(IR)	C#52678(IS)	C# 52679(IS)
3 N	28 E	WM	4	NE NW	12.1*	12.1*	12.1*
3 N	28 E	WM	4	SE NW	3.5*	3.5*	3.5*
4 N	28 E	WM	26	SW SW	3.2	3.2	3.2
4 N	28 E	WM	26	SE SW	11.4	--	--
4 N	28 E	WM	35	NE NW	0.5	0.2	0.2
4 N	28 E	WM	35	NW NW	7.2	7.2	7.2
				TOTALS	37.9	26.2	26.2

Note: * Existing water right Permit 53063 is requested to be diminished to supplemental irrigation for the incoming Simplot rights.

31. Notice of the application for transfer was published on July 21, 1992, 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.

Transfer Review Criteria (OAR 690-380-4010)

32. Water was used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
33. Pumps, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
34. Further review of Transfer Application T-6783 revealed that a portion of the "FROM" lands changed ownership and a water right conveyance agreement was recorded agreeing to allow Simplot, Inc. to transfer off the rights. On November 8, 2007, the Department received a copy of the water right conveyance agreement that authorizes the applicant to transfer off the rights as described above.
35. The reach of the river between the existing authorized points of diversion and the proposed new points of diversion is within the reach of the Umatilla River described in instream water right Certificate 59837. Stream flows within the reach are frequently below the levels allocated under the instream water right. The proposed upstream points of diversion changes will result in a reduction of flows in the reach.
36. Instream water right certificate 59837, established pursuant to ORS 537.346 at the request of the Oregon Department of Fish and Wildlife, is for flows to be maintained in the Umatilla River from McKay Creek (Section 8, T 2 N, R 32 E, W.M.) to the mouth of Umatilla River at River Mile 0.0 (Section 18, T 5 N, R 28 E, W.M.). The date of priority of the right is November 3, 1983.

37. Certificate 59837 is deficient annually during a portion of the irrigation season. The instream right is junior to the rights involved in Transfer Application T-6783 (proposing to change the points of diversion and place of use) and would further reduce flows in a portion of the designated reach of the instream water right.
38. No water rights, other than the instream water right, have been identified as having authorized diversion within the affected reach of the Umatilla River.
39. As described in Findings of Fact #8, #12, #16, #20 and #37, the proposed upstream point of diversion changes would result in injury to instream water right Certificate 59837.
40. The proposed changes in place of use would not result in injury to other water rights.
41. The proposed changes would not result in enlargement of the rights.
42. Due to the potential for injury to instream water right Certificate 59837, the Department mailed a *draft* Preliminary Determination proposing to **deny** Transfer Application T-6783, to the applicant on December 20, 2006. The cover letter that accompanied the *draft* Preliminary Determination set forth a deadline of January 22, 2007, for the applicant to respond. The applicant requested the Department proceed with issuance of a Preliminary Determination, pursue consent to injury to the instream water right as outlined in ORS 540.530 and OAR 690-380-5050 and requested the Department seek a recommendation from the agency that requested the instream water right. Additionally, at this time the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
43. On January 3, 2008, the Department issued a Preliminary Determination consistent with the *draft* Preliminary Determination. Concurrent with the issuance of the Preliminary Determination, the Department requested that the Oregon Department of Fish and Wildlife (ODFW) recommend whether the Water Resources Department should consent to the injury of the instream water right.
44. On February 17, 2009, ODFW recommended that the Department consent to the injury of instream water right Certificate 59837 because the proposed changes would result in a net benefit to the fishery resource. The recommendation included conditions necessary to meet the net benefit:
 - a. All points of diversion proposed to be unused must be abandoned.
 - b. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at any new or existing points of diversion consistent with ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Additionally, prior to submitting the required Claim of Beneficial Use (CBU), the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to

according to ODFW's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, the the points of diversion consistent with ODFW's operational and maintenance standards.

- c. If the riparian area is disturbed in the process of developing a point of diversion, the water user shall be responsible for restoration and enhancement of the riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy, OAR 635-415.
 - d. Upstream and downstream fish passage must not be impeded as a result of any structure built to divert water under these water rights.
45. Notice of the opportunity to comment on the recommendation to consent to injury of the instream water right was provided to the applicant and all persons who filed comments under OAR 690-380-4030. The notice of opportunity to comment was published on April 21, 2009, in the Department's weekly notice pursuant to OAR 690-380-5050(4).
46. On April 23, 2009, a cover letter and draft final order describing the changes proposed in Transfer Application T-6783 and the conditions as suggested by ODFW were sent to the applicant. The cover letter that accompanied the *draft* final order set forth a date of May 31, 2009, for the applicant to respond.
47. On June 2, 2009, the Department received an email response from the applicants agreeing to the conditions outlined in Finding of Fact #44.

Conclusions of Law

The Water Resources Department consents to injury of the instream water right under Certificate 59837. The changes proposed in Transfer Application T-6783, as modified by the conditions recommended by ODFW, are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and 690-380-5030.

Now, therefore it is ORDERED:

- 1. 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 Certificates 52677, 52678, 52679, 52680, 68760, 68761, 68762, 68763 and 72649 and any related decree.
- 2. Certificates 52677, 52678, 52679, 52680, 68760, 68761, 68762, 68763 and 72649 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
- 3. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.

4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The former places of use of the transferred water shall no longer receive water as part of these rights.
6. Existing water use Permit S-53063 is diminished to supplemental irrigation for the incoming Simplot rights as described in #7, #19, #27 and #30,.
7. The water user shall maintain and operate the existing measurement device(s) and shall make such improvements as may be required by the Department.
8. All points of diversion proposed to be unused shall be abandoned.
9. If the riparian area is disturbed in the process of developing a point of diversion, the water user shall be responsible for restoration and enhancement of the riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy, OAR 635-415.
10. Upstream and downstream fish passage must not be impeded as a result of any structure built to divert water under these water rights.
11. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at any new or existing points of diversion consistent with ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Additionally, prior to submitting the required Claim of Beneficial Use (CBU), the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to according to ODFW's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, the points of diversion consistent with ODFW's operational and maintenance standards.
12. When satisfactory proofs of the completed changes are evaluated, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 7th day of June, 2009.


Phillip C. Ward, Director *pm*

Mailing date: JUL 14 2009