

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING AN  
T-13707, Douglas County                                 )     ADDITIONAL 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**

MARIAN M. OWENS IRREVOCABLE TRUST  
MARIAN M. OWENS, TRUSTEE  
6523 AZALEA GLEN RD  
GLENDALE OR 97442

**Findings of Fact**

1. On May 6, 2021, MARIAN M. OWENS IRROVOCABLE TRUST and MARIAN M. OWENS, TRUSTEE filed an application for an additional point of diversion under Certificates 9638 and 9648. The Department assigned the application number T-13707.
2. Notice of the application for transfer was published on May 25, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 27, 2023, the Department sent a copy of the draft Preliminary Determination proposing to deny Transfer Application T-1370713707 to the applicant. The draft Preliminary Determination identified that the application was not complete because the location of the existing point of diversion under Certificates 9638 and 9648 was not clearly and consistently identified. The Draft Preliminary Determination cover letter outlined the deficient item and set forth a deadline of April 27, 2023, for the applicant to submit the required information.

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 April 17, 2023, the applicant submitted amended application pages, clarifying the location of the existing point of diversion and requested that the Department proceed with issuance of a Preliminary Determination. The applicant also provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. On September 11, 2023, the Department issued a Preliminary Determination proposing to approve Transfer Application T-1370713707 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 12, 2023, and in the News Review newspaper on September 14, 2023 and September 21, 2023 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The portion of the first right to be transferred is as follows:

**Certificate:** 9638 in the name of J. A. JACQUES (confirmed by Cow Creek Decree, Douglas County)

**Use:** IRRIGATION of 14.2 ACRES and STOCK WATER

**Priority Date:** SEPTEMBER 1901

**Rate:** 0.20 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed the rate of one cubic foot of water per second of time for each 70 acres of land irrigated during the irrigation season.

**Source:** COW CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
NOT DESCRIBED IN CERTIFICATE					

**Authorized Place of Use:**

IRRIGATION AND STOCK WATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	6 W	WM	35	NE NE	11.8
32 S	6 W	WM	35	NW NE	2.4
TOTAL:					14.2

7. Transfer Application T-13707 proposes an additional point of diversion approximately 1.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	6 W	WM	25	SW NE	POD 2 - 370 FEET NORTH AND 1965 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 25

8. The second right to be transferred is as follows:

**Certificate:** 9648 in the name of JOHN F. KAUFMAN & SONS (confirmed by Cow Creek Decree, Douglas County)

**Use:** IRRIGATION of 60.0 ACRES  
**Priority Date:** SEPTEMBER 1901  
**Rate:** 0.857 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water to which such right is entitled, for the purpose aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed the rate of one cubic foot per second of time for each 70 acres of land irrigated during the irrigation season.  
**Source:** COW CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
NOT DESCRIBED IN CERTIFICATE					

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	6 W	WM	25	NE NE	5.0
32 S	6 W	WM	25	SW NE	14.0
32 S	6 W	WM	25	SE NE	5.0
32 S	6 W	WM	25	NE SW	11.0
32 S	6 W	WM	25	SW SW	15.0
32 S	6 W	WM	25	SE SW	4.0
32 S	6 W	WM	25	NW SE	6.0
TOTAL:					60.0

9. Transfer Application T-13707 proposes an additional point of diversion, approximately 1.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
32 S	6 W	WM	25	SW NE	POD 2 - 370 FEET NORTH AND 1965 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 25

10. 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 690-380-4000(14), 690-380-4010(2) and 690-380-2110(2)]**

11. Water has been used within the last five years prior to the submittal of Transfer Application T-13707, according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A water delivery system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-13707.

13. The water rights are subject to transfer as defined in ORS 540.505(4) and OAR 690-380-0100(14).
14. The proposed changes, as conditioned, would not result in enlargement of the rights.
15. The proposed changes, as conditioned, would not result in injury to other water rights.
16. All other application requirements are met.

### **Conclusions of Law**

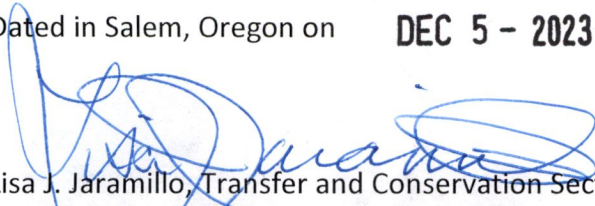
The additional point of diversion proposed in Transfer Application T-13707 is consistent with the requirements of ORS 537.705, 540.505 to 540.580 and OAR 690-380-5000.

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

1. The additional point of diversion proposed in Transfer Application T-13707 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 Certificates 9638 and 9648 and any related decree.
3. Water right Certificates 9638 and 9648 are cancelled. A new certificate will be issued describing that portion of Certificate 9638 not affected by this transfer.
4. The quantity of water diverted at the new additional point of diversion (POD 2), together with that diverted at the original point of diversion (POD 1), 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 Measurement Requirements:
  - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
  - b. The water user shall maintain the meters or measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) 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. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. Full beneficial use of the water shall be made, consistent with the terms and conditions of this order, on or before **October 1, 2025**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on **DEC 5 - 2023**

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

Mailing Date: DEC 6 - 2023