

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11298, Marion County)	CHANGE IN POINT OF
)	APPROPRIATION AND PLACE OF
)	USE

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

STEVEN V. AND CONSTANCE A. JOHNSON
10404 HAZELGREEN RD NE
SILVERTON, OR 97381

Receiving Landowner

ROBERT A. AND BONNIE J. DITCHEN
TRUSTEES
9712 NUSOM RD NE
SILVERTON OR 97381

Findings of Fact

Background

1. On September 22, 2011, Steven and Constance Johnson filed an application to change the point of appropriation and place of use under Certificate 86681. The Department assigned the application number T-11298.
2. Robert and Bonnie Ditchen are the receiving landowners who will along with the applicant be responsible for completion of the changes.
3. The portion of the right to be transferred is as follows:

Certificate: 86681 in the name of United Foods Inc. (perfected under Permit G-11940)
Use: Irrigation of 20 acres
Priority Date: June 24, 1992
Rate: 0.25 cubic foot per second
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of

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.

ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: March 1 through October 31 of each year

Source: Well 2 within the West Fork Little Pudding River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	29	NW SW	77	1450 FEET NORTH AND 1620 FEET WEST FROM THE MOST NORTHERLY CORNER OF DLC 75

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	2 W	WM	29	SW NW	80	9.7
7 S	2 W	WM	29	NW SW	77	10.3

4. Transfer Application T-11298 proposes to move the authorized point of appropriation approximately 4.7 miles from the existing point of appropriation to:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
MARI 6511	7 S	2 W	WM	3	SE NW	20 FEET SOUTH AND 20 FEET EAST FROM THE NW CORNER OF THE SENW OF SECTION 3

5. Transfer Application T-11298 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	2 W	WM	3	SE NW	20.0

6. Notice of the application for transfer was published on September 27, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On March 16, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11298 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 15, 2012, 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.
8. On April 18, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11298 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 24, 2012, and in the Silverton Appeal newspaper on May 23 and 30, and June 6, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11298 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. Certificate 86681 was issued on November 19, 2010.
10. A pump, pipeline, and sprinkler system 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-11298.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

The changes in point of appropriation and place of use proposed in Transfer Application T-11298 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

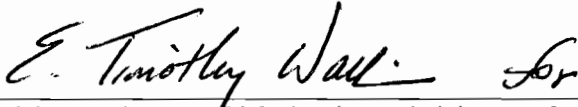
Now, therefore, it is ORDERED:

1. The changes in point of appropriation and place of use proposed in application T-11298 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 86681 and any related decree.
3. Water right certificate 86681 is modified. A new certificate will be issued describing that portion of the right not affected by this transfer, if pending Transfer Application T-11299 (which affects the remaining portion of the right) is not approved.
4. The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2013**. 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.

9. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 10th day of July, 2012.

 *Dwight French*

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date JUL 16 2012