

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-6682, Douglas County) CHANGES IN POINT OF DIVERSION
) AND PLACES 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.

Applicants

DALE R. JOHNS PO BOX 275 AZALEA OR 97410	JENNENE E. JOHNS PO BOX 275 AZALEA OR 97410
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Findings of Fact

- 1. On February 27, 1992, Dale R. Johns and Jennene E. Johns filed a transfer application to change the place of use, point of diversion and character of use under Certificates 6709, 9642, 9643, 9644, 9645, 9646, 9649, 26617 and 21820. The Department assigned the application number T-6682.
- 2. The applicants and the Certified Water Rights Examiners (CWRE) have submitted several amendments and additional information. On March 14, 2008, the Department received the final revision necessary to clarify and amend the application and map.
- 3. The entirety of the first right to be transferred is as follows:

Certificate: 6709 in the name of J. E. HARTLE (perfected under Permit S-6870)
Use: IRRIGATION of 3.5 ACRES
Priority Date: JULY 28, 1925
Rate: 0.05 cubic foot per second (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre during the irrigation season of each year
Source: BENJAMIN GULCH, a tributary of CLEAR BRANCH AND COW CREEK

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SE NE	3.5

4. The Department received information that describes the authorized point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q
32 S	5W	WM	11	SE NE

5. Transfer Application T-6682 proposes to move the authorized point of diversion for the entire right approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	11	NE SE	130 FEET SOUTH AND 700 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

6. Transfer Application T-6682 also proposes to change the authorized place of use identified in Finding of Fact #3 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE NE	3.5

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

Certificate: 9642 in the name of the Estate of C. E. JOHNS (confirmed by Cow Creek, Douglas County Decree)

Use: IRRIGATION of 68.70 ACRES

Priority Date: SEPTEMBER 30, 1907

Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season

Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SW SE	1.78
32 S	5 W	WM	11	SE SE	1.42
32 S	5 W	WM	14	NE NE	35.00
32 S	5 W	WM	14	NW NE	30.50

8. The Department received information that better describes the authorized point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	4W	WM	4	NW SW	580 FEET SOUTH AND 985 FEET EAST FROM W1/4 CORNER OF SECTION 4

9. Transfer Application T-6682 proposes to move the authorized point of diversion for the entire right approximately 4.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	13	NW NW	1110.6 FEET SOUTH AND 848.3 FEET EAST FROM NW CORNER OF SECTION 13

10. Transfer Application T-6682 also proposes to change the place of use identified in Finding of Fact #7 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE NE	4.50
32 S	5 W	WM	11	NW NE	0.02
32 S	5 W	WM	11	SE NE	13.90
32 S	5 W	WM	14	NE NE	27.08
32 S	5 W	WM	14	NW NE	23.20

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

Certificate: 9643 in the name of E. L. AND L. S. JOHNS (confirmed by Cow Creek, Douglas County Decree)

Use: IRRIGATION of 21.96 ACRES

Priority Date: SEPTEMBER 30, 1907

Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season

Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SW SE	10.46
32 S	5 W	WM	11	SE SE	11.50

12. The Department received information that better describes the point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	4W	WM	4	NW SW	580 FEET SOUTH AND 985 FEET EAST FROM W 1/4 CORNER OF SECTION 4

13. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 4.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	13	NW NW	1110.6 FEET SOUTH AND 848.3 FEET EAST FROM NW CORNER OF SECTION 13

14. Transfer Application T-6682 also proposes to change the place of use for the acres identified in Finding of Fact #11 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SW SE	5.40
32 S	5 W	WM	11	SE SE	8.00
32 S	5 W	WM	12	SW NW	5.70
32 S	5 W	WM	12	NW SW	2.86

15. The portion of the fourth right to be transferred is as follows:
Certificate: 9644 in the name of the ESTATE OF T. B. JOHNS, C/O L. S. JOHNS, ADMR. (confirmed by Cow Creek, Douglas County Decree)
Use: IRRIGATION of 6.95 ACRES AND LIVESTOCK
Priority Date: 1888
Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season
Source: CLEAR CREEK, tributary to COW CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NW SE	2.00
32 S	5 W	WM	11	SW SE	4.95

16. The Department received information that better describes the authorized point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q
32 S	5W	WM	2	SE SW

17. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 800 feet mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	11	NE SE	130 FEET SOUTH AND 700 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

18. Transfer Application T-6682 also proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NW SE	6.95

19. The portion of the fifth right to be transferred is as follows:
Certificate: 9645 in the name of the ESTATE OF T. B. JOHNS C/O L. S. JOHNS, ADMR. (confirmed by Cow Creek, Douglas County Decree)
Use: IRRIGATION of 28.59 ACRES
Priority Date: SEPTEMBER 30, 1907
Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season
Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	11.30
32 S	5 W	WM	11	SW SE	4.59
32 S	5 W	WM	11	SE SE	12.70

20. The Department received information that better describes the point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	4W	WM	4	NW SW	580 FEET SOUTH AND 985 FEET EAST FROM W1/4 CORNER OF SECTION 4

21. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 4.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	13	NW NW	1110.6 FEET SOUTH AND 848.3 FEET EAST FROM THE NW CORNER OF SECTION 13

22. Transfer Application T-6682 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	13.00
32 S	5 W	WM	11	SE SE	14.09
32 S	5 W	WM	12	SW SW	1.50

23. The entirety of the sixth right to be transferred is as follows:

Certificate: 9646 in the name of T. C. JOHNS AND A. E. JOHNS (confirmed by Cow Creek, Douglas County Decree)

Use: IRRIGATION of 63.71 ACRES

Priority Date: SEPTEMBER 30, 1907

Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season

Source: COW CREEK, tributary to SOUTH UMPQUA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	13	NW NW	AS DESCRIBED IN SPECIAL ORDER VOLUME 12 PAGE 578 - 867.8 FEET SOUTH AND 1297.2 FEET EAST FROM THE NW CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	7.50
32 S	5 W	WM	11	SE SE	10.71
32 S	5 W	WM	12	NW SW	0.50

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	12	SW SW	25.00
32 S	5 W	WM	13	NW NW	20.00

24. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 4.0 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	13	NW NW	1110.6 FEET SOUTH AND 848.3 FEET EAST FROM NW CORNER OF SECTION 13

25. Transfer Application T-6682 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	8.20
32 S	5 W	WM	11	SE SE	4.30
32 S	5 W	WM	12	NW SW	11.00
32 S	5 W	WM	12	SW SW	26.90
32 S	5 W	WM	13	NW NW	13.31

26. The seventh right to be transferred is as follows:

Certificate: 9649 in the name of J. E. HARTLE (confirmed by Cow Creek, Douglas County Decree)

Use: IRRIGATION of 6.93 ACRES AND LIVESTOCK

Priority Date: 1861

Limit/Duty: ONE-SEVENTIETH cfs per acre during the irrigation season

Source: CLEAR CREEK, tributary to COW CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SE NE	6.93

27. The Department received information that better describes the authorized point of diversion and locates it at:

Twp	Rng	Mer	Sec	Q-Q
32 S	5 W	WM	2	SE SW

28. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	11	NE SE	130 FEET SOUTH AND 700 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

29. Transfer Application T-6682 also proposes to change the place of use of the right to a different parcel within:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SE NE	6.93

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

Certificate: 26617 in the name of LELAND S. JOHNS (perfected under Permit S-21774)

Use: IRRIGATION of 13.87 ACRES

Priority Date: SEPTEMBER 11, 1952

Rate: 0.19 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre during the irrigation season

Source: CLEAR CREEK, tributary to COW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
32 S	5 W	WM	2	SE SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SW SE	13.87

31. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	11	NE SE	130 FEET SOUTH AND 700 FEET WEST FROM THE E1/4 CORNER OF SECTION 11

32. Transfer Application T-6682 also proposes to change the place of use of the right to a different parcel within:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	SW SE	13.87

33. The entirety of the ninth right to be transferred is as follows:

Certificate: 21820 in the name of LELAND S. JOHNS (perfected under Permit S-21773)

Use: SUPPLEMENTAL IRRIGATION of 37.0 ACRES

Priority Date: SEPTEMBER 11, 1952

Rate: 0.53 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-SEVENTIETH cfs per acre, not to exceed 3.5 acre-feet per acre during the irrigation season of each year

Source: CLEAR CREEK, tributary to COW CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
32 S	5 W	WM	11	NE SE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	10.0
32 S	5 W	WM	11	SE SE	26.0
32 S	5 W	WM	11	SW SE	1.0

34. Transfer Application T-6682 proposes to move the authorized point of diversion approximately 800 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
32 S	5 W	WM	11	NE SE	130 FEET SOUTH AND 700 FEET WEST FROM E1/4 CORNER OF SECTION 11

35. Transfer Application T-6682 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
32 S	5 W	WM	11	NE SE	21.2
32 S	5 W	WM	11	SE SE	1.94
32 S	5 W	WM	12	NW SW	13.86

36. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. A comment was filed on March 17, 1992, by Water Watch in response to this notice. Water Watch requested the inclusion of a condition requiring installation of proper fish screens. Additionally, Oregon Department of Fish and Wildlife also requested inclusion of a condition requiring installation of proper fish screens.
37. The supplemental documentation (dated February 21, 1992) submitted with Transfer Application T-6682 asserts that the water right was exercised within the five-year period prior to the filing of Transfer Application T-6682 which occurred on February 27, 1992. However, portions of the water right have been within the right-of-way, including those portions under the paved lanes, of the Interstate 5 freeway and Azalea interchange.
38. Highway 99 was constructed in the early 1920's with an enlargement of the interchange between 1945 and 1949. Highway 99 was subsequently enlarged and renamed Interstate 5. The freeway was constructed in 1966 and 1967. Although portions of the rights could not have been beneficially used at the locations authorized under the water rights since construction of the freeway, the presumption of forfeiture for failure to use the rights beneficially for five consecutive years likely could be rebutted under ORS 540.610(2)(f) and (m).
39. On March 31, 2008, the Department mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-6682 to the applicants. The letter that

accompanied the *draft* Preliminary Determination set forth a deadline of May 1, 2008, for the applicants to respond. On April 4, the applicants through their Certified Water Rights Examiner, Kenna Clay Jordan of Jordan Engineering, requested that the Department proceed with issuance of a Preliminary Determination.

40. On April 10, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-6682 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 April 15, 2008, 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(2)]

41. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
42. The proposed changes requested in Transfer Application T-6682 would not result in enlargement of the rights.
43. The proposed changes would not result in injury to other water rights.
44. Portions of the water rights proposed for transfer within the freeway right-of-way are on lands owned by the Oregon Department of Transportation. The applicant has provided a notarized statement from the Oregon Department of Transportation consenting to the transfer. This documentation demonstrates that the applicant is authorized to pursue the transfer of those portions of the rights that are not owned by the applicant.

Determination and Proposed Action

The proposed changes in place of use and point of diversion in Transfer Application T-6682 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.


Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion in Transfer Application T-6682 are approved.
2. Water right Certificates 6709, 9642, 9643, 9644, 9645, 9646, 9649, 26617 and 21820 are cancelled. New certificates will be issued for Certificate 9642, 9643, 9644, 9645, 9646, 9649 and 26617 describing those portions of the rights not affected by this transfer.
3. 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 6709, 9642, 9643, 9644, 9645, 9646, 9649, 26617 and 21820 and any related decree.
4. The former place of use of the transferred water shall no longer receive water as part of these rights.
5. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of

water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

6. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16th day of May, 2008.


Phillip C. Ward, Director *FW*

Mailing date: MAY 23 2008