



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 10, 2012

VIA E-MAIL

Applicants

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

SUBJECT: Water Right Transfer Application T-11299

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11299. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Silverton Appeal newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrp.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: T-11299
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Linda L. and Royal T. Harger, Receiving Landowners (*via e-mail: rlatfrance@hotmail.com*)

encs



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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11299, Marion County) PROPOSING APPROVAL OF
) CHANGES IN POINT OF
) APPROPRIATION 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.

Applicants

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

Receiving Landowners

LINDA L. AND ROYAL T. HARGER
2905 ALEXANDER LANE NE
ALBANY, OR 97321

Findings of Fact

Background

1. On September 22, 2011, Steven V. and Constance A. Johnson filed an application to change the point of appropriation and to change the place of use under Certificate 86681. The Department assigned the application number T-11299.
2. Linda L. and Royal T. Harger are the receiving landowners who will 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 15.5 ACRES
Priority Date: JUNE 24, 1992
Rate: 0.19 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 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.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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

Source: WELL #2 within the LITTLE PUDDING RIVER BASIN

Authorized Point of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
WELL #2	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	9.8
7 S	2 W	WM	29	SE NW	80	1.6
7 S	2 W	WM	29	NE SW	77	0.9
7 S	2 W	WM	29	NW SW	77	3.2

4. Transfer Application T-11299 proposes to move the authorized point of appropriation approximately 9.1 miles northeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	1 W	WM	19	SW NE	57	950 FEET NORTH AND 1500 FEET WEST FROM THE SE CORNER OF DLC 57

5. Transfer Application T-11299 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
6 S	1 W	WM	19	SW NE			0.5
6 S	1 W	WM	19	SW NE		57	2.8
6 S	1 W	WM	19	SE NW		57	11.9
6 S	1 W	WM	19	NW SE	6		0.3

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 July 12, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11299 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 13, 2012, for the applicants to respond. The applicants pointed out an error in the location of the proposed point of appropriation (which has been corrected in this document), requested that the Department proceed with issuance of a Preliminary Determination, and have provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

Transfer Review Criteria (OAR 690-380-4010)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11299 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.

9. 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-11299.
10. The proposed change would not result in enlargement of the right.
11. The proposed well is located approximately 9.1 miles northeast from the permitted well; and pumping at the proposed well will impact an entirely different group of groundwater users, however the magnitude of increase is not likely to be significant due to hydraulic properties of the aquifer system. Therefore, these groundwater users would not be injured.
12. The proposed change will likely result in interference with other surface water sources that are not currently impacted. The authorized well (POA) is located in the Pudding River>Molalla River – AB Howell Prairie Water Availability Basin (WAB), about 0.5 mile west of the Little Pudding River. Use of the authorized well currently impacts the Little Pudding River. The proposed POA is located in the same Water Availability Basin, but will interfere with the Pudding River and Howell Prairie Creek, which the original POA did not affect. Due to the hydrogeology at the proposed POA site, (saturated Willamette Silt between the aquifer and the streambeds), interference is estimated to be spread out throughout the year, with an instantaneous rate of interference of approximately 0.008 cfs (4 gallons per minute) for each stream.
13. The Department's Water Availability model predicts that flows in the Pudding River in this WAB will be insufficient to meet the needs of all water rights during the months of July, August and September. Historically, water rights on the Pudding River are regulated off to meet the needs of instream water right Certificate 59467 approximately one year out of four. Additional interference from the proposed groundwater use would further reduce available water in the Pudding River and potentially trigger regulation earlier in the season, unless mitigation were provided to offset the potential loss in streamflow.
14. The applicants, Steven and Constance Johnson, authorized cancellation of water rights from the Pudding River as mitigation for T-10999, which granted a new POA for a 0.50 cfs portion of the water right evidenced by Certificate 82388, of which Certificate 86681 is the remaining portion. The cancellation of these rights provided 0.50 cfs as mitigation for T-10999, and also an additional 0.08 cfs was cancelled under Certificate 28929 by the order recorded at Special Order Volume 83, page 857.
15. This 0.08 cfs of Pudding River water (priority date December 31, 1954) returned through cancellation to the river upstream of the T-11299 proposed POA, was above and beyond the amount required for mitigation for T-10999. Therefore, the cancellation of Certificate 28929 by Steven and Constance Johnson provides more than sufficient mitigation for the estimated 0.008 cfs Pudding River streamflow loss due to interference from the T-11299 proposed well

16. Partial confinement of the aquifer by the Willamette Silt means that impacts would be distributed over a broad area, and the cancellation of Certificate 28929 has provided mitigation, thus the proposed change would not result in injury to other water rights.
17. The proposed well produces water from the same aquifer as the authorized POA.

Determination and Proposed Action

The change in point of appropriation and change in place of use proposed in Transfer Application T-11299 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11299 is approved, the final order will include the following:

1. *The change in point of appropriation and change in place of use proposed in application T-11299 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 cancelled.*
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 September, 2012.

Handwritten signature of Dwight French in cursive script.

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

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wrд.state.or.us.

*Protests should be addressed to the attention of Transfer and Conservation Section,
Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*