

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10289, Baker County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE,
)	DIMINISHMENT, AND PARTIAL
)	CANCELLATION OF A WATER
)	RIGHT

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. ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

BELLE L. JOHNSON
36437 VALLEY VIEW LANE
HALFWAY OR 97834

Findings of Fact

Background

1. On December 26, 2006, Belle Johnson filed an application to change the place of use under Certificates 68490 and 68491. The Department assigned the application number T-10289.

2. The first right to be transferred is as follows:

Certificate: 68490 in the name of Lorval Johnson (confirmed by decree Vol. 11, Page 235)

Use: IRRIGATION of 10.0 ACRES, LIVESTOCK AND DOMESTIC

Priority Date: 1883

Rate: 0.25 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 1.0 acre-foot per acre in July, 1.0 acre-foot per acre in August, and 0.5 acre foot per acre in September of each year

Source: EAST PINE CREEK, tributary to PINE CREEK

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.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	46 E	WM	20	SE SW	67 FEET NORTH AND 795 FEET WEST FROM THE S1/4 CORNER OF SECTION 20
7 S	46 E	WM	29	SE SE	2080 FEET SOUTH AND 1595 FEET EAST FROM THE C1/4 CORNER OF SECTION. 29

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SE	6.0
7 S	46 E	WM	33	NW SE	4.0

3. Application T-10289 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SW	9.6
7 S	46 E	WM	33	NW SW	0.4

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

Certificate: 68491 in the name of Lorval Johnson (confirmed by decree Vol. 11, Page 235)

Use: IRRIGATION of 10.0 ACRES AND LIVESTOCK

Priority Date: 1898

Rate: 0.25 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 1.0 acre-foot per acre in July, 1.0 acre-foot per acre in August, and 0.5 acre foot per acre in September of each year

Source: EAST PINE CREEK, tributary to PINE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	46 E	WM	20	SE SW	67 FEET NORTH AND 795 FEET WEST FROM THE S1/4 CORNER OF SECTION 20
7 S	46 E	WM	29	SE SE	2080 FEET SOUTH AND 1595 FEET EAST FROM THE C1/4 CORNER OF SECTION. 29

Authorized Place of Use:

IRRIGATION AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SW	9.6
7 S	46 E	WM	33	NW SW	0.4

5. Application T-10289 proposes to change the place of use of the right to:

IRRIGATION AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SE	6.0
7 S	46 E	WM	33	NW SE	4.0

6. Notice of the application for transfer was published on January 2, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On May 7, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10289 to the applicant. The draft Preliminary Determination set forth a deadline of June 15, 2007, for the applicant to respond. On May 22, 2007, the applicant requested that the Department proceed with issuance of a Preliminary Determination, and on May 30, 2007, provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10289.
10. The proposed change would not result in enlargement of the rights.
11. The proposed change would not result in injury to other water rights.

Partial Diminishment of a Water Right

12. An affidavit requesting that a portion of a water right be diminished to supplemental irrigation was received from Belle Johnson. The portion of the right to be diminished is as follows:

Certificate: 8998 in the name of Clarence G. Huff (perfected under Permit S-8806)

Use: IRRIGATION 68.0 ACRES

Priority Date: NOVEMBER 19, 1928

Rate: 0.84 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: WASTE WATER and DRAINAGE FROM SWAMPS IN SECTIONS 29 AND 32, TOWNSHIP 7 SOUTH, RANGE 46 EAST, WM

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
7 S	46 E	WM	29	SE SE

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SW	35.0
7 S	46 E	WM	33	NW SW	33.0

Partial Cancellation of a Water Right

13. An affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Belle Johnson. The right to be cancelled is as follows:

Certificate: 3847 in the name of J. F. Flynn; C. V. Haines, Henry Bassett, Jim Wallace, J. J. Wolfenperger, J. M. Cole, Clay Mills, Lloyd Duke, Wm. Maddern and Bessie Woodhouse (perfected under Permit S-440)

Use: IRRIGATION of 15.0 ACRES AND DOMESTIC

Priority Date: JUNE 11, 1910

Rate: 0.19 CUBIC FOOT PER SECOND (cfs)

Limit/Duty: ONE-EIGHTIETH cfs per acre

Source: EAST PINE CREEK, tributary to PINE CREEK

Authorized Place of Use:

IRRIGATION AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	46 E	WM	33	NE SE	15.0

14. The applicant has also requested in the application, that the domestic use from Certificate 68490 be cancelled.

Determination and Proposed Action

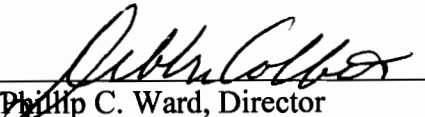
The changes in place of use proposed in application T-10289 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 a portion of a right should be diminished and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If application T-10289 is approved, the final order will include the following:

1. *The changes in place of use proposed in application T-10289 are approved. A portion of the right evidenced by Certificate 8998 is diminished to supplemental and the portion of a right that has been abandoned is cancelled.*
2. *Water right certificates 3847, 8998, 68490 and 68491 are cancelled. A new certificate will be issued to supersede Certificate 8998, confirming the partial diminishment of the right, and a new certificate will be issued describing that portion of Certificate 3847 not abandoned.*

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 68490, 68491, and any related decree.*
4. *The former place of use of the transferred rights shall no longer receive water under the rights.*
5. *Prior to diverting water, the water user shall install 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 measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.*
6. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
7. *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.*
8. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15th day of June 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Jason Spriet. If you have any questions about the information in this document, you may reach me at (541) 523-8224 or Jason.D.Spriet@wr.d.state.or.us

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.