

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10584, Marion County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF
)	APPROPRIATION, PLACE OF USE
)	AND CHARACTER 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

BENJAMIN JOHNSTON
ASHLEY JOHNSTON
9460 SUNNYVIEW ROAD NE
SALEM, OR 97301

Findings of Fact

Background

1. On April 1, 2008, Benjamin Johnston and Ashley Johnston filed an application to change the character of use, place of use and point of appropriation under Certificate 42223. The Department assigned the application number T-10584.
2. On May 22, 2008, the applicant forwarded information to the Department indicating that the water consumption for the right to be transferred was estimated at 1,314,000 gallons per year.
3. The right to be transferred is as follows:
Certificate: 42223 in the name of HERBERT ARTHUR SPADY (perfected under Permit G-4410)
Use: OPERATION OF A HEAT PUMP
Priority Date: NOVEMBER 18, 1968
Rate: 0.04 CUBIC FOOT PER SECOND (CFS)
Source: A WELL in the PUDDING RIVER BASIN

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 Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	2 W	WM	24	NE NE	English DLC 67	1250 FEET NORTH AND 900 FEET WEST FROM THE SE CORNER OF THE ENGLISH DLC 67

Authorized Place of Use:

OPERATION OF A HEAT PUMP						
Twp	Rng	Mer	Sec	Q-Q	DLC	
7 S	2 W	WM	24	NE NE	English DLC 67	

4. Transfer Application T-10584 proposes to move the authorized point of appropriation approximately 300 feet southeast of the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7S	2W	WM	24	NE NE	English DLC 67	1070 FEET NORTH AND 660 FEET WEST FROM THE SE CORNER OF THE ENGLISH DLC 67

5. Transfer Application T-10584 proposes to change the character of use to IRRIGATION.
6. Transfer Application T-10584 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7S	2W	WM	13	SE SE	English DLC 67	2.5
7S	2W	WM	24	NE NE	English DLC 67	0.7
TOTAL:						3.2

7. Irrigation in the Willamette Basin is generally subject to an irrigation season of March 1 through October 31 of each year.
8. Notice of the application for transfer was published on April 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On May 14, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10584 to the applicants. The cover letter sent with the draft Preliminary Determination set forth a deadline of June 30, 2008, for the applicants to submit information on the quantity of water used by the heat pump, a report of ownership and lien information and any comments to the draft. On May 22, 2008, the applicants supplied the information about the water use of the heat pump, 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.
10. Based upon the information supplied by the applicants on May 22, 2008, the Department prepared a REVISED draft Preliminary Determination and e-mailed a copy of it to the applicants on June 4, 2008. The applicants responded by e-mail on June 6, 2008, and indicated they were in agreement with the revised draft Preliminary Determination. The Preliminary Determination was then generated, consistent with the revised draft.

Transfer Review Criteria (OAR 690-380-4010)

11. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump and piping 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-10584.
13. The proposed point of appropriation will produce water from the same aquifer as the authorized point of appropriation if constructed as specified below.
14. The proposed character of use change requires that an annual duty limit be established, based on the annual volume of water that could have been beneficially used for the original character of use, to ensure that the proposed irrigation use would not result in enlargement of the right. Annual use of water under the right for operating the heat pump has been estimated at 1,314,000 gallons (4.0 acre feet). Therefore, by limiting the annual duty for irrigation to no more than a total of 4.0 acre feet (being 1.25 acre-feet per acre) during the irrigation season, the proposed changes would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

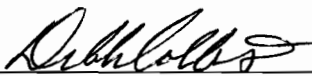
The changes in character of use, place of use and point of appropriation proposed in Transfer Application T-10584 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. Provided protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-10584 is approved, the final order will include the following:

1. *The changes in character of use, place of use and point of appropriation proposed in Transfer Application T-10584 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 42223 and any related decree.*
3. *Water right Certificate 42223 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, further limited to a total annual volume not to exceed 4.0 acre feet (being 1.25 acre feet per acre), during the irrigation season (March 1 through October 31) of each year.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *The former character of use of the transferred right shall no longer be allowed under the right.*

7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *Ground water production in the well shall be limited to a single aquifer within equivalent water-bearing zones encountered in MARI 7667.*
9. *The proposed well shall be cased and sealed at least 40 feet into hard, dense basalt.*
10. *The open interval in the well shall be no greater than 100 feet except as noted below. Open interval means the total length of borehole that is not behind sealed casing. The borehole above the open interval shall be continuously cased and continuously sealed to land surface. A larger open interval may be approved by the Department if the applicant can demonstrate, using packer test or other suitable methods, that the hydraulic heads of water-bearing zones in the proposed open interval are equivalent or if the applicant can demonstrate that the open interval is part of a continuous zone of interconnected porous materials such as a sequence of pillow lavas.*
11. *When required by the Department, the water user shall install, maintain and operate an in-line flow meter 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.*
12. *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.*
13. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 12th day of June 2008.


Phillip C. Ward, Director

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

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