

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-11699, Morrow County) ADDITIONAL POINT OF DIVERSION

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

WILLOW CREEK DISTRICT IMPROVEMENT CO.
BRIAN S. THOMPSON
55805 HWY 74
HEPPNER, OR 97836

BERNARD DAMON
2315 ROCKY LN
EUGENE, OR 97401

Findings of Fact

1. On December 13, 2013, BRIAN S. THOMPSON AND BERNARD DAMON filed an application for an additional point of diversion under Certificates 156, 87876, 87877, 87878, 114, and 87565. The Department assigned the application number T-11699.
2. Notice of the application for transfer was published on December 17, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 24, 2014, the Department contacted the applicant’s agent, William Porfily, by email to notify him of the deficiencies in the application. On March 5, 2014, the Department received an amended application from the agent, by email, resolving the deficiencies in the application.
4. On March 10, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11699 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 9, 2014, for the applicants to respond.

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.

5. On April 23, 2014, the applicants requested the application be put on Administrative Hold until October 20, 2014. On November 28, 2014, the application was again put on Administrative Hold until additional meetings could be held and the project could continue.
6. On April 1, 2016, the Department received an amended application from the applicants agent, the amended application included additional water right Certificates 4863, 7057, 30021, 64312, 80055, 82489, 82490 and 87565.
7. Notice of the application for transfer with the additional eight water right Certificates, was published on October 4, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. During the months of October and December, 2016, the Department contacted the applicants' agent by email to notify of the deficiencies in the application. On December 19 and 21, 2016, the Department received an Evidence of Use affidavit, Land Use form, and an amended application resolving the deficiencies and removing water right Certificates 30021, 82489 and 82490 from the application.
9. On January 6, 2017, the Department mailed a copy of the amended draft Preliminary Determination proposing to approve Transfer Application T-11699 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 5, 2017, 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 applicant is authorized to pursue the transfer.
10. On January 25, 2017, the Department issued a Preliminary Determination proposing to approve Transfer T-11699 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 31, 2017, and in the East Oregonian newspaper on January 27, 2017, and February 3, 2017 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 114 in the name of HENRY F. BLAHM (confirmed by Willow Creek, Morrow County (F) decree Volume 1, at page 73)

Use: IRRIGATION AND DOMESTIC USE

Priority Date: 1891 for the irrigation of twenty-five (25) acres and 1905 for the irrigation of twenty-three (23) acres

Rate: 0.42 cubic feet per second as of date 1891 and 0.38 cubic feet per second as of date 1905

Period of Use: March 1st to September 20th of each year

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	NE NW	1.00

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	NW NW	28.00
2 S	26 E	WM	17	SW NW	4.00
2 S	26 E	WM	17	SE NW	8.87
2 S	26 E	WM	17	NE SW	2.39
Total					44.26

12. Certificate 114 does not describe the location of the point of diversion, however information is available from the decree map and the transfer applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	NW SE	#2 - 1915 FEET NORTH AND 2670 FEET EAST FROM THE SW CORNER OF SECTION 17

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

Certificate: 156 in the name of JOHN HUGHES (confirmed by Willow Creek, Morrow County (F) decree Volume 1, at page 73)
Use: IRRIGATION
Priority Date: 1875
Rate: 0.83 CUBIC FEET PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purpose aforesaid, is limited to an amount actually beneficially used for said purpose, and shall not exceed 0.83 cubic feet per second.
Period of Use: March 1st to September 1st of each year.
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	7	NE SE	15.0
2 S	26 E	WM	7	SW SE	5.0
2 S	26 E	WM	7	SE SE	30.0
Total					50.0

14. Certificate 156 does not describe the location of the point of diversion, however information is available from the decree map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	8	SW SW	#2 - 60 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 8

15. The third right to be transferred is as follows:

Certificate: 4863 in the name of CHAS W. VALENTINE (perfected under Permit S-4528)
Use: IRRIGATION
Priority Date: APRIL 5, 1920

Rate: 0.3 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: WILLOW CREEK, tributary of COLUMBIA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	6	NW SW	4.0
2 S	26 E	WM	6	SW SW	17.3
2 S	26 E	WM	6	SE SW	2.2
Total					23.5

16. Certificate 4863 does not describe the location of the point of diversion, however information is available from the permit map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	7	NW SE	1216 FEET SOUTH AND 958 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 7

17. The fourth right to be transferred is as follows:

Certificate: 7057 in the name of J D BAUMAN (confirmed by Willow Creek, Morrow County (F) Decree Volume 1, at page 73)
Use: IRRIGATION
Priority Date: 1903
Rate: 0.75 CUBIC FOOT PER SECOND
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	25 E	WM	1	SW NE	11.0
2 S	25 E	WM	1	NE SE	2.0
2 S	25 E	WM	1	NW SE	22.0
2 S	25 E	WM	1	SE SE	10.0
Total					45.0

18. Certificate 7057 does not describe the location of the point of diversion, however information is available from the decree map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	6	SW SW	POD 1 – 180 FEET NORTH AND 510 FEET EAST FROM THE SE CORNER OF SECTION 1

19. The fifth right to be transferred is as follows:

Certificate: 64312 in the name of HAROLD S. HUBER AND JAMES S. BLOODSWORTH (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at page 73)
Use: IRRIGATING 82.25 ACRES
Priority Date: 1883 FOR TRACT 1 AND 1902 FOR TRACT 2
Rate: 1.37 CUBIC FEET PER SECOND BEING 1883 FOR 0.76 CFS AND 1902 FOR 0.61 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-SIXTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: WILLOW CREEK, a tributary of COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	25 E	WM	1	SW NE	POINT 2 - 920 FEET NORTH AND 160 FEET EAST FROM THE C1/4 CORNER OF SECTION 1
2 S	25 E	WM	1	SW NE	POINT 3 - 910 FEET NORTH AND 140 FEET EAST FROM THE C1/4 CORNER OF SECTION 1

Authorized Place of Use:

Tract 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	36	SE SW	1.90
2 S	25 E	WM	1	NE NW	19.90
2 S	25 E	WM	1	NW NW	25.90
2 S	25 E	WM	1	SE NW	4.35

Tract 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	25 E	WM	1	NW NW	2.40
2 S	25 E	WM	1	SW NW	2.40
2 S	25 E	WM	1	SE NW	24.40
2 S	25 E	WM	1	NE SW	1.00

20. The sixth right to be transferred is as follows:

Certificate: 80055 in the name of HAROLD S. HUBER AND JAMES E. BLOODSWORTH (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at page 73)
Use: IRRIGATION of 27.3 ACRES
Priority Date: 1890
Rate: 0.455 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 ONE-SIXTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.
Period of Use: March 1 to September 1

Source: WILLOW CREEK, a tributary of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	36	SW SW	POD 1 - 560 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 36
2 S	25 E	WM	1	SW NE	POD 3 - 910 FEET NORTH AND 140 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 1

Authorized Place of Use:

POD 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	35	SE SE	1.6
1 S	25 E	WM	36	SW SW	12.5

POD 3					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	35	SE SE	0.1
1 S	25 E	WM	36	SW SW	10.4
2 S	25 E	WM	1	NW NW	2.7

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

Certificate: 87565 in the name of BRIAN THOMPSON and SUSAN THOMPSON and NW FARM CREDIT SERVICES (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 67 ACRES

Priority Date: 1895

Rate: 1.12 CUBIC FEET PER SECOND (cfs); being 1.12 cfs at Evans Ditch, and 0.68 cfs at POD 3

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	7	SE NW	POD 3 - 2350 FEET SOUTH AND 3040 FEET WEST FROM THE NE CORNER OF SECTION 7
2 S	26 E	WM	8	SW SW	EVANS DITCH (POD 1) - 60 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	7	NE NW	26.0
2 S	26 E	WM	7	NW NW	10.0
2 S	26 E	WM	7	SE NW	9.0
2 S	26 E	WM	7	NE SW	4.0
2 S	26 E	WM	7	NW SE	18.0

22. The eighth right to be transferred is as follows:

Certificate: 87876 in the name of BERNARD DAMON and JEAN DAMON
(confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)
Use: IRRIGATION of 22 ACRES
Priority Date: 1889 for 5.0 acres of irrigation and 1891 for 17.0 acres of irrigation
Rate: 0.369 CUBIC FOOT PER SECOND (cfs), being 0.08 cfs as of the date 1889 and 0.29 cfs as of 1891.
Period of Use: Begins in April of each year.
Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	SE SE	POD # 3 - 600 FEET NORTH AND 680 FEET WEST FROM THE SE CORNER OF SECTION 17
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST FROM THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST FROM THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
2 S	26 E	WM	17	NW SE	12.5	1891
2 S	26 E	WM	17	SE SE	4.5	1891
2 S	26 E	WM	17	SE SE	2.8	1889
2 S	26 E	WM	20	NE NE	0.3	1889
2 S	26 E	WM	20	SE NE	1.9	1889

23. The ninth right to be transferred is as follows:

Certificate: 87877 in the name of BERNARD DAMON and JEAN DAMON
(confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)
Use: IRRIGATION of 39.0 ACRES
Priority Date: 1889 for 15.0 acres of irrigation and 1909 for 24.0 acres of irrigation
Rate: 0.65 CUBIC FOOT PER SECOND (CFS), being 0.25 CFS as of the date 1889 and 0.4 CFS as of 1909.
Period of Use: March 15th to September 15th of each year
Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST OF THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST OF THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SE SE	4.0
2 S	26 E	WM	20	NE NE	19.0
2 S	26 E	WM	21	NW NW	16.0

24. The tenth right to be transferred is as follows:

Certificate: 87878 in the name of BERNARD E. DAMON and JEAN DAMON (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 63.5 ACRES AND DOMESTIC

Priority Date: 1884

Rate: 1.06 CUBIC FEET PER SECOND (cfs)

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.06 CUBIC FEET PER SECOND (cfs), or its equivalent in case of rotation, measured at the points of diversion.

Period of Use: March 1 through July 1

Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	SE SE	POD # 3 - 600 FEET NORTH AND 680 FEET WEST FROM THE SE CORNER OF SECTION 17
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST FROM THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST FROM THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SW SE	15.8
2 S	26 E	WM	17	SE SE	4.2
2 S	26 E	WM	21	SW NW	32.0
2 S	26 E	WM	21	SE NW	4.5
2 S	26 E	WM	21	NE SW	4.0
2 S	26 E	WM	21	NW SW	3.0

25. Transfer Application T-11699 proposes an additional point of diversion approximately 1.6 to 7.5 miles from the existing points of diversion to water right Certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878, described as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
2 S	26 E	WM	27	NE NW	4300	TD #1 - 1120 FEET SOUTH AND 1820 FEET EAST FROM THE NW CORNER OF SECTION 27

26. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

27. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

28. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11699.

29. The proposed change would not result in enlargement of the rights.

30. The proposed change would not result in injury to other water rights.

Conclusions of Law

The additional point of diversion proposed in Transfer Application T-11699 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.


Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-11699 is 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 Certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878 and any related decree.
3. Water right certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878 are cancelled.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

6. In order to avoid enlargement of the right or injury to other rights, it is preferable to have a flowmeter installed that reads instantaneous, totalizes, and has real-time access so the Watermaster can access the flow data. However, if the flowmeter will not work and provide the real time data, the Watermaster can approve an alternate type of measuring device that will provide instantaneous data, totalizes, and will provide real time access to the flow data.
7. 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.
8. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
9. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 change and full beneficial use of the water.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 6 day of March, 2017.



 Dwight French, Water Right Services Division Administrator, for
 Thomas M. Byler, Director
 Oregon Water Resources Department

Mailing date: MAR 08 2017