

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-10734, Crook County) CHANGES IN POINTS OF DIVERSION
) AND PLACE 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.

Applicant

THE DANIELS GROUP, LLC
GREG DANIELS
1111 MAIN ST, SUITE 700
VANCOUVER, WA 98660

Findings of Fact

Background

1. On November 21, 2008, THE DANIELS GROUP, LLC filed an application for additional points of diversion and to change the place of use under Certificate 83850. The Department assigned the application number T-10734.
2. On September 10, 2009, the Department requested additional supporting information and clarification of the intent of T-10734.
3. On October 16, 2009, the applicant submitted additional supporting documentation for T-10734 and revised transfer maps with clarifying information.
4. On November 9, 2009, the Department requested further clarification of the intent of T-10734, including the location of the proposed place of use and the proposed relationship between the proposed PODs and proposed place of use.

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 November 3, 2010, the applicant provided further clarification of the intent of T-10734, revised transfer maps in support of T-10734, an amended proposed place of use, and requested that the type of transfer be “a change in POD”.
6. On December 13, 2010, the Department requested that a discrepancy in the mapped acreage of the “from” lands be clarified.
7. On December 21, 2010, the applicant provided an updated transfer map clarifying the location of the “from” lands.
8. The portion of the right to be transferred is as follows:

Certificate: 83850 in the name of U. S. BUREAU OF RECLAMATION (perfected under Permit S-25991)

Use: SUPPLEMENTAL IRRIGATION of 85.4 ACRES

Priority Date: APRIL 8, 1914

Rate: 2.16 CUBIC FEET 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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from Prineville Reservoir. Use of the water requires the existence of a current contract between the landowners and the United States Bureau of Reclamation.

Source: CROOKED RIVER AND PRINEVILLE RESERVOIR, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	23	NE SE	LOWLINE DITCH #47 - 950 FEET SOUTH AND 1,060 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 23; 35.8 acres
14 S	14 E	WM	29	NE NW	DIRECT DIVERSION # 51 - 980 FEET SOUTH AND 1,000 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 29; 49.6 acres

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Diversion	Acres
14 S	14 E	WM	20	SW SW	200	51	7.2
14 S	14 E	WM	28	NW NE	200	47	23.2
14 S	14 E	WM	28	NE NW	200	47	12.6
14 S	14 E	WM	29	NE NW	200	51	3.7
14 S	14 E	WM	29	NW NW	200	51	32.4
14 S	14 E	WM	29	SW NW	200	51	3.0
14 S	14 E	WM	29	SE NW	200	51	3.3

9. Transfer Application T-10734 proposes to move the authorized points of diversion to one point of diversion, to be located between the two authorized points of diversion approximately 3 miles upstream from Direct Diversion #51, to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	22	NE NE	DIRECT DIVERSION #47A – 1,300 FEET SOUTH FROM THE NE CORNER OF SECTION 22; 85.4 ACRES

10. The supplemental irrigation allowed under Certificate 83850 is proposed to move independently of the primary water rights under Certificates 83651, 83732 and 83857 to land appurtenant to primary irrigation water rights with similar reliability, pursuant OAR 690-380-2240(5). Transfer Application T-10734 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Diversion	Acres
14 S	14 E	WM	15	SW SE	100	#47A	1.1
14 S	14 E	WM	15	SE SE	100	#47A	5.7
14 S	14 E	WM	22	NE NE	100	#47A	24.2
14 S	14 E	WM	22	NW NE	100	#47A	19.0
14 S	14 E	WM	22	NE NW	100	#47A	22.4
14 S	14 E	WM	22	NW NW	100	#47A	13.0

11. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. Richard Candland of South Valley Bank & Trust (Bank) commented on August 27, 2009. The Bank stated that they have a security interest, including water rights and ditch rights, in real property located in Township 14 South, Range 14 East, WM, Sections 21 and 28, and requested to be kept informed during the transfer process. No other comments were filed in response to the notice.
12. On March 11, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10734 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 11, 2011, for the applicant to respond. The applicant requested that the Department extend the completion date to allow time to complete on-farm improvements and proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
13. The Department considers the request for additional time reasonable and has revised the completion date.
14. On April 13, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10734 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 April 19, 2011, and in The Bulletin newspaper on April 15, 22 and 29, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

15. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device.

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

16. Water has been used within the last five years 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.
17. 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-10734.
18. The proposed changes would not result in enlargement of the right.
19. The proposed changes would not result in injury to other water rights.
20. Consistent with OAR 690-380-2240(5), the priority dates and sources for the primary irrigation rights located at the place of use from which the supplemental irrigation rights are to be moved are similar in reliability to those of the primary irrigation rights currently located at the proposed place of use.

Conclusions of Law

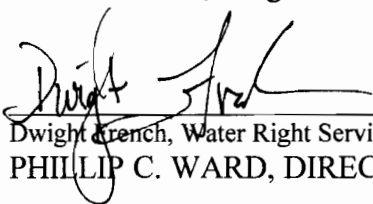
The changes in points of diversion and place of use proposed in Transfer Application T-10734 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and place of use proposed in Transfer Application T-10734 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 83850 and any related decree.
3. Water right certificate 83850 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.
4. The quantity of water diverted at the new point 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 the proposed point of diversion.
- b. The water user shall maintain the meter or measuring device in good working order.
- c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
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 water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 3 day of June, 2011.



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

Mailing date: JUN 07 2011