

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

In the Matter of Transfer Application)
T-10733, Crook County)
) FINAL ORDER APPROVING
) 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 changes in points of diversion and place of use under Certificate 83850. The Department assigned the application number T-10733.
2. On September 10, 2009, the Department requested additional supporting information and clarification of the intent of T-10733.
3. On October 16, 2009, the applicant submitted additional supporting documentation for T-10733 and revised transfer maps with clarifying information.
4. On November 9, 2009, the Department requested further clarification of the intent of T-10733, including the location of the proposed place of use and the proposed relationship between the proposed PODs and proposed place of use.
5. On November 3, 2010, the applicant provided further clarification of the intent of T-10733, revised transfer maps in support of T-10733, and amended the 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.

6. 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: IRRIGATION of 47.4 ACRES

Priority Date: APRIL 8, 1914

Rate: 1.20 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 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	29	NE NW	DIRECT DIVERSION #51 - 980 FEET SOUTH AND 1,000 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 29; 26.5 ACRES
14 S	14 E	WM	29	NE NW	DIRECT DIVERSION #52 - 500 FEET SOUTH AND 950 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 29; SHARES ACRES WITH DIVERSION #53; 20.9 ACRES
14 S	14 E	WM	29	NE NW	DIRECT DIVERSION #53 - 170 FEET SOUTH AND 660 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 29; SHARES ACRES WITH DIVERSION #52; 20.9 ACRES

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Diversion	Acres
14 S	14 E	WM	20	SW SW	200	51	4.4
14 S	14 E	WM	20	SE SW	205	52 & 53	8.1
14 S	14 E	WM	20	SE SW	200	51	6.9
14 S	14 E	WM	29	NE NW	205	52 & 53	12.8
14 S	14 E	WM	29	NE NW	200	51	13.6
14 S	14 E	WM	29	SW NW	200	51	1.6

7. Transfer Application T-10733 proposes to continue using the following authorized point of diversion for primary irrigation of 7.4 acres:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
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

8. Transfer Application T-10733 also proposes to change the points of diversion to share primary irrigation of 40.0 acres. Proposed Direct Diversion #50 is approximately ¾ miles

downstream from authorized POD Direct Diversion #51. Proposed Lowline Ditch #47 is located in an irrigation canal that diverts from the Crooked river approximately 3 ½ miles upstream from the authorized POD Direct Diversion #51:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	20	SE SE	DIRECT DIVERSION #50 – 280 FEET NORTH AND 120 FEET WEST FROM THE SE CORNER OF SECTION 20; SHARES ACRES WITH DIVERSION #47; 40.0 ACRES
14 S	14 E	WM	23	NE SE	LOWLINE DITCH #47 – 950 FEET SOUTH AND 1,060 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 23; SHARES ACRES WITH DIVERSION #50; 40.0 ACRES

9. Transfer Application T-10733 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Diversion	Acres
14 S	14 E	WM	28	NW NE	200	47 or 50	24.9
14 S	14 E	WM	28	NE NW	200	47 or 50	15.1
14 S	14 E	WM	29	NW NW	200	51	0.5
14 S	14 E	WM	29	NE NW	200	51	0.3
14 S	14 E	WM	29	SE NW	200	51	2.0
14 S	14 E	WM	29	SW NW	200	51	4.6

10. 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.
11. On March 11, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10733 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.
12. The Department considers the request for additional time reasonable and has revised the completion date.
13. On April 13, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10733 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.

14. 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

15. 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.
16. 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-10733.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

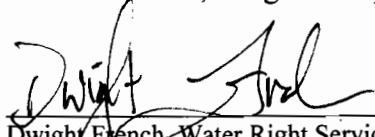
The changes in points of diversion and place of use proposed in Transfer Application T-10733 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of diversion and place of use proposed in Transfer Application T-10733 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 points of diversion, together with that diverted at the original 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 each point of diversion.
 - b. The water user shall maintain the meter or measuring devices in good working order.

- c. The water user shall allow the Watermaster access to the meter 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. 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. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW'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
PHILIP C. WARD, DIRECTOR

Mailing date: JUN 03 2011