

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

In the Matter of Transfer Application) FINAL ORDER APPROVING AN
T-10732, Crook 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.

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 an additional point of diversion under Certificate 47267. The Department assigned the application number T-10732.
2. On September 10, 2009, the Department requested additional supporting information and clarification of the intent of T-10732.
3. On October 16, 2009, the applicant submitted additional supporting documentation for T-10732 and revised transfer maps with clarifying information.
4. On November 9, 2009, the Department requested revised transfer maps to correct an apparent clerical error in the description of the "from" lands.
5. Certificate 47267 was determined to be incorrectly issued in the name of Low Line Ditch Company. On March 5, 2010, Certificate 47267 was cancelled by superseding Certificate 86121, which correctly listed the right in the name of Dorothy Livingston Sims.

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. Certificate 86121 was determined to contain a scrivener error that erroneously described the place of use. On March 17, 2010, Certificate 86121 was cancelled by superseding Certificate 86137, which correctly described the place of use.
7. On November 3, 2010, the applicant provided revised transfer maps in support of T-10732 that correctly described the From lands.
8. The right to be transferred is as follows:

Certificate: 86137 in the name of Dorothy Livingston Sims (confirmed by Crooked River decree)
Use: IRRIGATION of 34.2 ACRES
Priority Date: 1903
Rate: 0.43 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.43 cubic foot per second (cfs), the total quantity being limited to four (4.0) acre feet per acre during each year.
Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	20	SE SE	270 FEET NORTH AND 190 FEET WEST FROM THE SE CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	14 E	WM	28	NE NW	7.1
14 S	14 E	WM	28	NW NW	22.1
14 S	14 E	WM	28	SW NW	5.0

9. Transfer Application T-10732 proposes an additional point of diversion, Lowline Ditch 47, to be located in an irrigation canal that diverts from the Crooked River approximately 3 ½ miles upstream from the authorized point of diversion. The proposed additional point of diversion is located at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	14 E	WM	23	NE SE	950 FEET SOUTH AND 1,060 FEET WEST FROM THE E¼ CORNER OF SECTION 23

10. Notice of the application for transfer was published on December 2, 2008, pursuant to OAR 690-380-4000. No 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-10732 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-1073210732 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 currently equipped with an appropriate fish screening and/or by-pass device.

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 was present within the five-year period prior to submittal of Transfer Application T-10732.
17. The proposed change would not result in enlargement of the right.
18. The proposed change would not result in injury to other water rights.

Conclusions of Law

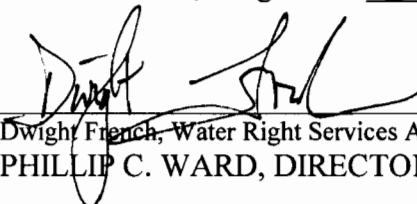
The additional point of diversion proposed in Transfer Application T-10732 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in Transfer Application T-10732 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 Certificate 86137 and any related decree.
3. Water right certificate 86137 is cancelled.

4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point 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. 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 approved change 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 change and full beneficial use of the water.
9. When satisfactory proof of the completed change 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