

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10734, Crook County)	PROPOSING APPROVAL OF
)	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.
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".

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.
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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	SE SW	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. 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 were present within the five-year period prior to submittal of Transfer Application T-10734.
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.
19. 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.

Determination and Proposed Action

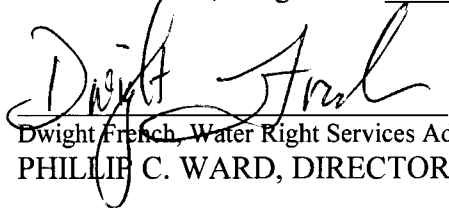
The changes in points of diversion and place of use proposed in Transfer Application T-10734 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-10734 is approved, the final order will include the following:

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 13 day of April, 2011.



Dwight French, Water Right Services Administrator, for
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@wrds.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.

**Notice of Preliminary Determination for
Water Right Transfer T-10734**

T-10734 filed by THE DANIELS GROUP, LLC, 1111 MAIN ST SUITE 700, VANCOUVER WA 98660 proposes a change in points of diversion and place of use under Certificate 83850. The right allows the use of 2.16 CUBIC FEET PER SECOND (priority date APRIL 8, 1914) from the CROOKED RIVER AND PRINEVILLE RESERVOIR in Sec. 23 and 29, T 14 S, R 14 E, W.M. for SUPPLEMENTAL IRRIGATION in Sec. 20, 28, and 29. The applicant proposes to move the points of diversion to one point of diversion approximately 3 miles upstream to Sec. 22, T 14 S, R 14 E, W.M.) and to change the place of use to Sec. 15 and 22, T 14S, R 14 E, W.M. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.

Any person may file, jointly or severally, with the Department a protest or standing statement within 30 days after the date of final publication of notice in the Department's weekly notice or of this newspaper notice, whichever is later. A protest form and additional information on filing protests may be obtained by calling (503) 986-0883. The last date of newspaper publication is [DATE OF LAST PUBLICATION]. If no protests are filed, the Department will issue a final order consistent with the preliminary determination.