

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

In the Matter of Transfer Application)
T-10733, Crook County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF
) ACHANGES 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.

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.

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. 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)]

14. 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.
15. 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.
16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

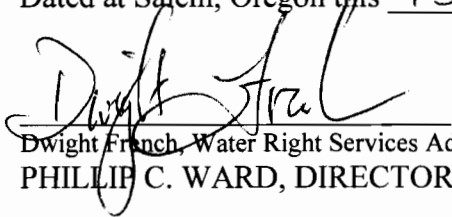
The changes in points of diversion and place of use proposed in Transfer Application T-10733 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-10733 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-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 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@wrд.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-10733**

T-10733 filed by 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 1.2 CUBIC FEET PER SECOND (priority date APRIL 8, 1914) from the CROOKED RIVER in Sec. 29, T 14 S, R 14 E, W.M. for IRRIGATION in Sec. 20 and 29. The applicant proposes to move the points of diversion approximately 0.75 miles downstream and approximately 3.5 miles upstream in Sec. 20, T 14 S, R 14 E, W.M. and in Sec. 23, T 14 S, R 14 E, W.M., and to change the place of use to Sec. 28 and 29, T14 S, 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.