

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

In the Matter of Transfer Application            )     PRELIMINARY DETERMINATION  
T-7252, Baker County                            )     PROPOSING DENIAL OF A CHANGE  
  )     IN 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**

FRANK and DOROTHY HANNIGAN  
4533 SE 17<sup>TH</sup> CT.  
GRESHAM, OR 97080

**Findings of Fact**

***Background***

1. On November 1, 1994, Frank and Dorothy Hannigan filed an application to change the place of use under Certificate 10020. The Department assigned the application number T-7252.
2. On February 20, 1996, the Water Resources Department (Department) received a protest to the transfer application from the United States Forest Service – Wallowa-Whitman National Forest.
3. On February 4, 1997, the applicants submitted an amended application to change the place of use under certificates 10020 and 10082.
4. On September 4, 1997, the applicants submitted amendments (version three) to Transfer Application T-7252 to change the place of use under Certificates 10020, 10082, 11418 and 25914.
5. On July 13, 1998, the applicants submitted amended and corrected exhibits in response to deficiency letters from the Department's transfer processor.

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. On July 15, 1998, the Department's transfer processor sent the applicants a letter, indicating that the amended and corrected exhibits still failed to identify the quantity of water to be used on Parcels two and three identified in the transfer application, and that they failed to correctly map some points of diversion. The letter also noted the United States Forest Service (USFS) had not withdrawn the protest to the transfer application nor granted permission to the portion of the transfer involving lands owned by the United States of America and managed by the USFS (the unpatented Carranza Claim).
7. On July 17, 1998, the applicants responded identifying the quantities of water to be used on parcels two and three, but had yet to receive consent to the transfer from the USFS.
8. Upon receiving affidavits asserting nonuse of water rights, the Department issued Notices of Proposed Cancellation of Water Right on February 18, 1999. The Notices proposed cancellation of the entirety of Certificate 25914, and parts of Certificates 10020, 10082 and 11418 authorizing mining from certain water sources.
9. A hearing was conducted on June 14 and 15, 2000, in Baker City, Oregon, as to whether the noticed water rights had been forfeited by the applicants' failure to make beneficial use of water under the terms of the water right for a period of five or more consecutive years.
10. On November 29, 2001, the Director of the Water Resources Department issued a Final Order, recorded at Special Order Volume 55, Pages 1189 to 1197, cancelling the following water rights or sources:
  - Certificate 10020: 22 cubic feet per second (cfs) from Greenhorn Creek for mining purposes.
  - Certificate 10082: 4.0 cfs from West Fork Clear Creek;  
4.0 cfs from East Fork Clear Creek;  
8.0 cfs from Dry Gulch;  
6.0 cfs from Little Salmon and Lightning Creeks;  
6.0 cfs from Bear Gulch (upper diversion); and  
8.0 cfs from Bear Gulch (lower diversion) for placer mining purposes.
  - Certificate 11418: 30 cfs; being 15 cfs each from West Fork Clear Creek and East Fork Clear Creek for mining purposes.
  - Certificate 25914: 8.0 cfs from West Fork Clear Creek;  
4.0 cfs from East Fork Clear Creek;  
4.0 cfs from Dry Gulch;  
4.0 cfs from Spring Creek;  
4.0 cfs from Salmon Creek;  
2.0 cfs from Lightning Creek; and  
1.0 cfs from Olive Creek for mining purposes.
11. On November 29, 2001, the Water Resources Department also issued new certificates describing the remainder of the water rights not canceled by the Final Order.

Original Certificate Number	Superseding Certificate Number
10020	78604
10082	78605
11418	78606
25914	78607

12. The applicants appealed the decision to the Court of Appeals of the State of Oregon.
13. On September 15, 2004, the Court of Appeals of the State of Oregon affirmed the Final Order issued by the Director of the Water Resources Department cancelling the water rights.
14. The portion of the first right proposed to be transferred is as follows:

**Certificate:** 10020 in the name of J. R. Dodson (perfected under permit S-8405)

**Use:** Placer Mining

**Priority Date:** APRIL 3, 1928

**Rate:** 2.0 CUBIC FEET PER SECOND (cfs)

**Source:** Greenhorn Creek, tributary to North Fork Burnt River

**Authorized Point of Diversion:**

SOURCE	TWP	RNG	MER	SEC	Q-Q
GREENHORN CR	10 S	35.5 E	W.M.	16	NW NE

**Authorized Place of Use:**

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	14	W½ SW NE	CARRANZA
10 S	35.5 E	W.M.	14	W½ NW SE	CARRANZA

15. Application T-7252 also proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	10	SE SE	PARKER PLACER
10 S	35.5 E	W.M.	15	S½ NW NE	CHANNEL #1
10 S	35.5 E	W.M.	16	S½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ SW	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	NW SE	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ NE SE	PARKERVILLE MINE

16. The portion of the second right proposed to be transferred is as follows:

**Certificate:** 10082 in the name of J. R. Dodson (perfected under permits S-1651, S-1652, S-1653, S-1654, S-3262 and S-3263)

**Use:** Mining

**Priority Date:** JULY 5, 1913 - Permits S-1651, S-1652, S-1653 and S-1654

FEBRUARY 1, 1917 - Permits S-3262 and S-3263

**Rate:** 1.0 CUBIC FEET PER SECOND (cfs)

**Source:** East Fork Clear Creek, West Fork Clear Creek, Dry Gulch, Little Salmon Creek and Lightning Creek (all tributary to John Day River), and Bear Gulch, tributary to North Fork Burnt River

**Authorized Point of Diversion:**

SOURCE	TWP	RNG	MER	SEC	Q-Q
EAST FK CLEAR CR	9 S	35 E	W.M.	30	NE NW
WEST FK CLEAR CR	9 S	35 E	W.M.	30	SW SE
DRY GULCH	10 S	35 E	W.M.	5	NE NW
SALMON CR	10 S	35 E	W.M.	4	SW NE
LIGHTNING CR	10 S	35 E	W.M.	4	SE NW
UPPER BEAR GULCH	10 S	35 E	W.M.	12	NW SW
LOWER BEAR GULCH	10 S	35 E	W.M.	13	SW SW

**Authorized Place of Use:**

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	14	W½ SW NE	CARRANZA
10 S	35.5 E	W.M.	14	W½ NW SE	CARRANZA

17. Application T-7252 also proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	16	S½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ SW	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	NW SE	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ NE SE	PARKERVILLE MINE

18. The portion of the third right proposed to be transferred is as follows:

**Certificate:** 11418 in the name of J. R. Dodson (perfected under permit S-10087)

**Use:** Mining

**Priority Date:** APRIL 3, 1928

**Rate:** 1.5 CUBIC FEET PER SECOND (cfs)

**Source:** West Fork Clear Creek and East Fork Clear Creek, tributary to Clear Creek (John Day Basin)

**Authorized Point of Diversion:**

SOURCE	TWP	RNG	MER	SEC	Q-Q
WEST FK CLEAR CR	9 S	34 E	W.M.	36	NE NW
EAST FK CLEAR CR	9 S	35 E	W.M.	31	NWSW

**Authorized Place of Use:**

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	14	W½ SW NE	CARRANZA
10 S	35.5 E	W.M.	14	W½ NW SE	CARRANZA

19. Application T-7252 also proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	10	S½ NE NE	Y-KAKE #4
10 S	35.5 E	W.M.	10	SE NE	Y-KAKE #2
10 S	35.5 E	W.M.	16	S½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ SW	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	NW SE	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ NE SE	PARKERVILLE MINE

20. The portion of the fourth right proposed to be transferred is as follows:

**Certificate:** 25914 in the name of C. E. Travillion (perfected under John Day River (F) Decree)

**Use:** Mining

**Priority Date:** 1865

**Rate:** 2.0 CUBIC FEET PER SECOND (cfs)

**Source:** West Fork Clear Creek and East Fork Clear Creek, Dry Gulch, Spring Creek, Salmon Creek, Lightning Creek and Olive Creek (John Day Basin)

**Authorized Place of Use:**

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	14	W½ SW NE	CARRANZA
10 S	35.5 E	W.M.	14	W½ NW SE	CARRANZA

21. Application T-7252 also proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	PLACE NAME
10 S	35.5 E	W.M.	10	S½ NE NE	Y-KAKE #4
10 S	35.5 E	W.M.	10	SE NE	Y-KAKE #2
10 S	35.5 E	W.M.	10	SE SE	PARKER PLACER
10 S	35.5 E	W.M.	16	S½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ SW	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	NW SE	PARKERVILLE MINE
10 S	35.5 E	W.M.	21	N½ NE SE	PARKERVILLE MINE

22. On August 9, 2011, the Department mailed a cover letter and a copy of the draft preliminary determination to the applicants. The Department proposed to deny Transfer Application T-7252 because the water rights proposed for transfer had been canceled.

23. The cover letter suggested the applicant withdraw the transfer application, otherwise the Department had no alternative but to deny the application.

24. The Department has received no response to the draft preliminary determination from the applicant

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

25. On November 29, 2001, the Water Resources Director issued a Final Order, recorded at Special Order Volume 55, Pages 1189 to 1197, cancelling the water rights proposed for transfer.
26. The transfer application cannot be approved because the portions of the water rights proposed to be transferred have been cancelled pursuant to ORS 540.610, and therefore are not water uses subject to transfer.

**Determination and Proposed Action**

The change in place of use proposed in application T-7252 does NOT appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and the application will be denied unless it is withdrawn.

The Department intends to deny Transfer Application T-7252.

Dated at Salem, Oregon this 18 day of October, 2011.

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

This Preliminary Determination was prepared by Greg Nelson. If you have questions about the information in this document, you may reach me at 503-986-0888 or [Greg.L.Nelson@wrdd.state.or.us](mailto:Greg.L.Nelson@wrdd.state.or.us).

Protests should be addressed to the attention of the Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.