



Oregon

John A. Kitzhaber, MD, Governor

November 8, 2011

Water Resources Department

North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone 503-986-0900
FAX 503-986-0904

HELEN DAVIDSON
2311 W 16TH AVENUE #89
SPOKANE, WA 99224

SUBJECT: Transfer Application T-10934

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-10934. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a 30-day period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision.

Because the new points of diversion are more than ¼ mile from the authorized points of diversion, the applicant is responsible for giving public notice of the transfer changes in a local newspaper having a general circulation in the area of the water right. The notice must be published at least once a week for three consecutive weeks. We have prepared the notice for you (enclosed). The deadline for individuals to file protests or standing statements is 30 days after the date of last publication. Please have the newspaper insert the date of last publication in the proper place.

After publication, the Department needs to receive an affidavit specifying the dates the notice was published. Please have the newspaper prepare and mail an original affidavit of publication to me at the address shown in the letterhead, **by December 23, 2011**.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at (503) 986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: Eric W. Julsrud, District 4 Watermaster
Robert Bagett, CWRE #009

encs



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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10934, Grant County) PROPOSING APPROVAL OF ADDITIONAL
) POINTS OF DIVERSION, CLARIFYING THE
) DESCRIPTION OF THE PLACE OF USE OF
) TWO WATER RIGHTS AND CANCELLATION
) OF A PORTION OF A WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

HELEN DAVIDSON, TRUSTEE
CLYDE DAVIDSON FAMILY TRUST
P.O. BOX 424
MONUMENT, OR 97864

Findings of Fact

Background

1. On July 29, 2009, Helen Davidson filed an application to change the points of diversion under Certificates 24925 and 48441. The Department assigned the application number T-10934.
2. The portion of the first right to be transferred is as follows:
 - Certificate:** 24925, in the name of Guy Boyer (confirmed by decree of the Circuit Court of the State of Oregon for Grant County)
 - Use:** Irrigation of 40.0 acres
 - Priority Date:** 1906
 - Limit/Duty:** ONE-FORTIETH of one cubic foot per second (cfs) per acre irrigated to June 1 and ONE-EIGHTIETH of one cfs per acre thereafter; further limited on 1.0 acre-

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.

foot per calendar month to June 1 and 4.0 acre-feet per acre during the season April 1 to September 30, measured at point of diversion.

Source: Cottonwood Creek, tributary to the North Fork John Day River

Authorized Place of Use:

IRRIGATION (IR)					
Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	28 E	WM	19	NE NW	6.1
9 S	28 E	WM	19	SW NW	3.6
9 S	28 E	WM	19	SE NW	11.0
9 S	28 E	WM	19	NE SW	7.0
9 S	28 E	WM	19	NW SW	3.7
9 S	28 E	WM	19	SW SW	4.2
9 S	28 E	WM	19	SE SW	4.4

3. Certificate 24925 does not describe the location of the point of diversion, however information is available from the John Day River Decree and associated adjudication map indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q - Q
9 S	28 E	WM	30	NW NW

4. Transfer Application T-10934 proposes to add additional points of diversion to the above described water right downstream approximately 5,000 feet to proposed POD #2 and 3,000 feet to proposed POD #3 located:

Twp	Rng	Mer	Sec	Q - Q	Gov't Lot	Measured Distances
9 S	28 E	WM	19	SW NW	2	POD #2 - 1210 FEET NORTH AND 4270 FEET WEST FROM E $\frac{1}{4}$ CORNER OF SECTION 19
9 S	28 E	WM	19	NW SW	3	POD #3 - 760 FEET SOUTH AND 4410 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 19

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

Certificate: 48441, in the name of James W. Beymer, T.J. Merrill, Lawrence Sweek, J.C. Owen (perfected under Permit E-15)

Use: Irrigation of 45.22 acres

Priority Date: August 5, 1909

Amount: 0.57 cubic foot per second

Source: Cottonwood Creek, tributary to the North Fork John Day River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Gov't Lot
9 S	28 E	WM	30	NW NW	1

Authorized Place of Use:

IRRIGATION (IR)					
Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	28 E	WM	18	NE NW	8.00
9 S	28 E	WM	18	SE NW	6.00
9 S	28 E	WM	18	NE SW	12.00
9 S	28 E	WM	18	SE SW	11.10

9 S	28 E	WM	19	NE NW	6.00
9 S	28 E	WM	19	NE SW	2.12

6. Certificate 48441 contains an apparent scrivener's error in its description of the rate allowed under permits for Cottonwood Creek. The designation of one-fortieth of one cubic foot per second (cfs) is in error. Based on the original Permit E-18, Certificate 1851, cancellation order and the associated confirming right Certificate 57732 from past transfer application T-4031, all designating one-eightieth of one cfs as the instantaneous rate allowed under the right, Certificate 48441 should be corrected to reflect one-eightieth of a cfs per acre.
7. Transfer Application T-10934 proposes to add additional points of diversion to the above described water right downstream approximately 5,000 feet to proposed POD #2, and 9,000 feet to proposed POD #1. These proposed points of diversion are located:

Twp	Rng	Mer	Sec	Q - Q	Gov't Lot	Measured Distances
9 S	28 E	WM	18	NE SW	--	POD #1 - 4810 FEET NORTH AND 3820 FEET WEST FROM THE E¼ CORNER OF SECTION 19
9 S	28 E	WM	19	SW NW	2	POD #2 - 1210 FEET NORTH AND 4270 FEET WEST FROM THE E¼ CORNER OF SECTION 19

8. The Department's adjudication map prepared in 1926 for water rights on Cottonwood Creek describes the place of use in Certificate 24925. The 1926 survey described the place of Certificate 24925 in relation to the Township, Range, Section and Quarter-Quarter lines found at that time. The adjudication map for Certificate 24925 lacks the specificity to tie the place of use adequately to a survey monument allowing the correct breakdown of acreage per each quarter quarter within Sections 18 and 19.
9. A new survey was performed in June of 2009 by the applicant's Certified Water Right Examiner which superimposed the Township, Range and Section on the place of use differently from the 1926 State Engineer survey. It was also noted by the CWRE that the adjudication map for this area was tied to the SE Corner of Section 24, within the next Township to the west.
10. The Permit E-15 map, prepared in 1909 for the lands adjacent to the north of the Certificate 24925 right, also reveals a discrepancy for the location of the lands covered under this right. The Department did not conduct a Final Proof survey for the perfection of this right, but accepted at face value the acreage on the original permit map and issued Certificate 1851. Superseding Certificate 48441 was issued following a partial cancellation (May 9, 1979) and approval of Transfer Application T-4031.
11. The apparent difference in location of water use under Certificate 24925 and Certificate 48441 was noted by the Watermaster in 2007 as a result of regulation activities on Cottonwood Creek within District 4. By overlaying the 2009 CWRE transfer application map onto the existing 1926 John Day adjudication map and a copy of the current aerial photo, and matching the Public Land Survey lines, the place of use on the original map appears to be located on the hillside, not along the source of water described on the map and certificate. However, when the adjudication map is shifted to the southwest, the layout of

roads and property lines match the current county assessor's map, but the section lines do not match. The footprint of the original right fits the majority of the shape and size of today's actual irrigated land, but current understanding of how the Public Land Survey lines overly the land would describe it to be in different quarter quarter locations than the authorized place of use description. Though the course of the creek has changed slightly over time, it does not significantly affect its relationship with the lands under the water right.

12. The Department acknowledges the need for a re-description of the lands upon which the irrigation water rights have been from the beginning, and have been continuously used by the same family for a couple of generations, to match points established or re-established by government land surveyors in more recent time.
13. The Watermaster made a brief field visit to inspect the lands in relation to the old Beymer Ditch, and determined that potentially more acres were certified than were actually being used. The Department assisted the applicant by providing mapping resources to delineate which lands have received no water (presumed forfeited and abandoned) under Certificate 48441 and provided newer information on the location of the remaining acreages, consistent with the claims of the applicant.
14. The following table lists the place of use as described in existing Certificates 48441 and 24925 and their proposed re-description based on the above findings:

Original Description of Place of Use						Proposed Re-description of Place of Use			
Certificate	Twp	Rng	Q - Q	Sec	Acres	Q - Q	Estimated Acres	Acres to be Cancelled	Tax Lot
48441	9S	28E	NE NW	18	8.00	NE NW	0.00	8.00	TL 1500
48441	9S	28E	SE NW	18	6.00	SE NW	5.00	1.00	TL 1500
48441	9S	28E	NE SW	18	12.00	NE SW	10.0	2.00	TL 1500
48441	9S	28E	SE SW	18	11.10	SE SW	7.40	1.60	TL 1500
48441	9S	28E	NE NW	19	6.00	NE NW	7.80	--	TL 1500
48441	9S	28E	NE SW	19	2.12	NW SW	0.3	2.12	TL 1500
TOTAL:					45.22	TOTAL:	30.50	14.72	
24925	9S	28E	NE NW	19	6.10	NE NW	4.50	--	TL 1500
24925	9S	28E	NW NW	19	--	NW NW	1.50	--	TL 1500
24925	9S	28E	SW NW	19	3.60	SW NW	5.60	--	TL 1500
24925	9S	28E	SE NW	19	11.00	SE NW	7.00	--	TL 1500
24925	9S	28E	NE SW	19	7.00	NE SW	10.50	--	TL 1500
24925	9S	28E	NW SW	19	3.70	NW SW	0.60	--	TL 1500
24925	9S	28E	SW SW	19	4.20	SW SW	7.10	--	TL 1500
24925	9S	28E	SE SW	19	4.40	SE SW	3.20	--	TL 1500
24925	9S	28E	NW NW	30	3.80 (RR)	NW NW	3.80	Not involved in transfer	TL 2900
TOTAL:					43.80	TOTAL:	40.00	--	

15. Helen Davidson has submitted a signed voluntary cancellation affidavit for the unused and abandoned portion, and acknowledges the re-descriptions of these two water rights contained in this document.

16. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new points 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. The fish screen and/or by-pass device must meet ODFW's design, construction, operational and maintenance standards.
17. Notice of the application for transfer was published on August 18, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
18. On September 15, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10934 to the applicant. The draft Preliminary Determination set forth a deadline of October 14, 2011, for the applicant to respond. On October 12, 2011, the applicant submitted a letter requesting the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

19. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-10934.
21. The proposed changes would not result in enlargement of the rights.
22. The proposed changes would not result in injury to other water rights.

Partial Cancellation Provisions

23. On November 10, 2010, Helen Davidson, Trustee of the Clyde Davidson Family Trust, owner of the property appurtenant to the following water right, submitted a voluntary cancellation affidavit meeting the requirements of ORS 540.621.

The portion of the water right to be cancelled is described as follows (based on the above redescription):

Certificate: 48441, in the name of James W. Beymer, T.J. Merrill, Lawrence Sweek, J.C. Owen (perfected under Permit E-15)
Use: Irrigation of 14.72 acres
Priority Date: August 5, 1909
Amount: 0.19 cubic foot per second
Limit/Duty: ONE-FORTIETH of one cfs per acre
Source: Cottonwood Creek, tributary to the John Day River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Lot
9 S	28 E	WM	30	NW NW	1

Place of Use to be cancelled:

Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	28 E	WM	18	NE NW	8.00
9 S	28 E	WM	18	SE NW	1.00
9 S	28 E	WM	18	NE SW	2.00
9 S	28 E	WM	18	SE SW	1.60
9 S	28 E	WM	19	NE SW	2.12
TOTAL:					14.72

Determination and Proposed Action

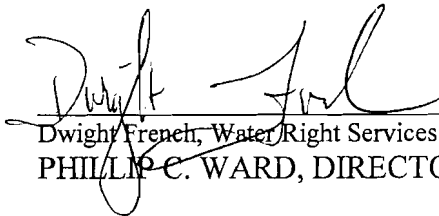
The change to add additional points of diversion proposed in Transfer Application T-10934 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned portion of Certificate 48441 will be cancelled.

If application T-10934 is approved, the final order will include the following:

- 1. The changes in additional points of diversion proposed in application T-10934 are approved. The portion of Certificate 48441 described in Finding of Fact #23 above that has been abandoned is cancelled.*
- 2. The place of use of Certificates 24925 and 48441, is re-described as per Finding of Fact #14.*
- 3. 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 Certificates 24925 and 48441 and any related decree.*
- 4. Water right Certificates 24925 and 48441 are cancelled. A new certificate will be issued describing that portion of Certificate 24925 not affected by this transfer and cancellation.*
- 5. The quantity of water diverted at the new additional 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 point of diversion.*
- 6. Before water use may begin under this order, the water user shall install totalizing flow meters at each new point of diversion, or, with prior approval of the Director, another suitable measuring device. The water user shall maintain the meters or measuring devices in good working order. The water user shall allow the Watermaster access to the meters 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.*

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 approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of November, 2011.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in his document, you may reach me at (541) 278-5456 or Ken.D.Dowden@wrd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.

**Notice of Preliminary Determination for
Water Right Transfer T-10934**

T-10934 filed by Helen Davidson, P.O. Box 424, Monument, OR 97864, proposes points of diversion for portions of two existing water rights. Certificate 24925 allows the use of one-fortieth of one cfs (priority date 1906) from a diversion on Cottonwood Creek for irrigation in Sec. 19, T9S, R28E, W.M. Certificate 48411 allows the use of 0.57 cfs (priority date August 5, 1909) also from the same point of diversion on Cottonwood Creek, a tributary to the John Day River, located in Sec. 30, T9S, R28E, W.M., for irrigation in Sections 18 and 19. The applicant proposes to add three new points of diversion downstream approximately 3,000 feet to proposed POD 3, 5,000 feet to proposed POD 2, both in Sec. 19, and 9,000 feet to proposed POD 1 in Sec. 18. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540, OAR 690-380-2110 and 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) 986-0881. 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.

