



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

January 26, 2017

VIA E-MAIL and USPS

WILLOW CREEK DISTRICT IMPROVEMENT CO. BERNARD DAMON (USPS)
BRIAN S. THOMPSON 2315 ROCKY LN
55805 HWY 74 EUGENE, OR 97401
HEPPNER, OR 97836

SUBJECT: Water Right Transfer Application T-11699

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11699. 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 and in the East Oregonian newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a 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. The protest period will end 30 days after the last date of newspaper publication.

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 Sarah.A.Henderson@oregon.gov or 503 986-0890 if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11699
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
William I. Porfily, Agent for the applicant (*via e-mail*)
Dale G. VanSchoiack, CWRE # 333 (*via e-mail*)
Shonee Langford, Schwabe, Williamson and Wyatt (*via e-mail*)

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6. On April 1, 2016, the Department received an amended application from the applicants agent, the amended application included additional water right Certificates 4863, 7057, 30021, 64312, 80055, 82489, 82490 and 87565.
7. Notice of the application for transfer with the additional eight water right Certificates, was published on October 4, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. During the months of October and December, 2016, the Department contacted the applicants' agent by email to notify of the deficiencies in the application. On December 19 and 21, 2016, the Department received an Evidence of Use affidavit, Land Use form, and an amended application resolving the deficiencies and removing water right Certificates 30021, 82489 and 82490 from the application.
9. On January 6, 2017, the Department mailed a copy of the amended draft Preliminary Determination proposing to approve Transfer Application T-11699 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 5, 2017, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
10. The first right to be transferred is as follows:

Certificate: 114 in the name of HENRY F. BLAHM (confirmed by Willow Creek, Morrow County (F) decree Volume 1, at page 73)

Use: IRRIGATION AND DOMESTIC USE

Priority Date: 1891 for the irrigation of twenty-five (25) acres and 1905 for the irrigation of twenty-three (23) acres

Rate: 0.42 cubic feet per second as of date 1891 and 0.38 cubic feet per second as of date 1905

Period of Use: March 1st to September 20th of each year

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	NE NW	1.00
2 S	26 E	WM	17	NW NW	28.00
2 S	26 E	WM	17	SW NW	4.00
2 S	26 E	WM	17	SE NW	8.87
2 S	26 E	WM	17	NE SW	2.39
Total					44.26

11. Certificate 114 does not describe the location of the point of diversion, however information is available from the decree map and the transfer applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	NW SE	#2 - 1915 FEET NORTH AND 2670 FEET EAST FROM THE SW CORNER OF SECTION 17

12. The second right to be transferred is as follows:

Certificate: 156 in the name of JOHN HUGHES (confirmed by Willow Creek, Morrow County (F) decree Volume 1, at page 73)
Use: IRRIGATION
Priority Date: 1875
Rate: 0.83 CUBIC FEET PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purpose aforesaid, is limited to an amount actually beneficially used for said purpose, and shall not exceed 0.83 cubic feet per second.
Period of Use: March 1st to September 1st of each year.
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	7	NE SE	15.0
2 S	26 E	WM	7	SW SE	5.0
2 S	26 E	WM	7	SE SE	30.0
Total					50.0

13. Certificate 156 does not describe the location of the point of diversion, however information is available from the decree map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	8	SW SW	#2 - 60 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 8

14. The third right to be transferred is as follows:

Certificate: 4863 in the name of CHAS W. VALENTINE (perfected under Permit S-4528)
Use: IRRIGATION
Priority Date: APRIL 5, 1920
Rate: 0.3 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: WILLOW CREEK, tributary of COLUMBIA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	6	NW SW	4.0
2 S	26 E	WM	6	SW SW	17.3
2 S	26 E	WM	6	SE SW	2.2
Total					23.5

15. Certificate 4863 does not describe the location of the point of diversion, however information is available from the permit map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	7	NW SE	1216 FEET SOUTH AND 958 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 7

16. The fourth right to be transferred is as follows:

Certificate: 7057 in the name of J D BAUMAN (confirmed by Willow Creek, Morrow County (F) Decree Volume 1, at page 73)
Use: IRRIGATION
Priority Date: 1903
Rate: 0.75 CUBIC FOOT PER SECOND
Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	25 E	WM	1	SW NE	11.0
2 S	25 E	WM	1	NE SE	2.0
2 S	25 E	WM	1	NW SE	22.0
2 S	25 E	WM	1	SE SE	10.0
Total					45.0

17. Certificate 7057 does not describe the location of the point of diversion, however information is available from the decree map and the applicant indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	6	SW SW	POD 1 – 180 FEET NORTH AND 510 FEET EAST FROM THE SE CORNER OF SECTION 1

18. The fifth right to be transferred is as follows:

Certificate: 64312 in the name of HAROLD S. HUBER AND JAMES S. BLOODSWORTH (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at page 73)
Use: IRRIGATING 82.25 ACRES
Priority Date: 1883 FOR TRACT 1 AND 1902 FOR TRACT 2
Rate: 1.37 CUBIC FEET PER SECOND BEING 1883 FOR 0.76 CFS AND 1902 FOR 0.61 CFS
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-

SIXTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: WILLOW CREEK, a tributary of COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	25 E	WM	1	SW NE	POINT 2 - 920 FEET NORTH AND 160 FEET EAST FROM THE C1/4 CORNER OF SECTION 1
2 S	25 E	WM	1	SW NE	POINT 3 - 910 FEET NORTH AND 140 FEET EAST FROM THE C1/4 CORNER OF SECTION 1

Authorized Place of Use:

Tract 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	36	SE SW	1.90
2 S	25 E	WM	1	NE NW	19.90
2 S	25 E	WM	1	NW NW	25.90
2 S	25 E	WM	1	SE NW	4.35

Tract 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	25 E	WM	1	NW NW	2.40
2 S	25 E	WM	1	SW NW	2.40
2 S	25 E	WM	1	SE NW	24.40
2 S	25 E	WM	1	NE SW	1.00

19. The sixth right to be transferred is as follows:

Certificate: 80055 in the name of HAROLD S. HUBER AND JAMES E. BLOODSWORTH (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 27.3 ACRES

Priority Date: 1890

Rate: 0.455 CUBIC FOOT 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-SIXTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Period of Use: March 1 to September 1

Source: WILLOW CREEK, a tributary of the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	25 E	WM	36	SW SW	POD 1 - 560 FEET NORTH AND 450 FEET EAST FROM THE SW CORNER OF SECTION 36
2 S	25 E	WM	1	SW NE	POD 3 - 910 FEET NORTH AND 140 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 1

Authorized Place of Use:

POD 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	35	SE SE	1.6
1 S	25 E	WM	36	SW SW	12.5

POD 3					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	25 E	WM	35	SE SE	0.1
1 S	25 E	WM	36	SW SW	10.4
2 S	25 E	WM	1	NW NW	2.7

20. The seventh right to be transferred is as follows:

Certificate: 87565 in the name of BRIAN THOMPSON and SUSAN THOMPSON and NW FARM CREDIT SERVICES (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 67 ACRES

Priority Date: 1895

Rate: 1.12 CUBIC FEET PER SECOND (cfs); being 1.12 cfs at Evans Ditch, and 0.68 cfs at POD 3

Source: WILLOW CREEK, tributary to the COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	7	SE NW	POD 3 - 2350 FEET SOUTH AND 3040 FEET WEST FROM THE NE CORNER OF SECTION 7
2 S	26 E	WM	8	SW SW	EVANS DITCH (POD 1) - 60 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	7	NE NW	26.0
2 S	26 E	WM	7	NW NW	10.0
2 S	26 E	WM	7	SE NW	9.0
2 S	26 E	WM	7	NE SW	4.0
2 S	26 E	WM	7	NW SE	18.0

21. The eighth right to be transferred is as follows:

Certificate: 87876 in the name of BERNARD DAMON and JEAN DAMON (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 22 ACRES

Priority Date: 1889 for 5.0 acres of irrigation and 1891 for 17.0 acres of irrigation

Rate: 0.369 CUBIC FOOT PER SECOND (cfs), being 0.08 cfs as of the date 1889 and 0.29 cfs as of 1891.

Period of Use: Begins in April of each year.

Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	SE SE	POD # 3 - 600 FEET NORTH AND 680 FEET WEST FROM THE SE CORNER OF SECTION 17
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST FROM THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST FROM THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
2 S	26 E	WM	17	NW SE	12.5	1891
2 S	26 E	WM	17	SE SE	4.5	1891
2 S	26 E	WM	17	SE SE	2.8	1889
2 S	26 E	WM	20	NE NE	0.3	1889
2 S	26 E	WM	20	SE NE	1.9	1889

22. The ninth right to be transferred is as follows:

Certificate: 87877 in the name of BERNARD DAMON and JEAN DAMON (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 39.0 ACRES

Priority Date: 1889 for 15.0 acres of irrigation and 1909 for 24.0 acres of irrigation

Rate: 0.65 CUBIC FOOT PER SECOND (CFS), being 0.25 CFS as of the date 1889 and 0.4 CFS as of 1909.

Period of Use: March 15th to September 15th of each year

Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST OF THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST OF THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SE SE	4.0
2 S	26 E	WM	20	NE NE	19.0
2 S	26 E	WM	21	NW NW	16.0

23. The tenth right to be transferred is as follows:

Certificate: 87878 in the name of BERNARD E. DAMON and JEAN DAMON (confirmed by Willow Creek, Morrow County (F) decree in Volume 1, at Page 73)

Use: IRRIGATION of 63.5 ACRES AND DOMESTIC
Priority Date: 1884
Rate: 1.06 CUBIC FEET PER SECOND (cfs)
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 1.06 CUBIC FEET PER SECOND (cfs), or its equivalent in case of rotation, measured at the points of diversion.
Period of Use: March 1 through July 1
Source: WILLOW CREEK, tributary to COLUMBIA RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	26 E	WM	17	SE SE	POD # 3 - 600 FEET NORTH AND 680 FEET WEST FROM THE SE CORNER OF SECTION 17
2 S	26 E	WM	21	NW NW	POD # 4 - 1215 FEET SOUTH AND 815 FEET EAST FROM THE NW CORNER OF SECTION 21
2 S	26 E	WM	21	NE SW	POD # 1 - 240 FEET SOUTH AND 1120 FEET WEST FROM THE CENTER OF SECTION 21

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	26 E	WM	17	SW SE	15.8
2 S	26 E	WM	17	SE SE	4.2
2 S	26 E	WM	21	SW NW	32.0
2 S	26 E	WM	21	SE NW	4.5
2 S	26 E	WM	21	NE SW	4.0
2 S	26 E	WM	21	NW SW	3.0

24. Transfer Application T-11699 proposes an additional point of diversion approximately 1.6 to 7.5 miles from the existing points of diversion to water right Certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878, described as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
2 S	26 E	WM	27	NE NW	4300	TD #1 - 1120 FEET SOUTH AND 1820 FEET EAST FROM THE NW CORNER OF SECTION 27

25. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

26. Water has been used within the last five years 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.

27. A pump, pipeline, and sprinkler system 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-11699.
28. The proposed change would not result in enlargement of the rights.
29. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-11699 appears 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-11699 is approved, the final order will include the following:

1. *The additional point of diversion proposed in Transfer Application T-11699 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 Certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878 and any related decree.*
3. *Water right certificates 114, 156, 4863, 7057, 64312, 80055, 87565, 87876, 87877 and 87878 are cancelled.*
4. *The quantity of water diverted at the additional point of diversion, together with that diverted at the original points 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 new point of diversion.***
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *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.*
6. *In order to avoid enlargement of the right or injury to other rights, it is preferable to have a flowmeter installed that reads instantaneous, totalizes, and has real-time access so the Watermaster can access the flow data. However, if the flowmeter will not work and provide the real time data, the Watermaster can approve an alternate type of measuring device that will provide instantaneous data, totalizes, and will provide real time access to the flow data.*
7. *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.*


8. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.*

10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 25 day of January, 2017.


Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or sarah.a.henderson@oregon.gov.

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>