

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9567, Baker County) PROPOSING APPROVAL OF
) ADDITIONAL POINTS OF DIVERSION

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

Burnt River Irrigation District
19498 Highway 745
Hereford, Oregon 97837

Findings of Fact

Background

1. On September 29, 2003, Burnt River Irrigation District filed an application for additional points of diversion under Certificates 5875, 5877, 5919, 5972, 5992, 6004, 6034, 6038, 6040, 6052, 6063, 6137, and 9286. The Department assigned the application number T-9567.

2. The portion of the first right to be transferred is as follows:

Certificate: 5875 in the name of Milton Eddy (confirmed by Burnt River decree)

Use: Irrigation of 4.4 acres

Priority Date: 1869

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Burnt River, tributary to the Snake River

Authorized Point of Diversion:

NORMAN ELLIOTT DITCH

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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	40 E	WM	25	SE NE	4.4

3. Application T-9567 proposes an additional point of diversion approximately 3 miles downstream located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	40 E	WM	25	SE SE	VANDECAR - 1171 FEET NORTH AND 474 FEET WEST FROM THE SE CORNER OF SECTION 25

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

Certificate: 5877 in the name of B.C. Elliot (confirmed by Burnt River decree)

Use: Irrigation of 2.5 acres

Priority Date: August 29, 1904

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: North Fork Burnt River, tributary to the Burnt River

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
12 S	37 E	WM	17	SE NW	2.5	3

5. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
11 S	37 E	WM	30	SW SE	NELSON PORTABLE PUMP - 80 FEET NORTH AND 1851 FEET WEST FROM THE SE CORNER OF SECTION 30

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

Certificate: 5919 in the name of J. R. Hardman (confirmed by Burnt River decree)

Use: Irrigation of 5.5 acres

Priority Date: 1895

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Amelia Creek, tributary to the South Fork Burnt River

Authorized Point of Diversion:

HARDMAN DITCH

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
13 S	36 E	WM	27	SE NE	5.50	1

7. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	37 E	WM	27	NE NE	AMELIA CREEK - 1190 FEET SOUTH AND 448 FEET WEST FROM THE NE CORNER OF SECTION 27

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

Certificate: 5972 in the name of Wm. L. Morfitt (confirmed by Burnt River decree)

Use: Irrigation of 1.4 acres

Priority Date: 1877

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Job Creek, tributary to Burnt River

Authorized Point of Diversion:

MORFITT NO. 2 DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	37 E	WM	21	SW SW	1.4

9. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
13 S	37 E	WM	9	SW NW	ROUSE RANCH NO. 6 - 1505 FEET SOUTH AND 407 FEET EAST FROM THE NW CORNER OF SECTION 9

10. The portion of the fifth right to be transferred is as follows:

Certificate: 5992 in the name of Donald Payton (confirmed by Burnt River decree)

Use: Irrigation of 5.7 acres

Priority Date: 1907

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: South Fork Burnt River, tributary to Burnt River

Authorized Point of Diversion:

ELDORADO DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	37 E	WM	31	SE SE	5.7

11. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	37 E	WM	28	NE NW	UNITY STATE PARK - 1750 FEET NORTH AND 943 FEET WEST FROM THE CENTER OF SECTION 28

12. The portion of the sixth right to be transferred is as follows:

Certificate: 6004 in the name of Tabor M. Reed (confirmed by Burnt River decree)

Use: Irrigation of 4.8 acres

Priority Date: 1890

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Burnt River, tributary to the Snake River

Authorized Point of Diversion:

REED DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	39 E	WM	27	SW NW	4.8

13. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	39 E	WM	26	NE SE	WISE PUMP - 1547 FEET NORTH AND 1073 FEET WEST FROM THE SE CORNER OF SECTION 26

14. The portion of the seventh right to be transferred is as follows:

Certificate: 6034 in the name of Michael Sullivan (confirmed by Burnt River decree)

Use: Irrigation of 3.2 acres

Priority Date: 1880

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Mill Gulch, tributary to Burnt River

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
12 S	40 E	WM	29	NE NW	3.2	1

15. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	40 E	WM	29	NE NW	MILL GULCH - 1447 FEET NORTH AND 31 FEET WEST FROM THE CENTER OF SECTION 29

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

Certificate: 6038 in the name of Thomsen and Company (confirmed by Burnt River decree)

Use: Irrigation of 15.0 acres

Priority Date: February 21, 1871

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Cow Creek, tributary to Burnt River

Authorized Point of Diversion:

THOMSEN COW CREEK DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	38 E	WM	25	NE SE	15.0

17. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	38 E	WM	25	SW NE	VAUGHN PUMP NO. 1 - 431 FEET NORTH AND 720 FEET EAST FROM THE CENTER OF SECTION 25

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

Certificate: 6040 in the name of James Trimble (confirmed by Burnt River decree)

Use: Irrigation of 4.0 acres

Priority Date: 1878

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Beaverdam Creek, tributary to Burnt River

Authorized Point of Diversion:

BEAVERDAM DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	38 E	WM	30	NW NE	4.0

19. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	38 E	WM	30	NW NE	BEAVERDAM CREEK DIVERSION - 55 FEET SOUTH AND 1997 FEET WEST FROM THE NE CORNER OF SECTION 30

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

Certificate: 6052 in the name of Henry Wendt and Chas. Wendt (confirmed by Burnt River decree)

Use: Irrigation of 32.7 acres

Priority Date: 1870

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Auburn Gulch, tributary to Burnt River

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	41 E	WM	30	NW NW	15.2
12 S	41 E	WM	30	SE SW	17.5

21. Application T-9567 proposes an additional points of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	40 E	WM	25	NE NE	AUBERN GULCH NO. 2 - 78 FEET SOUTH AND 515 FEET WEST FROM THE NE CORNER OF SECTION 25
12 S	41 E	WM	30	SW NW	AUBERN GULCH NO. 1 - 208 FEET NORTH AND 1437 FEET WEST FROM THE CENTER OF SECTION 30

22. The portion of the eleventh right to be transferred is as follows:

Certificate: 6063 in the name of A. P. Sullivan (confirmed by Burnt River decree)

Use: Irrigation of 3.5 acres

Priority Date: 1880

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Burnt River, tributary to the Snake River

Authorized Point of Diversion:

MCPHERSON DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	40 E	WM	27	SE SE	3.5

23. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	40 E	WM	27	NE SW	SHUMWAY - 1267 FEET SOUTH AND 66 FEET WEST FROM THE CENTER OF SECTION 27

24. The portion of the twelfth right to be transferred is as follows:

Certificate: 6137 in the name of Ralph P. Yeakley (confirmed by Burnt River decree)

Use: Irrigation of 6.0 acres

Priority Date: 1884

Duty: Not to exceed 3.0 acre-feet per acre during any irrigation season (with further limitations contained in Paragraph 64 of said decree)

Source: Burnt River, tributary to the Snake River

Authorized Point of Diversion:

CLEMENT DITCH

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	40 E	WM	28	SW NW	6.0

25. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	40 E	WM	28	SW NW	MARTIN DIVERSION - 1391 FEET SOUTH AND 346 FEET EAST FROM THE NW CORNER OF SECTION 28

26. The portion of the thirteenth right to be transferred is as follows:

Certificate: 9286 in the name of Mount Moore (perfected under Permit S-10127)

Use: Irrigation of 1.3 acres

Priority Date: May 20, 1931

Rate: 0.02 cubic foot per second (cfs)

Limit/Duty: One-eightieth of one cubic foot per second per acre.

Source: Burnt River, tributary to the Snake River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
11 S	43 E	WM	34	NW SW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
12 S	43 E	WM	3	SE SE	1.3

27. Application T-9567 proposes an additional point of diversion located:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
12 S	44 E	WM	32	SE NE	DOMAN PORTABLE PUMP - 640 FEET NORTH AND 1338 FEET EAST FROM THE CENTER OF SECTION 32

28. Notice of the application for transfer was published on October 14, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
29. 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost share funds become available to assist in the construction of a fish screening and/or by-pass device. If cost share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost share funding.
30. On August 16, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9567 to the applicant. The draft Preliminary Determination set forth a deadline of September 9, 2007, for the applicant to respond. The applicant did not provide any comments.

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

31. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
32. A diversion structure and ditch or 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 Application T-9567.
33. The proposed changes would not result in enlargement of the rights.
34. The proposed changes would not result in injury to other water rights.
35. The proposed changes will be confirmed by the approval of the Burnt River Irrigation District HB-3111/SB129 petition.

Determination and Proposed Action

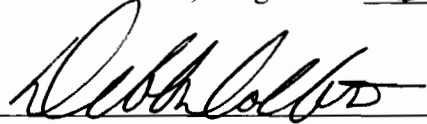
The additional points of diversion proposed in application T-9567 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If application T-9567 is approved, the final order will include the following:

- 1. The additional points of diversion proposed in application T-9567 are approved.*
- 2. Water Right Certificates 5875, 5877, 5919, 5972, 5992, 6004, 6034, 6038, 6040, 6052, 6063, 6137, and 9286 are modified. Superseding certificates will be issued upon approval of the Burnt River Irrigation District HB-3111/SB-129 petition.*
- 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 5875, 5877, 5919, 5972, 5992, 6004, 6034, 6038, 6040, 6052, 6063, 6137, 9286, and any related decree.*
- 4. The quantity of water diverted at the additional points 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. Within two years after the date of this order, 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. The water user may withdraw water at the new point of diversion without screening or by-pass devices until two years after the date of this order. 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.*
- 6. When required by the Department, the water user shall install, maintain and operate headgates to control and regulate the quantity of water diverted. The type and plans of the headgates must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
- 7. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2010.*
- 8. The approved HB-311/SB-129 petition for Burnt River Irrigation District shall serve as the Claim of Beneficial Use Report for Transfer Application T-9567.*

9. *When the Burnt River Irrigation District HB-3111/SB-129 petition is approved, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 6th day of November 2007.


Phillip C. Ward, Director
PH

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

This Preliminary Determination was prepared by Jason Spriet. If you have any questions about the information in this document, you may reach me at (541) 523-8224 or Jason.D.Spriet@wrд.state.or.us.