

- d) The transfer will produce a negative economic impact on down-system users.
 - e) The application contains inaccuracies, therefore failing to meet the statutes for applying for a transfer.
 - f) The applicant has failed to prove that he is “Ready, willing, and able” to apply the water beneficially.
 - g) Enlargement and injury are occurring.
4. Not all the issues raised by the commenters are relevant to the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. Many of the issues noted in Finding of Fact #3, though important to the residents and water resources of the area, do not directly relate to the transfer review criteria. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
- a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.
5. If approved, the Final Order for T-13297 will contain conditions retaining the current rate limit of the right. Measurement devices are in place to ensure that enlargement of the right does not occur.
6. On February 5, 2020, the Department requested revisions to the map and Table 2 of the application. On February 7, 2020, the applicant’s agent responded with the revised map and Table 2.
7. On April 10, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13297 to the applicant and agent. The draft Preliminary Determination cover letter set forth a deadline of June 6, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination, requested a completion date of October 1, 2026, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. On July 30, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13297 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department’s weekly notice on August 4, 2020, and in the Burns Times-Herald newspaper on August 5

and 12, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Decree: Silvies River, 1926, Harney County, in the name of F L. MACE (Volume 9, Page 79)
Use: IRRIGATION of 224.7 ACRES
Priority Date: 1886
Rate: 2.81 CUBIC FEET PER SECOND
Limit/Duty: 1/80 CFS PER ACRE, NOT TO EXCEED 2 ACRE-FEET PER ACRE IN ANY ONE IRRIGATION SEASON.
Period of Use: MARCH 20 to SEPTEMBER 1
Source: A DITCH, tributary to the EAST FORK SILVIES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
23 S	31 E	WM	20	NE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	28	NE NW	40.0
23 S	31 E	WM	28	NW NW	40.0
23 S	31 E	WM	28	SW NW	40.0
23 S	31 E	WM	28	SE NW	40.0
23 S	31 E	WM	28	NW SW	39.7
23 S	31 E	WM	28	SW SW	25.0
TOTAL					224.7

10. Silvies River Decree, 1926 does not describe the location of the point of diversion, however information is available from the applicant, indicating that the point of diversion is located as follows:

Twp	Rng	Sec	Mer	Q-Q	GLot	Measured Distance
23 S	31 E	20	WM	NE NW	1	POD 1 - 750 FEET SOUTH AND 1840 FEET EAST OF THE NW CORNER OF SECTION 20

11. Transfer Application T-13297 proposes additional points of diversion downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances	Approximate distance from Authorized Point of Diversion in miles (mi.)
23 S	31 E	WM	20	SW NE	3	POD 2 - 1290 FEET SOUTH OF THE N¼ CORNER OF SECTION 20	0.3 mi.
23 S	31 E	WM	20	SW NE	3	POD 3 - 1220 FEET SOUTH AND 700 FEET EAST OF THE N¼ CORNER OF SECTION 20	0.4 mi.

12. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device may be required in the future 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.

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

13. 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.
14. A diversion structure and ditch 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-13297.
15. The proposed changes would not result in enlargement of the right.
16. The proposed changes would not result in injury to other water rights.
17. All other application requirements are met.

Conclusions of Law

The additional points of diversion proposed in Transfer Application T-13297 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

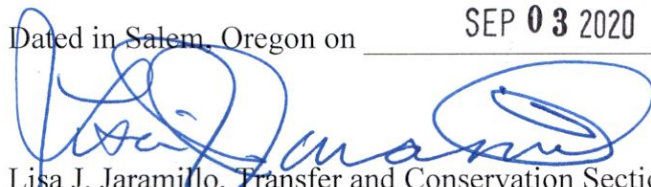
Now, therefore, it is ORDERED:

1. The additional points of diversion proposed in Transfer Application T-13297 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 Silvies River Decree, 1926, (Volume 9, Page 79).
3. The Silvies River Decree Volume 9, Page 79 contains a description of the right to be transferred; the portion of the right described and/or identified under the name F.L. Mace, is cancelled.
4. The quantity of water diverted at the additional new points of diversion (POD 2 and POD 3), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. Within one year after receiving written notification from the Oregon Department of Fish and Wildlife (ODFW) that a fish screening and/or by-pass device is required, the water user shall install a screening and/or by-pass device, as appropriate, at the new point of diversion. The fish screening and/or by-pass device must meet ODFW's design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screening and/or by-pass device meets ODFW's criteria. Once installed the water

user shall maintain and operate the fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2026**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on SEP 03 2020



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: SEP 04 2020