

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

In the Matter of Transfer Application	)	FINAL ORDER
T-7885, Union County	)	APPROVING CHANGES IN POINTS
	)	OF DIVERSION, CHANGES IN
	)	PLACES OF USE, AN ADDITIONAL
	)	POINT OF DIVERSION, AND
	)	DIMINISHMENT 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.

**Applicant**

WILSON CATTLE CO., INC.  
P.O. BOX 129  
NORTH POWDER, OR 97867

**Findings of Fact**

**Background**

1. On December 11, 1997, Wilson Cattle Co., Inc. filed an application to change the place of use, point of diversion and additional points of diversion under Certificates 75629 and 1456. The Department assigned the application number T-7885.
2. On December 12, 1997, Certificate 1456 was canceled upon approval of Transfer Application T-7749.
3. On September 14, 2007, Certificate 83537 was issued to confirm the changes approved under Transfer Application T-7749.
4. On April 18, 2000, the applicant submitted a revised application.
5. On May 17, 2002, the applicant submitted a revised application map.
6. On August 15, 2008, the applicant submitted a revised map clarifying the intent of the transfer.
7. On August 25, 2008, the applicant submitted a revised application clarifying the intent of the transfer.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

8. The first right to be transferred is as follows:

**Certificate:** 75629 in the name of Wilson Cattle Co. Inc. (confirmed by North Powder River, 1916 decree)

**Use:** IRRIGATION of 84.0 ACRES FOR TRACT 1 AND 193.0 ACRES FOR TRACT 2

**Priority Dates:** 1874 FOR TRACT 1 AND 1887 FOR TRACT 2

**Rate/Duty:** 2.10 CUBIC FEET PER SECOND (CFS) FOR TRACT 1 AND 4.83 CFS FOR TRACT 2 FROM MARCH 1<sup>ST</sup> TO JULY 1<sup>ST</sup> AND 1.05 CFS FOR TRACT 1 AND 2.42 CFS FOR TRACT 2 FROM JULY 1 TO OCTOBER 1 OF EACH YEAR; THE TOTAL QUANTITY DIVERTED DURING EACH IRRIGATION SEASON NOT TO EXCEED 210.0 ACRE FEET FOR TRACT 1 AND 483.0 ACRE FEET FOR TRACT 2.

**Source:** NORTH POWDER RIVER, tributary to the POWDER RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	35	SW NE	TRACT 1; DAVIS DALTON DITCH
6 S	38 E	WM	35	SW NE	TRACT 2; DAVIS KELSEY (WILSON) DITCH

**Authorized Place of Use:**

IRRIGATION TRACT 1 (1874)					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	SE NE	17.5
6 S	38 E	WM	35	NE SE	33.5
6 S	38 E	WM	36	NW SW	21.5
6 S	38 E	WM	36	SW SW	11.5
TOTAL ACRES:					84.0

TRACT 2 (1887)					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE NE	4.5
6 S	38 E	WM	35	SE NE	8.0
6 S	38 E	WM	36	NE NE	1.5
6 S	38 E	WM	36	NW NE	7.5
6 S	38 E	WM	36	SW NE	40.0
6 S	38 E	WM	36	SE NE	40.0
6 S	38 E	WM	36	NE NW	16.5
6 S	38 E	WM	36	NW NW	25.0
6 S	38 E	WM	36	SW NW	18.0
6 S	38 E	WM	36	SE NW	32.0
TOTAL ACRES:					193.0

9. Certificate 75629 does not describe the location of the points of diversion, however information is available from the Powder Valley Water Control District HB3111 petitions and maps that indicate that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	35	SW NE	DAVIS DALTON DITCH -220 FEET SOUTH AND 1570 FEET WEST FROM THE NE CORNER OF SECTION 35
6 S	38 E	WM	35	SW NE	DAVIS-KELSEY (WILSON) DITCH - 710 FEET SOUTH AND 2550 FEET WEST FROM THE NE CORNER, SECTION 35

10. Transfer Application T-7885 proposes to move the authorized points of diversion within various distances (shown below) in order to accompany the changes in the places of use. The applicant also requests to add the Daly Ditch (POD 1) for lands described in Finding of Fact #8:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	27	NW SW	POD 1 – (DALY DITCH) 2220 FEET NORTH AND 690 FEET EAST FROM THE SW CORNER OF SECTION 27
6 S	38 E	WM	35	SW NE	POD 2 – (DAVIS DALTON DITCH) 2220 FEET SOUTH AND 1570 FEET WEST FROM THE NE CORNER OF SECTION 35
6 S	38 E	WM	35	SW NE	POD 3 – (DAVIS-KELSEY (WILSON) DITCH) 1710 FEET SOUTH AND 2550 FEET WEST FROM THE NE CORNER OF SECTION 35

Distances: Davis-Kelsey to Davis Dalton: 1000' (downstream); Davis Dalton to Daly: 1 mile (upstream); Davis-Kelsey to Daly: 1 mile (upstream)

11. Transfer Application T-7885 also proposes to change the place of use and accompanying points of diversion to:

IRRIGATION TRACT 1 (1874)						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD
6 S	38 E	WM	35	NE NE	30.0	1
6 S	38 E	WM	35	NE NE	2.6	1,3
6 S	38 E	WM	35	SE NE	20.0	1,3
6 S	38 E	WM	36	NE NW	1.0	1,3
6 S	38 E	WM	36	NW NW	21.0	1,3
6 S	38 E	WM	36	SW NW	9.4	1,3
TOTAL ACRES:					84.0	

IRRIGATION TRACT 2 (1887)						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD
6 S	38 E	WM	35	SE NE	1.0	1,3
6 S	38 E	WM	35	SE NE	6.0	2
6 S	38 E	WM	36	NE NE	0.1	1,3
6 S	38 E	WM	36	NW NE	4.0	1,3
6 S	38 E	WM	36	SW NE	40.0	1,3
6 S	38 E	WM	36	SE NE	36.0	1,3
6 S	38 E	WM	36	NE NW	11.7	1,3

IRRIGATION TRACT 2 (1887)						
Twp	Rng	Mer	Sec	Q-Q	Acres	POD
6 S	38 E	WM	36	SW NW	23.0	1,3
6 S	38 E	WM	36	SE NW	39.3	1,3
6 S	38 E	WM	36	NW SW	3.9	1,3
6 S	38 E	WM	36	NW SW	24.0	2
6 S	38 E	WM	36	SW SW	4.0	2
TOTAL ACRES:					193.0	

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

**Certificate:** 83537 in the name of Wilson Cattle Co. Inc. (confirmed by North Powder River, 1916 decree)

**Use:** IRRIGATION of 30.0 ACRES

**Priority Date:** 1887

**Rate:** 0.75 CUBIC FOOT PER SECOND (CFS) FROM MARCH 1<sup>ST</sup> TO JULY 1<sup>ST</sup> AND 0.38 CFS FROM JULY 1<sup>ST</sup> TO OCTOBER 1<sup>ST</sup> OF EACH YEAR; THE TOTAL QUANTITY DIVERTED DURING EACH IRRIGATION SEASON NOT TO EXCEED 75.0 ACRE FEET IF AVAILABLE AT THE ORIGINAL POINT OF DIVERSION: DAVIS-KELSEY DITCH – SW¼ NE¼, SECTION 35, T 6 S, R 38 E, W.M.

**Source:** NORTH POWDER RIVER, tributary to the POWDER RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	27	NW SW	2220 FEET NORTH AND 690 FEET EAST FROM THE SW CORNER OF SECTION 27

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE NE	30.0

13. Transfer Application T-7885 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	35	NE SE	30.0

14. Transfer Application T-7885 proposes to move the authorized point of diversion approximately 1 mile downstream to accompany the change in place of use to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	27	NW SW	DAVIS-DALTON DITCH - 1570 FEET WEST AND 2020 FEET SOUTH FROM THE NE CORNER OF SECTION 35

15. Notice of the application for transfer was published on December 16, 1997, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

16. On December 15, 1997, a letter was sent to Oregon Department of Fish and Wildlife soliciting input on the transfer. No comments were received.

17. On August 8, 2008, the Department presented a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7885 to the applicant. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
18. On September 2, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-7885 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 September 9, 2008, and in the Record-Courier newspaper on September 18, 25 and October 2, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

19. 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.
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-7885.
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.

***Diminution of a Water Right***

23. On August 25, 2008, the Department received an affidavit from John Wilson, the legal representative of lands and the water rights appurtenant as evidenced by Certificate 65929, State Record of Water Right Certificates. The right to be diminished to **SUPPLEMENTAL IRRIGATION** is as follows:

**Certificate:** 65929 in the name of Lula A. Cantrell and William J. Cantrell (perfected under Permit G-7978)  
**Use:** IRRIGATION of 10.6 ACRES  
**Priority Date:** JANUARY 9, 1978  
**Rate:** 0.13 CUBIC FOOT PER SECOND (CFS)  
**Limit/Duty:** ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right is further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.  
**Source:** A SUMP WELL, in the NORTH POWDER RIVER BASIN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	38 E	WM	36	SW NW	1900 FEET SOUTH AND 320 FEET EAST FROM THE NW CORNER OF SECTION 36

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	38 E	WM	36	SW NW	8.4
6 S	38 E	WM	36	SE NW	0.3
6 S	38 E	WM	36	NW SW	1.9

**Conclusions of Law**

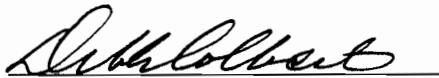
The change in places of use, change in points of diversion, and additional point of diversion proposed in Transfer Application T-7885 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

**Now, therefore, it is ordered:**

1. The change in places of use, change in points of diversion and additional point of diversion in Transfer Application T-7885 are approved.
2. The water right for irrigation of 10.6 acres as evidenced by Certificate 65929, described in Finding of Fact #23, is diminished from a right for primary irrigation to a right for supplemental irrigation.
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 75629 and 83537 and any related decree.
4. Water right certificates 65929, 75629, and 83537 are cancelled.
5. The quantity of water diverted at the proposed 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.
6. The former places of use of the transferred rights shall no longer receive water under the rights.
7. Prior to diverting water, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device 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 and operate the measuring device as required by the Department.
8. 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.

9. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2010. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.
11. The Department shall issue a new and superseding certificate to confirm the diminution of Certificate 65929.

Dated at Salem, Oregon this 6<sup>th</sup> day of November 2008.



*PC* Phillip C. Ward, Director

Mailing date: NOV 10 2008