

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

In the Matter of Transfer Application	)	FINAL ORDER
T-12702, Harney County	)	APPROVING A CHANGE
	)	IN POINTS OF DIVERSION

**Authority**

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

WILBURN RANCHES, INC.  
38498 FOX ROUND BASIN ROAD  
LONG CREEK, OR 97856

**Agent**

JOHN SHORT  
WATER RIGHT SERVICE, LLC.  
PO BOX 1830  
BEND, OR 97709

**Findings of Fact**

1. On June 22, 2017, Bob Cargill filed an application to change the points of diversion and character of use under a decreed water right evidenced in Silvies River Decree (1926) in Volume 9, Page 79. The Department assigned the application number T-12702.
2. Notice of the application for transfer was published on June 27, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Upon initial review of the transfer application, discussions with the agent for the applicant resulted in the withdrawal of the request to change the character of use proposed in the application. On July 16, 2018, the applicant submitted a revised application and map proposing to remove the request for a change in character of use.

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.

4. On September 7, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12702 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 7, 2018, for the applicant to respond. On October 8, 2018, the agent for the applicant requested the Department continue with the transfer, proceed with issuance of the Preliminary Determination and provided information to demonstrate that new owners have purchased the property. Additionally, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2023 to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2023.
5. On October 10, 2018, the agent for the applicant submitted a report of ownership information for the land where the right is proposed to be transferred. The report describes owners that are not the applicant and not authorized to pursue the transfer. The application requires either written authorization or an assignment approved by the Department, required by OAR 690-380-4010(5).
6. On December 3, 2018, the new landowners filed an assignment for the transfer application. On December 5, 2018, the Department approved an assignment of transfer application T-12702 to Wilburn Ranches, Inc., who took ownership of the property in March of 2018. The assignment was recorded in the records of the Water Resources Department in Salem.
7. On February 11, 2019, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12702 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on February 12, 2019, and in the Burns Times-Herald newspaper on February 13 and 20, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. The portion of the right to be transferred is as follows:

**Decree:** Water Right evidenced by Silvies River Decree, in the name of Pacific Livestock Co. (confirmed by Silvies River Decree, 1926)

**Use:** IRRIGATION of 866.60 ACRES

**Priority Date:** 1887

**Rate/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 a diversion of ONE-EIGHTIETH of one cubic foot per second (cfs), 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 provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

**Source:** Silvies River, tributary to Malheur Lake



**Authorized Place of Use:**

IRRIGATION (1887)						
Twp	Rng	Mer	Sec	Q-Q	Ditch/Remarks	Acres
25 S	32 E	WM	15	NW NW	Cronin Ditch and W.Fk. Slough	8.3
25 S	32 E	WM	15	SW NW	Cronin Ditch and W.Fk. Slough	40.0
25 S	32 E	WM	15	SE NW	Black Slough	4.9
25 S	32 E	WM	15	NE SW	Cronin Ditch, W.Fk. & Black Sloughs	20.1
25 S	32 E	WM	15	NW SW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	15	SW SW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	15	SE SW	Cronin Ditch & W.Fk. Slough	39.7
25 S	32 E	WM	15	SW SE	Cronin Ditch & W.Fk. Slough	15.6
25 S	32 E	WM	22	NE NE	Cronin Ditch & W.Fk. Slough	25.0
25 S	32 E	WM	22	NW NE	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	SW NE	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	SE NE	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	NE NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	NW NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	SW NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	SE NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	NE SW	Cronin Ditch & W.Fk. Slough	31.5
25 S	32 E	WM	22	NW SW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	22	SW SW	Cronin Ditch & W.Fk. Slough	14.0
25 S	32 E	WM	22	SE SW	Cronin Ditch & W.Fk. Slough	12.0
25 S	32 E	WM	22	NE SE	Cronin Ditch & W.Fk. Slough	39.0
25 S	32 E	WM	22	NW SE	Cronin Ditch & W.Fk. Slough	36.0
25 S	32 E	WM	22	SW SE	Cronin Ditch & W.Fk. Slough	10.5
25 S	32 E	WM	22	SE SE	Cronin Ditch & W.Fk. Slough	2.0
25 S	32 E	WM	23	NE NW	Cronin Ditch & W.Fk. Slough	4.0
25 S	32 E	WM	23	NW NW	Cronin Ditch & W.Fk. Slough	7.0
25 S	32 E	WM	23	SW NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	23	SE NW	Cronin Ditch & W.Fk. Slough	40.0
25 S	32 E	WM	23	NE SW	Cronin Ditch & W.Fk. Slough	38.0
25 S	32 E	WM	23	NW SW	Cronin Ditch & W.Fk. Slough	31.0
25 S	32 E	WM	23	SE SW	Cronin Ditch & W.Fk. Slough	8.0
Total						866.6

9. The water use tabulated in the Silvies River Decree (1926) identifies a “Cronin Ditch, West Fork Slough and numerous small ditches,” and “Black Slough” and “Square Well” ditches as the delivery systems, but do not describe the location of the points of diversion from the Silvies River for the water use. Information is available however from the Department records, adjudication map and Watermaster’s office indicating that the points of diversion on the Silvies River are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	32 E	WM	35	SE SW	SQUARE WELL SLOUGH - NONE GIVEN
25 S	32 E	WM	1	NE SE	BLACK SLOUGH - NONE GIVEN
25 S	32 E	WM	10	NW SW	CRONIN DITCH - NONE GIVEN
25 S	32 E	WM	10	NW SW	WEST FORK SLOUGH - NONE GIVEN

10. Transfer Application T-12702 proposes to change the points of diversion downstream approximately an average of 2.0 miles from the authorized points of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	32 E	WM	10	NW SW	POD #2 – 1800 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 10

11. 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)]***

12. Water has been used within the five-year period prior to submittal of the transfer application 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.
13. Diversion structures, ditches and various sloughs 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-12702.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

**Conclusions of Law**

The change in points of diversion proposed in Transfer Application T-12702 is 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 point of diversion proposed in Transfer Application T-12702 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 the water right evidenced in the Silvies River Decree (1926).
3. The portion of the water right confirmed by the Silvies River Decree to Pacific Livestock Company, recorded in Order Volume 9 beginning at Page 79, and as described in Finding of Fact No. 4 above, is cancelled.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
5. 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.
6. 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.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 1<sup>st</sup> day of April, 2019.

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

Mailing date: APR 02 2019