

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

In the Matter of Transfer Applications    )  
T-10333 and T-10338, Harney County    )  
  )    **FINAL ORDER APPROVING AN  
  )    ADDITIONAL POINT OF DIVERSION TO  
  )    REFLECT HISTORIC USE**

**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.

**Applicants for T-10333**

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BURNS OR 97720

LARRY WODELL  
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MARY L. WHITE  
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DEAN L. SHERMAN  
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HIGHWAY 205  
BURNS, OR 97720

**Agent**  
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REDMOND, OR 97756

**Applicant for T-10338**

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**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

**Findings of Fact**

1. On March 7, 2007, Dorothy Hammond, Andy Root, Mary White, Larry Woodell and Dean Shelman filed a transfer application to add a point of diversion to the following entries in the 1926 Silvies River Decree: Volume 9 at Page 152 in the name of THE WILLIAM HANLEY CO.; Volume 9 at Page 170 in the name of F.L. Mace; Volume 9 at Page 175 in the name of CHAS NELSON; Volume 9 at Page 179, in the name of PACIFIC LIVESTOCK CO.; and Volume 9 at Page 201, in the name of C.G. SMITH, The Department assigned number T-10333 to the application.
2. On March 13, 2007, Ron Schirm filed a transfer application to add a point of diversion to the following entries in the 1926 Silvies River Decree: Volume 9 at Page 152 in the name of THE WILLIAM HANLEY CO.; and Volume 9 at Page 179, in the name of PACIFIC LIVESTOCK CO. The Department assigned number T-10338 to the application and joined it with application number T-10338.
3. The portion of the first right to be transferred is as follows:

**1926 Silvies River Decree; Volume 9 at Page 152** in the name of THE WILLIAM HANLEY CO.

**Use:** IRRIGATION of 1147.93 ACRES

**Priority Date:** DECEMBER 31, 1886

**Rate:** 14.3 CUBIC FEET PER SECOND

**Limit/Duty:** 1/80 cfs per acre, not to exceed 2 acre-feet per acre in any one irrigation season.

**Source:** EAST FORK OF THE SILVIES RIVER AND SLOUGHS, tributary to MALHEUR LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Survey Coordinates
22 S	30 E	WM	26	HANLEY UPPER & WEST SIDE
23 S	31 E	WM	21	DAMS & DITCHES

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	31 E	WM	27	SW NE		20.00
23 S	31 E	WM	27	NE NW		20.00
23 S	31 E	WM	27	NW NW		40.00
23 S	31 E	WM	27	SW NW		40.00
23 S	31 E	WM	27	SE NW		40.00
23 S	31 E	WM	27	NE SW		40.00
23 S	31 E	WM	27	NW SW		40.00
23 S	31 E	WM	27	SW SW		40.00
23 S	31 E	WM	27	SE SW		40.00
23 S	31 E	WM	27	NE SE		5.00
23 S	31 E	WM	27	NW SE		35.00
23 S	31 E	WM	27	SW SE		40.00
23 S	31 E	WM	27	SE SE		25.00
24 S	31 E	WM	3	NE NE	1	15.00
24 S	31 E	WM	3	NW NE	2	47.30
24 S	31 E	WM	3	SW NE		40.00
24 S	31 E	WM	3	NE NW	3	48.22
24 S	31 E	WM	3	NW NW	4	49.41
24 S	31 E	WM	3	SW NW		40.00
24 S	31 E	WM	3	SE NW		40.00
24 S	31 E	WM	3	NE SW		40.00
24 S	31 E	WM	3	NW SW		40.00

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	31 E	WM	3	SW SW		40.00
24 S	31 E	WM	3	SE SW		40.00
24 S	31 E	WM	3	NE SE		40.00
24 S	31 E	WM	3	NW SE		40.00
24 S	31 E	WM	3	SW SE		40.00
24 S	31 E	WM	3	SE SE		40.00
24 S	31 E	WM	11	NE NW		20.00
24 S	31 E	WM	11	NW NW		35.00
24 S	31 E	WM	11	SW NW		38.00
24 S	31 E	WM	11	SE NW		30.00

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

**1926 Silvies River Decree; Volume 9 at Page 170** in the name of F.L. Mace.

**Use:** IRRIGATION of 110.0 ACRES

**Priority Date:** 1886

**Rate:** 1.38 CUBIC FEET PER SECOND

**Limit/Duty:** 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre per year

**Source:** EAST FORK SILVIES RIVER AND SLOUGHS, tributary to MALHEUR LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Survey Coordinates
23 S	31 E	WM	28	MACE #2 AND SLOUGHS

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	28	NE NE	40.0
23 S	31 E	WM	28	NW NE	12.0
23 S	31 E	WM	28	SW NE	18.0
23 S	31 E	WM	28	SE NE	40.0

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

**1926 Silvies River Decree; Volume 9 at Page 175** in the name of CHAS NELSON.

**Use:** IRRIGATION of 32.0 ACRES

**Priority Date:** 1905

**Rate:** 0.40 CUBIC FOOT PER SECOND

**Limit/Duty:** 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre per year

EAST FORK SILVIES RIVER AND SLOUGHS, tributary to MALHEUR LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Survey Coordinates
23 S	31 E	WM	21	DAMS & SLOUGHS

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	22	SW SW	32.0

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

**1926 Silvies River Decree; Volume 9 at Page 179**, in the name of PACIFIC LIVESTOCK CO.

**Use:** IRRIGATION of 1348.0 ACRES

**Priority Dates:** 1887, 1889, 1893, 1897, and 1900

**Rate:** 16.85 CUBIC FEET PER SECOND

**Limit/Duty:** 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre per year

EAST FORK SILVIES RIVER AND SLOUGHS, tributary to MALHEUR LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Survey Coordinates
24 S	31 E	WM	4	SMITH AND CLEMMONS AND HOMER MACE SLOUGH
24 S	31 E	WM	11	MACE-DEWITT, HANLEY AND HILL DAMS, CHAPMAN SLOUGH

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Priority	Acres
23 S	31 E	WM	33	NE NE	1900	40.0
23 S	31 E	WM	33	SW NE	1900	20.0
23 S	31 E	WM	33	SE NE	1900	40.0
23 S	31 E	WM	33	NE SW	1900	40.0
23 S	31 E	WM	33	SE SW	1900	40.0
23 S	31 E	WM	33	NE SE	1900	40.0
23 S	31 E	WM	33	NW SE	1900	40.0

Twp	Rng	Mer	Sec	Q-Q	Priority	Acres
23 S	31 E	WM	33	SW SE	1900	40.0
23 S	31 E	WM	33	SE SE	1900	40.0
23 S	31 E	WM	34	NE NW	1889	40.0
23 S	31 E	WM	34	NW NW	1889	40.0
23 S	31 E	WM	34	SW NW	1889	40.0
23 S	31 E	WM	34	SE NW	1889	40.0
23 S	31 E	WM	34	NE SW	1889	40.0
23 S	31 E	WM	34	NW SW	1889	40.0
23 S	31 E	WM	34	SW SW	1889	40.0
23 S	31 E	WM	34	SE SW	1889	40.0
24 S	31 E	WM	4	NE NE	1887	40.0
24 S	31 E	WM	4	NW NE	1887	40.0
24 S	31 E	WM	4	NE NW	1887	30.5
24 S	31 E	WM	4	NW NW	1887	26.0
24 S	31 E	WM	4	NE SW	1887	20.0
24 S	31 E	WM	4	NE SE	1887	40.0
24 S	31 E	WM	4	NW SE	1887	20.0
24 S	31 E	WM	4	SE SE	1887	20.0
24 S	31 E	WM	4	SW NE	1893	40.0
24 S	31 E	WM	4	SE NE	1893	40.0
24 S	31 E	WM	4	SW NW	1893	11.5
24 S	31 E	WM	4	SE NW	1893	40.0
24 S	31 E	WM	11	NE SW	1887	40.0
24 S	31 E	WM	11	NW SW	1887	40.0
24 S	31 E	WM	11	NE SE	1887	40.0
24 S	31 E	WM	11	NW SE	1887	40.0
24 S	31 E	WM	11	SW SW	1897	40.0
24 S	31 E	WM	11	SE SW	1897	40.0
24 S	31 E	WM	11	SW SE	1897	40.0
24 S	31 E	WM	11	SE SE	1897	40.0

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

**1926 Silvies River Decree; Volume 9 at Page 201, in the name of C.G. SMITH.**

**Use:** IRRIGATION of 98.0 ACRES

**Priority Date:** 1886

**Rate:** 1.23 CUBIC FEET PER SECOND

**Limit/Duty:** 1/80 cfs per acre, not to exceed 2.0 acre-feet per acre per year

**Source:** EAST FORK SILVIES RIVER AND SLOUGHS, tributary to MALHEUR LAKE

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Survey Coordinates
23 S	31 E	WM	20	F.L. MACE DAMS, DYKES

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	31 E	WM	28	NE SE	40.0
23 S	31 E	WM	28	NW SE	8.0
23 S	31 E	WM	28	SW SE	10.0
23 S	31 E	WM	28	SE SE	40.0

8. Applications T-10333 and T-10338 propose to add an authorized point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
23 S	31 E	WM	22	NW SW	NELSON DITCH - 1500 FEET NORTH AND 100 FEET EAST FROM THE SW CORNER OF SECTION 22

9. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Findings of Fact #3 through #7, has been in use for more than ten years.
11. Pursuant to OAR 690-380-2120(2)(c) the Watermaster provided a statement that to her knowledge there was no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
12. On October 16, 2007, all affected water right holders were notified of the proposed transfer by mail, pursuant to 690-380-2120(4). No comments were received in response to that notice.
13. The Oregon Department of Fish and Wildlife (ODFW) determined that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. ODFW further 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.
14. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

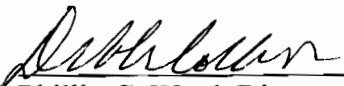
**Conclusions of Law**

The proposed additional point of diversion in applications T-10333 and T-10338 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes proposed in T-10333 and T-10338 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 the 1926 Silvies River Decree.
3. The proposed change shall be effective immediately upon issuance of the special order approving T-10333 and T-10338.
4. The following entries in the 1926 Silvies River Decree: **Volume 9 at Page 152** in the name of THE WILLIAM HANLEY CO.; **Volume 9 at Page 170** in the name of F.L. MACE; **Volume 9 at Page 175** in the name of CHAS NELSON; **Volume 9 at Page 179**, in the name of PACIFIC LIVESTOCK CO.; and **Volume 9 at Page 201**, in the name of C.G. SMITH, are hereby modified.
5. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Within one year of 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.
7. Prior to October 1, 2009, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

Dated at Salem, Oregon this 27<sup>th</sup> day of December 2007.

  
Phillip C. Ward, Director

Mailing Date DEC 31 2007