



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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November 17th, 2014

Applicants

SILVER LAKE IRRIGATION DISTRICT
C/O TOM O'LEARY
PO BOX 96
SILVER LAKE, OR 97638

BELL A LAND AND CATTLE
C/O THERESA CLIFF
PO BOX 97
LA PINE, OR 97739

SUBJECT: Water Right Transfer Application T-11629

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11629. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Lake County Examiner newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11629
Brian M. Mayer, District 12 Watermaster (via e-mail)
Dennis R. Glender, Agent for the applicant (via e-mail)
Scott Montgomery, CWRE #51324 (via e-mail)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11629, Lake County)	PROPOSING APPROVAL OF CHANGE
)	IN POINTS OF APPROPRIATION,
)	PLACE OF USE, AND PARTIAL
)	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.

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Findings of Fact

1. On June 28, 2013, SILVER LAKE IRRIGATION DISTRICT, C/O TOM O'LEARY and BELL A LAND AND CATTLE C/O THERESA CLIFF filed an application to change the place of use under Certificates 81396, 81659 and 86160 and to change points of appropriation and the place of use under Certificates 46780 and 62688. The Department assigned the application number T-11629.
2. Notice of the application for transfer was published on July 9, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 8, 2014, the Department contacted Dennis Glender, by written correspondence to notify the applicant's agent of the deficiencies in the application. The Department requested address corrections, authorized place of use and tax lot corrections, a signature from the Silver Lake Irrigation District and an Affidavit for Partial Diminution of a Water Right Certificate with a map showing the acreage to be diminished.
4. On May 16, August 11, 12 and October 8, 2014, Dennis Glender submitted documents resolving the deficiencies.

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.

5. On October 9, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11629 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 8, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 46780 in the name of CAMERON CLIFF (perfected under Permit G-5544)
Use: IRRIGATION of 81.6 ACRES
Priority Date: MARCH 28, 1972
Rate: 1.02 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to 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.
Source: CLIFF WELL, a tributary of BRIDGE CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	15	NE NE	POA 1 (CLIFF WELL): 50 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 15

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	9	SW SW	8.6
28 S	14 E	WM	9	SE SW	2.9
28 S	14 E	WM	9	SW SE	7.5
28 S	14 E	WM	9	SE SE	4.1
28 S	14 E	WM	10	SW SW	6.7
28 S	14 E	WM	15	NW NW	11.1
28 S	14 E	WM	16	NE NE	9.0
28 S	14 E	WM	16	NW NE	10.9
28 S	14 E	WM	16	NE NW	8.0
28 S	14 E	WM	16	NW NW	12.8
Total					81.6

7. Water Right Certificate 46780 has a scrivener's error describing the location of the point of appropriation as being in the NE NE of T 28 S, R 14 E, WM, Section 15, the point of appropriation should be described as being in the NW NW, of T 28 S, R 14 E, WM, Section 15.

8. Transfer Application T-11629 proposes to move the authorized point of appropriation approximately 1.42 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	22	SE NW	POA 4: 2150 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 22

9. Transfer Application T-11629 also proposes to change the place of use of the right to:

IRRIGATION						
Pod	Twp	Rng	Mer	Sec	Q-Q	Acres
1	28 S	14 E	WM	10	SE SW	33.3
1	28 S	14 E	WM	15	NE NW	31.3
4	27 S	14 E	WM	35	SW SE	17.0
Total						81.6

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

Certificate: 62688 in the name of BELL A LAND AND CATTLE COMPANY
(perfected under Permit G-8915)

Use: IRRIGATING 31.0 ACRES

Priority Date: FEBRUARY 21, 1980

Rate: 0.38 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to 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.

Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	23	SE NE	POA 6: 1380 FEET SOUTH AND 1260 FEET WEST FROM THE NE CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	23	NE NE	6.9
28 S	14 E	WM	23	NW NE	8.7
28 S	14 E	WM	23	SW NE	7.6
28 S	14 E	WM	23	SE NE	7.8
Total					31.0

11. Transfer Application T-11629 proposes to move the authorized point of appropriation approximately 1.38 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	22	SE NW	POA 4: 2150 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 22

12. Transfer Application T-11629 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	14 E	WM	35	SW SE	23.0
27 S	14 E	WM	35	SE SE	8.0
Total					31.0

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

Certificate: 81396 in the name of SILVER LAKE IRRIGATION DISTRICT C/O LAWRENCE IVERSON (perfected under Permit S-11656)
Use: IRRIGATION AND SUPPLEMENTAL IRRIGATION of 58.0 ACRES
Priority Date: OCTOBER 11, 1915
Rate: 1.02 CUBIC FEET PER SECOND
Limit/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 ONE-FORTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from East Thompson Valley Reservoir and Diversion Dam Reservoir constructed under Permit R-680.
Source: SILVER CREEK, EAST THOMPSON VALLEY RESERVOIR, AND DIVERSION DAM RESERVOIR. Constructed under Permit R-680, a tributary of SILVER LAKE (DRY)

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
29 S	14 E	WM	5	NE NE	1	DIVERSION DAM RESERVOIR - 100 FEET SOUTH AND 1300 FEET WEST FROM THE NE CORNER OF SECTION 5
30 S	13 E	WM	24	NE SE		SILVER CREEK - 2800 FEET SOUTH AND 500 FEET WEST FROM THE NE CORNER OF SECTION 24
30 S	14 E	WM	17	SE SW		EAST THOMPSON VALLEY RESERVOIR - 600 FEET NORTH AND 1700 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	15 E	WM	18	NE NE	30.9
28 S	15 E	WM	18	SE NE	27.1
Total					58.0

14. Application T-11629 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	24	NE NE	7.5
28 S	14 E	WM	24	NW NE	1.5
28 S	14 E	WM	24	SW NE	20.6
28 S	14 E	WM	24	SE NE	28.4
Total					58.0

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

Certificate: 81659 in the name of SILVER LAKE IRRIGATION DISTRICT C/O LAWRENCE IVERSON (perfected under Permit S-29955)
Use: SUPPLEMENTAL IRRIGATION of 58.0 ACRES
Priority Date: AUGUST 24, 1964
Rate: 44.35 ACRE FEET
Limit/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 not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: EAST THOMPSON VALLEY RESERVOIR enlarged under Permit R-4461, a tributary of SILVER CREEK (DRY)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
30 S	14 E	WM	17	SE SW	EAST THOMPSON VALLEY RESERVOIR - 600 FEET NORTH AND 1700 FEET EAST FROM THE SW CORNER OF SECTION 17

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	15 E	WM	18	NE NE	30.9
28 S	15 E	WM	18	SE NE	27.1
Total					58.0

16. Certificate 81659 has a scrivener's error describing the place of use acres as being Primary and Supplemental Irrigation. The use should be described as Supplemental Irrigation only.
17. Transfer Application T-11629 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	24	NE NE	7.5
28 S	14 E	WM	24	NW NE	1.5
28 S	14 E	WM	24	SW NE	20.6
28 S	14 E	WM	24	SE NE	28.4
Total					58.0

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

Certificate: 86160 in the name of BELL "A" LAND & CATTLE CO. AND NW FARM CREDIT SERVICE, FLCA (perfected under Permit G-10039)

Use: IRRIGATION of 63.3 ACRES AND SUPPLEMENTAL IRRIGATION of 55.4 ACRES

Priority Date: FEBRUARY 28, 1983

Rate: 0.59 CUBIC FOOT PER SECOND (CFS), being 0.06 CFS from Well 1; 0.17 CFS from Well 2; 0.18 CFS from Well 3; 0.09 CFS from Well 4; and 0.09 CFS from Well 5, or its equivalent in case of rotation, measured at the well.

Limit/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, 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.

Source: FIVE WELLS in the GOOSE & SUMMER LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	15	NW NW	POA 1: 50 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 15
28 S	14 E	WM	15	NW SW	POA 2: 80 FEET SOUTH AND 850 FEET EAST FROM THE W 1/4 CORNER OF SECTION 15
28 S	14 E	WM	15	SE SW	POA 3: 600 FEET NORTH AND 2550 FEET EAST FROM THE SW CORNER OF SECTION 15
28 S	14 E	WM	22	SE NW	POA 4: 2150 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 22
28 S	14 E	WM	24	NW NE	POA 5: 950 FEET SOUTH AND 2510 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	24	NE NE	3.0
28 S	14 E	WM	24	NW NE	2.8
28 S	14 E	WM	24	SW NE	25.8
28 S	14 E	WM	24	SE NE	31.7
Total					63.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	15 E	WM	18	NE NE	26.4
28 S	15 E	WM	18	SE NE	29.0
					55.4

19. Transfer Application T-11629 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	14 E	WM	35	SE SE	0.7
28 S	15 E	WM	18	NE NE	26.4
28 S	15 E	WM	18	SE NE	29.0
Total					56.1

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	24	NE NE	8.8
28 S	14 E	WM	24	NW NE	4.3
28 S	14 E	WM	24	SW NE	20.6
28 S	14 E	WM	24	SE NE	28.9
Total					62.6

Partial Diminution of a Water Right

20. On October 8, 2014, an affidavit certifying that a portion of a water right has been diminished from primary irrigation to supplemental irrigation and requesting partial diminution of the right was received from Tom O’Leary of Silver Lake Irrigation District. The right to be diminished is as follows:

Certificate: 86160 in the name of BELL “A” LAND & CATTLE CO AND NORTHWEST FARM CREDIT SERVICE, FLCA (perfected under Permit G-10039)

Use: IRRIGATION of 7.2 ACRES

Priority Date: FEBRUARY 28, 1983

Rate: 0.04 CUBIC FOOT PER SECOND

Limit/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, 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.

Source: FIVE WELLS in the GOOSE & SUMMER LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
28 S	14 E	WM	15	NW NW	POA 1: 50 FEET SOUTH AND 60 FEET EAST FROM THE NW CORNER OF SECTION 15
28 S	14 E	WM	15	NW SW	POA 2: 80 FEET SOUTH AND 850 FEET EAST FROM THE W 1/4 CORNER OF SECTION 15
28 S	14 E	WM	15	SE SW	POA 3: 600 FEET NORTH AND 2550 FEET EAST FROM THE SW CORNER OF SECTION 15
28 S	14 E	WM	22	SE NW	POA 4: 2150 FEET SOUTH AND 1800 FEET EAST FROM THE NW CORNER OF SECTION 22
28 S	14 E	WM	24	NW NE	POA 5: 950 FEET SOUTH AND 2510 FEET WEST FROM THE NE CORNER OF SECTION 24

Authorized Place of Use to be Diminished:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
28 S	14 E	WM	24	SE NE	7.2

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

21. 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 rights are subject to forfeiture under ORS 540.610.
22. A pump, pipeline, and sprinkler system and open canals for flood irrigation 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-11629.
23. The proposed changes as conditioned would not result in enlargement of the rights.
24. The proposed changes as conditioned would not result in injury to other water rights.

Determination and Proposed Action

The change in points of appropriation and place of use proposed in Transfer Application T-11629 appear to be consistent with the requirements of ORS 537.705 and 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 and the right proposed to be diminished will be diminished.

If Transfer Application T-11629 is approved, the final order will include the following:

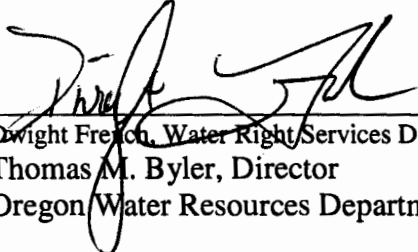
1. *The change in points of appropriation and place of use proposed in Transfer Application T-11629 are approved.*
2. *The water right for the irrigation of 7.2 acres under Water Right Certificate 86160 as described in Finding No. 20 is diminished from primary irrigation to supplemental irrigation.*
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 46780, 62688, 81396, 81659, 86160 and any related decree.*
4. *Water Right Certificates 46780, 62688, 81396, 81659 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
5. *Water Right Certificate 86160 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and modified by the diminishment.*
6. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*

7. *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.*
8. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a weir, or, with prior approval of the Director, another suitable measuring device, at each point of diversion/appropriation (new and existing).*
 - b. *The water user shall maintain the weirs or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the weirs or measuring devices; provided however, where the weirs or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
9. *Static Water Level Conditions:*
 - a. *The Department requires a qualified individual (see below) to measure, record, and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement in a format approved by the Department (see below).*
 - b. *The water user shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may assign a reference level based on an analysis of other water-level data. The Director may require the user to measure, record, and report water levels more frequently each year if more data are needed to evaluate the aquifer system.*
 - c. *All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with a calibrated electric tape or steel tape that is accurate to at least 0.025 feet and reported to a precision of at least 0.10 feet. The Department requires the individual performing the measurement to:*
 - i. *Associate each measurement with an owner's well name or number and a Department well log ID; and*
 - ii. *Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and*

- iii. *Specify the method of measurement; and*
- iv. *Certify the accuracy of all measurements and calculations reported to the Department.*

- 10. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 11. *The former place of use of the transferred rights shall no longer receive water under the rights.*
- 12. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.*
- 13. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 7 day of November, 2014.



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

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrds.state.or.us.

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