



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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January 17, 2018

CHILDERS HAY RANCH INC.  
30040 WEAVER SPRINGS LN  
BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-12513

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12513. 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 Burns Times Herald 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 Teri Hranac at 503-986-0881 or [teri.k.hranac@oregon.gov](mailto:teri.k.hranac@oregon.gov), if I may be of assistance.

Sincerely,

Teri Hranac  
Transfer and Conservation Section

Enclosure

cc: T-12513  
J R. Johnson, District 10 Watermaster (via e-mail)  
John A. Short, Agent for the applicant (via e-mail)  
Marcy Osborn, OWRD (via e-mail)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12513, Harney County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION

**Authority**

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

CHILDERS HAY RANCH, INC.  
30040 WEAVER SPRINGS LN  
BURNS, OR 97720

**Findings of Fact**

1. On October 21, 2016, CHILDERS HAY RANCH, INC. filed an application for ADDITIONAL POINTS OF APPROPRIATION under Certificate 90726. The Department assigned the application number T-12513.
2. Notice of the application for transfer was published on October 25, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 2, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12513 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 4, 2017, for the applicant to respond. The applicant requested the completion date be extended to October 1, 2023, and for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

4. The right to be transferred is as follows:

**Certificate:** 90726 in the name of CHILDERS HAY RANCH INC. (perfected under Permit G-8979)  
**Use:** IRRIGATION of 1056.5 ACRES  
**Priority Date:** JUNE 4, 1980

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.

**Rate:** 13.21 CUBIC FEET PER SECOND (CFS), further limited to no more than 4.14 CFS from Well 1, 4.27 CFS from Well 2, 2.98 CFS from Well 3, 1.56 CFS from Well 4, 2.75 CFS from Well 5, 2.42 CFS from Well 6, 4.41 CFS from Well 7, 3.65 CFS from Well 8, 1.35 CFS from Well 9, 1.35 CFS from Well 10, and 4.38 CFS from Well 11, in any combination, or its equivalent in case of rotation, measured at the wells.

**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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** WELLS 1 THROUGH 11 within the MALHEUR LAKE BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	30 E	WM	35	SW SW		WELL 1 - 1300 FEET NORTH AND 1350 FEET WEST FROM THE SOUTH 1/4 CORNER OF SECTION 35
25 S	30 E	WM	35	NW SE		WELL 2 - 1330 FEET NORTH AND 1280 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 35
26 S	30 E	WM	2	SW NW		WELL 3 - 1340 FEET SOUTH AND 1350 FEET WEST FROM THE NORTH 1/4 CORNER OF SECTION 2
26 S	30 E	WM	2	NW NE	2	WELL 4 - 1310 FEET SOUTH AND 1280 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 2
26 S	30 E	WM	2	SW NE		WELL 5 - 1350 FEET SOUTH AND 1280 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 2
26 S	30 E	WM	1	NW SW		WELL 6 - 260 FEET SOUTH AND 40 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 1
26 S	30 E	WM	1	NW SW		WELL 7 - 1310 FEET SOUTH AND 1310 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 1
26 S	30 E	WM	1	SE SE		WELL 8 - 1330 FEET SOUTH AND 1310 FEET WEST FROM THE EAST 1/4 CORNER OF SECTION 1
26 S	31 E	WM	6	SE NE		WELL 9 - 1330 FEET SOUTH AND 1310 FEET WEST FROM THE NE CORNER OF SECTION 6
26 S	31 E	WM	6	NW NE		WELL 10 - 80 FEET SOUTH AND 60 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 6
26 S	31 E	WM	6	SW NW	2	WELL 11 - 280 FEET NORTH AND 160 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 6

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	30 E	WM	35	NE SW		31.5

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	30 E	WM	35	NW SW		32.0
25 S	30 E	WM	35	SW SW		33.4
25 S	30 E	WM	35	SE SW		33.5
25 S	30 E	WM	35	NE SE		31.7
25 S	30 E	WM	35	NW SE		32.6
25 S	30 E	WM	35	SW SE		33.1
25 S	30 E	WM	35	SE SE		33.0
26 S	30 E	WM	1	NE SW		31.6
26 S	30 E	WM	1	NW SW		32.3
26 S	30 E	WM	1	SW SW		31.7
26 S	30 E	WM	1	SE SW		32.4
26 S	30 E	WM	1	NE SE		32.7
26 S	30 E	WM	1	NW SE		33.3
26 S	30 E	WM	1	SW SE		32.7
26 S	30 E	WM	1	SE SE		33.3
26 S	30 E	WM	2	NE NE	1	32.4
26 S	30 E	WM	2	NW NE	2	32.7
26 S	30 E	WM	2	SW NE		32.4
26 S	30 E	WM	2	SE NE		33.3
26 S	30 E	WM	2	NE NW	3	31.9
26 S	30 E	WM	2	NW NW	4	32.6
26 S	30 E	WM	2	SW NW		32.8
26 S	30 E	WM	2	SE NW		33.5
26 S	31 E	WM	6	NE NE		33.4
26 S	31 E	WM	6	NW NE		33.6
26 S	31 E	WM	6	SW NE		33.9
26 S	31 E	WM	6	SE NE		34.2
26 S	31 E	WM	6	NE NW		34.4
26 S	31 E	WM	6	NW NW	1	34.4
26 S	31 E	WM	6	SW NW	2	35.1
26 S	31 E	WM	6	SE NW		35.1
					Total	1056.5

5. Transfer Application T-12513 proposes 6 additional points of appropriation which are described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	31 E	WM	6	SE NW	WELL 12 - 20 FEET NORTH AND 220 FEET WEST FROM THE CENTER OF SECTION 7
26 S	31 E	WM	7	SW SE	WELL 13 - 1740 FEET SOUTH AND 30 FEET EAST FROM THE CENTER OF SECTION 7
26 S	30 E	WM	1	SW SE	WELL 14 - 30 FEET NORTH AND 10 FEET EAST FROM THE SOUTH 1/4 CORNER OF SECTION 1
26 S	30 E	WM	7	SW SE	WELL 15 - 1800 FEET SOUTH AND 30 FEET EAST FROM THE CENTER OF SECTION 7
26 S	31 E	WM	6	SW NE	WELL 16 - 1450 FEET SOUTH AND 1110 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 6
26 S	30 E	WM	1	NW SW	WELL 17 - 300 FEET SOUTH AND 50 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 1

The table below shows the proposed additional points of appropriation with the approximate measured distances from the authorized points of appropriation:

	WELL 12 (Proposed)	WELL 13 (Proposed)	WELL 14 (Proposed)	WELL 15 (Proposed)	WELL 16 (Proposed)	WELL 17 (Proposed)
WELL 1 (Authorized)	2.8 miles	3.0 miles	1.8 miles	3.1 miles	2.5 miles	1.1 miles
WELL 2 (Authorized)	2.4 miles	2.7 miles	1.4 miles	2.8 miles	2.0 miles	0.8 miles
WELL 3 (Authorized)	2.5 miles	2.7 miles	1.4 miles	2.8 miles	2.4 miles	0.8 miles
WELL 4 (Authorized)	2.1 miles	2.3 miles	1.0 mile	2.4 miles	2.0 miles	0.4 mile
WELL 5 (Authorized)	2.0 miles	2.3 miles	1.0 mile	2.4 miles	2.0 miles	0.4 mile
WELL 6 (Authorized)	1.7 miles	1.9 miles	0.6 mile	2.0 miles	1.7 miles	40 feet
WELL 7 (Authorized)	1.4 miles	1.6 miles	0.3 mile	1.7 miles	1.5 miles	0.3 mile
WELL 8 (Authorized)	1.0 mile	1.3 miles	0.3 mile	1.35 miles	1.0 mile	0.7 mile
WELL 9 (Authorized)	1.3 miles	1.6 miles	1.4 miles	1.65 miles	0.05 mile	1.7 mile
WELL 10 (Authorized)	1.5 miles	1.8 miles	1.4 miles	1.85 miles	0.3 mile	1.6 miles
WELL 11 (Authorized)	1.1 miles	1.4 miles	0.8 mile	1.5 miles	0.7 mile	1.0 mile

***Transfer Review Criteria (OAR 690-380-4010)***

6. 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.
7. A pump, pipeline, and sprinkler system 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-12513.
8. The proposed change would not result in enlargement of the right.
9. The proposed change would not result in injury to other water rights.
10. All other application requirements are met.

**Determination and Proposed Action**


The additional points of appropriation proposed in Transfer Application T-12513 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.

*If Transfer Application T-12513 is approved, the final order will include the following:*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

1. *The additional points of appropriation proposed in Transfer Application T-12513 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 Certificate 90726 and any related decree.*
3. *Water right Certificate 90726 is cancelled.*
4. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
5. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install totalizing flow meters, or, with prior approval of the Director, other suitable measuring devices at each point of appropriation (new and existing).*
  - b. *The water user shall maintain the meters or measuring devices in good working order.*
  - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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 17 day of January, 2018.

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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@oregon.gov.

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