

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12827, Harney County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND A CHANGE IN
	)	PLACE OF USE

**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**

DRY MOUNTAIN RANCH LLC  
70194 SILVER CREEK RD  
RILEY OR 97758

**Findings of Fact**

1. On January 18, 2018, DRY MOUNTAIN RANCH LLC filed an application to change the points of appropriation and place of use under Certificates 14058, 14067, 14068, 63570, and 61068. The Department assigned the application number T-12827.
2. Notice of the application for transfer was published on January 30, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 17, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12827 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 17, 2018; for the applicant to respond. The applicant requested that the completion date be extended to five years, being October 1, 2024. The applicant 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 (or amended the application or did not respond by the deadline).

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.

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

**Certificate:** 14058 in the name of EMMITT JOHNSON (confirmed by Silver Creek Decree, Harney County)

**Use:** IRRIGATION OF 16.5 ACRES AND STOCK

**Priority Date:** 1877

**Limit/Duty:** The amount of water to which such right is entitled for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/60<sup>th</sup> of one cubic foot per second per acre irrigated from March 1 to April 30, and 1/80<sup>th</sup> of one cubic foot per second from May 1 to August 1; provided, that the total quantity diverted during the months of March, April, May, and June shall not exceed 2.5 acre-feet per acre.

**Source:** SILVER CREEK, tributary to HARNEY LAKE

**Authorized Place of Use:**

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	5	NE NW	3	2.6
23 S	26 E	WM	5	SE NW		13.9
Total						16.5

5. Certificate 14058 does not describe the location of the points of diversion, however information is available from the decree and the CWRE survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	26 E	WM	30	SE SE	POD 1 – 860 FEET NORTH AND 4090 FEET EAST FROM THE SW CORNER OF SECTION 30
23 S	26 E	WM	5	NW NW	POD 2 – 80 FEET SOUTH AND 260 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SW NW	POD 3 – 1550 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SE NW	POD 4 – 1410 FEET SOUTH AND 1740 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SW NW	POD 5 – 2630 FEET SOUTH AND 1170 FEET EAST FROM THE NW CORNER OF SECTION 5

6. Transfer Application T-12827 proposes to use only the authorized point of diversion (POD #4) as described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	26 E	WM	5	SE NW	POD 4 - 1410 FEET SOUTH AND 1740 FEET EAST FROM THE NW CORNER OF SECTION 5

7. Transfer Application T-12827 also proposes to change the place of use of the right to:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	5	NW NE	2	4.8
23 S	26 E	WM	5	SW NE		8.1
23 S	26 E	WM	5	SE NE		3.1
23 S	26 E	WM	5	SE NW		0.5
Total						16.5

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

**Certificate:** 14067 in the name of L.L. NOONCHESTER (confirmed by Silver Creek Decree, Harney County)

**Use:** IRRIGATION OF 19.6 ACRES AND STOCK

**Priority Date:** 1877

**Limit/Duty:** The amount of water to which such right is entitled for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/60<sup>th</sup> of one cubic foot per second per acre irrigated from March 1 to April 30, and 1/80<sup>th</sup> of one cubic foot per second from May 1 to August 1; provided, that the total quantity diverted during the months of March, April, May, and June shall not exceed 2.5 acre-feet per acre.

**Source:** SILVER CREEK, tributary to HARNEY LAKE

**Authorized Place of Use:**

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	5	NW NW	4	11.1
23 S	26 E	WM	5	SW NW		8.5
Total						19.6

9. Certificate 14067 does not describe the location of the points of diversion, however information is available from the decree and the CWRE survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	26 E	WM	30	SE SE	POD 1 - 860 FEET NORTH AND 4090 FEET EAST FROM THE SW CORNER OF SECTION 30
23 S	26 E	WM	5	NW NW	POD 2 - 80 FEET SOUTH AND 260 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SW NW	POD 3 - 1550 FEET SOUTH AND 90 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SE NW	POD 4 - 1410 FEET SOUTH AND 1740 FEET EAST FROM THE NW CORNER OF SECTION 5
23 S	26 E	WM	5	SW NW	POD 5 - 2630 FEET SOUTH AND 1170 FEET EAST FROM THE NW CORNER OF SECTION 5

10. Transfer Application T-12827 proposes to use only the authorized point of diversion (POD #4) as described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	26 E	WM	5	SE NW	POD 4 - 1410 FEET SOUTH AND 1740 FEET EAST FROM THE NW CORNER OF SECTION 5

11. Transfer Application T-12827 also proposes to change the place of use of the right to:

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	5	NW NE	2	1.9
23 S	26 E	WM	5	NE NW	3	15.9
23 S	26 E	WM	5	SE NW		1.8
Total						19.6

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

**Certificate:** 14068 in the name of OREGON & WESTERN COLONIZATION COMPANY (confirmed by Silver Creek Decree, Harney County)

**Use:** IRRIGATION OF 120.0 ACRES AND STOCK

**Priority Date:** 1899

**Limit/Duty:** The amount of water to which such right is entitled for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/60th of one cubic foot per second per acre irrigated from March 1 to April 30, and 1/80th of one cubic foot per second from May 1 to August 1; provided, that the total quantity diverted during the months of March, April, May, and June shall not exceed 2.5 acre-feet per acre.

**Source:** SILVER CREEK, tributary to HARNEY LAKE

**Authorized Place of Use:**

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	27 E	WM	19	NE SW	20.0
23 S	27 E	WM	19	NW SW	30.0
23 S	27 E	WM	19	SW SW	30.0
23 S	27 E	WM	19	SE SW	40.0
Total					120.0

13. Certificate 14058 does not describe the location of the points of diversion, however information is available from the decree and the CWRE survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	26 E	WM	15	SW NE	POD 1 – 540 FEET NORTH AND 2550 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 15
23 S	27 E	WM	19	SW NW	POD 2 – 3580 FEET NORTH AND 10 FEET EAST FROM THE SW CORNER OF SECTION 19
23 S	27 E	WM	19	SW SW	POD 3 – 1020 FEET NORTH AND 20 FEET EAST FROM THE SW CORNER OF SECTION 19
23 S	27 E	WM	19	SW SW	POD 4 - 420 FEET NORTH AND 30 FEET EAST FROM THE SW CORNER OF SECTION 19
23 S	27 E	WM	19	SW SW	POD 5 – 1 FOOT NORTH AND 40 FEET EAST FROM THE SW CORNER OF SECTION 19

14. Transfer Application T-12827 proposes to change the place of use of the right to:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	27 E	WM	19	NE SW	32.2
23 S	27 E	WM	19	NW SW	29.7
23 S	27 E	WM	19	SW SW	27.9
23 S	27 E	WM	19	SE SW	30.2
Total					120.0

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

**Certificate:** 63570 in the name of MEADOW CREEK ENTERPRISES C/O RICHARD RANEY (perfected under Permit G-8056)

**Use:** PRIMARY IRRIGATION OF 47.3 ACRES AND SUPPLEMENTAL IRRIGATION OF 119.2 ACRES

**Priority Date:** FEBRUARY 14, 1978

**Rate:** 2.0 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:** A WELL within the SILVER CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	27 E	WM	19	SE SW	40 FEET NORTH AND 30 FEET WEST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 19

**Authorized Place of Use:**

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	27 E	WM	19	SW NW	16.8
23 S	27 E	WM	19	SE NW	0.9
23 S	27 E	WM	19	NE SW	14.0
23 S	27 E	WM	19	NW SW	8.4
23 S	27 E	WM	19	SW SW	7.2
Total					47.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	27 E	WM	19	NE SW	20.0
23 S	27 E	WM	19	NW SW	30.0
23 S	27 E	WM	19	SW SW	30.0
23 S	27 E	WM	19	SE SW	39.2
Total					119.2

16. Transfer Application T-12827 proposes to move the authorized point of appropriation for a portion of the land approximately 6.5 miles from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	26 E	WM	5	NE NW	POA – 50 FEET SOUTH AND 3070 FEET WEST FROM THE NE CORNER OF SECTION 5

17. Transfer Application T-12827 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
23 S	26 E	WM	5	SE NE	24.2	POA/POU
23 S	26 E	WM	5	NE SE	23.1	POA/POU
Total					47.3	

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
23 S	27 E	WM	19	NE SW	32.2	POU
23 S	27 E	WM	19	NW SW	29.5	POU
23 S	27 E	WM	19	SW SW	27.5	POU
23 S	27 E	WM	19	SE SW	30.0	POU
Total					119.2	

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

**Certificate:** 61068 in the name of HOYT AND SONS (perfected under Permit G-6884)  
**Use:** SUPPLEMENTAL IRRIGATION OF 21.2 ACRES  
**Priority Date:** JANUARY 8, 1976  
**Rate:** 0.27 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:** HEGEWALD WELL 4 within the CHICKAHOMINY BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	27 E	WM	30	NW NW	HEGEWALD WELL 4 - 20 FEET SOUTH AND 4290 FEET WEST FROM THE NE CORNER OF SECTION 30

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
23 S	27 E	WM	30	SW NW	5.4
23 S	27 E	WM	30	SE NW	4.0
23 S	27 E	WM	30	NE SW	2.2
23 S	27 E	WM	30	NW SW	3.9
23 S	27 E	WM	30	SW SW	3.5
23 S	27 E	WM	30	SE SW	2.2
Total					21.2

19. Transfer Application T-12827 proposes to move the authorized point of appropriation approximately 0.3 mile from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	26 E	WM	5	NE NW	POA - 50 FEET SOUTH AND 3070 FEET WEST FROM THE NE CORNER OF SECTION 5

20. Transfer Application T-12827 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
23 S	26 E	WM	5	NW NE	2	5.9
23 S	26 E	WM	5	SW NE		8.1
23 S	26 E	WM	5	SE NE		3.1
23 S	26 E	WM	5	NE NW	3	1.9
23 S	26 E	WM	5	SE NW	3	2.2
Total						21.2

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

21. 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 rights are subject to forfeiture under ORS 540.610.
22. A diversion structure and ditch, and a pump, pipeline and sprinkler system 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-12827.
23. The proposed changes would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.
25. All other application requirements are met.

**Determination and Proposed Action**

The change in point of appropriation and change in place of use proposed in Transfer Application T-12827 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

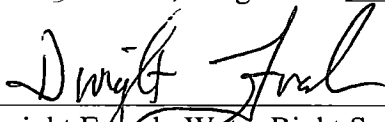
*If Transfer Application T-12827 is approved, the final order will include the following:*

1. *The change in points of appropriation and change in place of use proposed in Transfer Application T-12827 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 Certificates 14058, 14067, 14068, 63570, and 61068 and any related decree.*
3. *Water right Certificates 14068 and 63570 are cancelled.*
4. *Water right Certificates 14058, 14067 and 61068 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
5. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*



6. *Water use measurement conditions:*
  - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of appropriation and diversion(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.*
7. *The former place of use of the transferred rights shall no longer receive water under the rights.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.*
9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this DEC 03 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.*

**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>



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 28, 2018

DRY MOUNTAIN RANCH LLC  
70194 SILVER CREEK ROAD  
RILEY OR 97758

SUBJECT: Water Right Transfer Application T-12827

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12827. 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 me at 503-986-0886 or [Patrick.K.Starnes@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov) if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12827  
J. R. Johnson, District 10 Watermaster *(via e-mail)*  
John A. Short, Agent for the applicant *(via e-mail)*

encs