

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12702, Harney County)	PROPOSING APPROVAL OF 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.
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

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.

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. 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

IRRIGATION (1887)						
Twp	Rng	Mer	Sec	Q-Q	Ditch/Remarks	Acres
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

8. 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

9. 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

10. 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)]

11. 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.
12. 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.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

The change in points of diversion proposed in Transfer Application T-12702 appears 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.

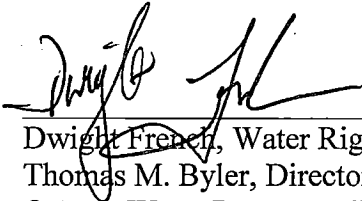
If Transfer Application T-12702 is approved, the final order will include the following:

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, 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 FEB 11 2019 ,



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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

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Salem, OR 97301
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Fax (503) 986-0904

February 4, 2019

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

SUBJECT: Water Right Transfer Application T-12702

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12702. 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 if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application T-12702
J.R. Johnson, Watermaster, District 10 *(via e-mail)*
John A. Short, Agent for the applicant *(via e-mail)*
Linda Lee Miller, CWRE #47708 *(via e-mail)*

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