

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13903, Harney County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION,
)	CHANGES IN POINTS OF DIVERSION, AND
)	CHANGES 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

WILBER & SONS, LLC
77 W ADAMS ST.
BURNS, OR 97720

Findings of Fact

1. On January 31, 2022, WILBER AND SONS, LLC filed an application for an additional point of diversion, a change in points of diversion, and to change the place of use under Certificate 6931. The Department assigned the application number T-13903.
2. Notice of the application for transfer was published on February 8, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13903 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 30, 2022, for the applicant to respond. 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.
4. On July 14, 2022, the agent for the applicant requested the completion date of October 1, 2027 to allow time to transfer to allow time to complete the changes and comply with the fish screen requirement. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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

Certificate: 6931 in the name of GEO. W. WRIGHT; SUCCESSOR IN INTEREST TO WM. H. HOWARD (confirmed by Malheur River Decree, Volume 8, Page 228)
Use: IRRIGATION of 67.0 ACRES
Priority Date: 1907
Rate: 3.35 CUBIC FEET PER SECOND
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 1.5 acre feet per acre in any 30-day period prior to June 1st, 1 acre foot per acre in any 30-day period after June 1st, of each year, or 3.0 acre feet per acre during any season, diverted at a rate not to exceed ONE TWENTIETH of a cubic foot per second per acre.
Source: LITTLE STINKINGWATER CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	35 E	WM	12	NW NW	16.0
22 S	35 E	WM	12	SW NW	24.0
22 S	35 E	WM	12	NW SW	27.0
				Total	67.0

6. The agent has provided measured distances to better describe the authorized points of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	35 E	WM	13	NE NW	POD 2 – 320 FEET SOUTH AND 590 FEET WEST FROM THE N 1/4 CORNER OF SECTION 13
22 S	35 E	WM	24	SE SW	POD 1 – 550 FEET NORTH AND 490 FEET WEST FROM THE S 1/4 CORNER OF SECTION 24

7. Transfer Application T-13903 proposes an additional point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Diversion in Miles (mi.)	
20 S	35 E	WM	25	NE SE	POD 3 – 1440 FEET NORTH AND 780 FEET WEST FROM THE SE CORNER OF SECTION 25	POD 1	POD 2
						13.9 mi.	12.2 mi.

8. Transfer Application T-13903 proposes to move the authorized points of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate Distance from Authorized Points of Diversion in Miles (mi.)	
						POD 1	POD 2
20 S	35 E	WM	25	SW NE	POD 1 – 780 FEET NORTH AND 3460 FEET EAST FROM THE W ¼ CORNER OF SECTION 25	15.5 mi.	12.2 mi.
20 S	35 E	WM	25	NW SE	POD 2 – 640 FEET SOUTH AND 3850 FEET EAST FROM THE W 1/4 CORNER OF SECTION 25	13.5 mi.	11.8 mi.

9. Transfer Application T-13903 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Tax Lot	Q-Q	Acres
20 S	35 E	WM	25	3700	SW NE	15.0
20 S	35 E	WM	25	3700	SE NE	0.7
20 S	35 E	WM	25	3700	NE SW	6.0
20 S	35 E	WM	25	3900	SE SW	0.7
20 S	35 E	WM	25	3900	NE SE	13.7
20 S	35 E	WM	25	3900	NW SE	17.7
20 S	35 E	WM	25	3900	SW SE	2.1
20 S	35 E	WM	25	3900	SE SE	0.6
20 S	36 E	WM	31	3900	NE NW	2.0
20 S	36 E	WM	31	3900	NW SE	8.5
					Total	67.0

10. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary 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 and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. 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 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.
12. A diversion structure and ditch 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-13903.

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

Determination and Proposed Action

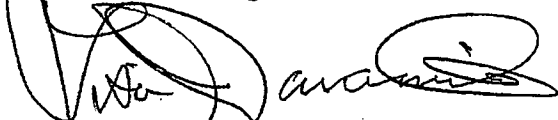
The additional point of diversion, change in points of diversion, and change in place of use proposed in Transfer Application T-13903 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13903 is approved, the final order will include the following:

1. *The additional point of diversion, change in points of diversion, and change in place of use proposed in Transfer Application T-13903 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 6931, and any related decree.*
3. *Water right Certificate 6931 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and POD 2).*
5. *The quantity of water diverted at the new points of diversion (POD 1 and POD 2), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and POD 2).*
6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **SEP 22 2022**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. **The Oregon Military Department does not have a toll free number.**



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

September 22, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

WILBER & SONS, LLC

77 W ADAMS ST.

BURNS, OR 97720

SUBJECT: Water Right Transfer Application T-13903

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13903. 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 contact me at scott.a.grew@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

Transfer and Conservation Section

cc: Transfer Application file T-13903
Donald Swindlehurst, District 10 Watermaster (via e-mail)
John A. Short, Agent for the applicant (via e-mail)