

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

| | | |
|---------------------------------------|---|----------------------------------|
| In the Matter of Transfer Application |) | FINAL ORDER APPROVING ADDITIONAL |
| T-13395, Harney County |) | POINTS OF DIVERSION, ADDITIONAL |
| |) | POINTS OF APPROPRIATION AND A |
| |) | CHANGE IN PLACES OF USE |

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

WILLIAM DUNBAR
DUNBAR SILVIES RIVER RANCH
9622 VICTOR RD
ANCHORAGE, AK 99515

Findings of Fact

1. On March 18, 2020, WILLIAM DUNBAR, DUNBAR SILVIES RIVER RANCH filed an application for additional points of diversion and a change in places of use under Certificates 1991, 11060, and 33152, and additional points of appropriation and a change in places of use under Certificates 28656 and 33151. The Department assigned the application number T-13395.
2. Notice of the application for transfer was published on March 24, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 6, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. A change in place of use under five water right certificates is involved in T-13395, and only one map was submitted. Pursuant to Oregon Administrative Rule 690-380-3100(1)(i), if the proposed

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

transfer involves changes in place of use or character of use for more than three water rights, a separate map shall be provided for each water right. The "FROM" and "TO" lands for each certificate did not match between each Table 2 and the map. The Department requested that the deficiencies be resolved by September 7, 2021.

4. On August 7, 2021, the applicant's agent submitted revised tables and maps, resolving the deficiencies.
5. On September 8, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13395 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 8, 2021, 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.
6. On October 27, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13395 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 2, 2021, and in the Burns Times Herald newspaper on November 3 and 10, 2021 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
7. The first right to be transferred is as follows:

Certificate: 1991 in the name of PAUL HOWES (perfected under Permit S-3372)
Use: IRRIGATION of 160.0 ACRES
Priority Date: MAY 16, 1917
Rate: 2.0 CUBIC FEET PER SECOND
Source: POISON SLOUGH, a tributary of POISON CREEK and tributaries

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|-------------------------------------|-----|-----|-----|-----|
| <i>Not specified in certificate</i> | | | | |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed changes |
| 23 S | 32 E | WM | 27 | NE NW | 8.0 | APOD/POU |
| 23 S | 32 E | WM | 27 | NE NW | 32.0 | APOD |
| 23 S | 32 E | WM | 27 | NW NW | 5.1 | APOD/POU |
| 23 S | 32 E | WM | 27 | NW NW | 34.9 | APOD |
| 23 S | 32 E | WM | 27 | SW NW | 7.0 | APOD/POU |
| 23 S | 32 E | WM | 27 | SW NW | 33.0 | APOD |
| 23 S | 32 E | WM | 27 | SE NW | 10.0 | APOD/POU |
| 23 S | 32 E | WM | 27 | SE NW | 30.0 | APOD |
| Total | | | | | 160.0 | |

8. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 1991 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|--|
| 23 S | 32 E | WM | 27 | SW NW | POD 1 - GRAPHICALLY LOCATED ALONG SLOUGH MIDWAY BETWEEN N1/16 AND W1/4 CORNERS OF SECTION 27 |

9. Transfer Application T-13395 proposes an additional point of diversion approximately 936 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 27 | SW NW | POD 4 - LATITUDE: 43 DEG 32' 54.84" N LONGITUDE: -118 DEG 52' 46.84" W |

10. Transfer Application T-13395 also proposes to change the place of use for a portion of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 23 S | 32 E | WM | 27 | NE SW | 7.5 |
| 23 S | 32 E | WM | 27 | NW SW | 7.6 |
| 23 S | 32 E | WM | 27 | SW SW | 7.5 |
| 23 S | 32 E | WM | 27 | SE SW | 7.5 |
| Total | | | | | 30.1 |

11. The second right to be transferred is as follows:

Certificate: 11060 in the name of B. M. PORDEN (perfected under Permit S-7570)
Use: IRRIGATION of 160.0 ACRES
Priority Date: SEPTEMBER 15, 1926
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.
Source: POISON SLOUGH, a tributary of SILVIES RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|-------|
| 23 S | 32 E | WM | 27 | NW SW |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed Changes |
| 23 S | 32 E | WM | 27 | NE SW | 17.0 | APOD/POU |
| 23 S | 32 E | WM | 27 | NE SW | 23.0 | APOD |
| 23 S | 32 E | WM | 27 | NW SW | 17.1 | APOD/POU |
| 23 S | 32 E | WM | 27 | NW SW | 22.9 | APOD |
| 23 S | 32 E | WM | 27 | SW SW | 17.0 | APOD/POU |
| 23 S | 32 E | WM | 27 | SW SW | 23.0 | APOD |
| 23 S | 32 E | WM | 27 | SE SW | 17.0 | APOD/POU |

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed Changes |
| 23 S | 32 E | WM | 27 | SE SW | 23.0 | APOD |
| Total | | | | | 160.0 | |

12. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 11060 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 27 | NW SW | POD 3 -- SOUTH 79 DEGREES 27' EAST, 518 FEET FROM W1/4 CORNER OF SECTION 27 |

13. Transfer Application T-13395 proposes an additional point of diversion approximately 148 feet downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 27 | SW NW | POD 4 - LATITUDE: 43 DEG 32' 54.84" N LONGITUDE: -118 DEG 52' 46.84" W |

14. Transfer Application T-13395 also proposes to change the place of use for a portion of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 23 S | 32 E | WM | 27 | NE NW | 8.0 |
| 23 S | 32 E | WM | 27 | NW NW | 5.1 |
| 23 S | 32 E | WM | 27 | SW NW | 7.0 |
| 23 S | 32 E | WM | 27 | SE NW | 10.0 |
| 23 S | 32 E | WM | 28 | NE SE | 7.9 |
| 23 S | 32 E | WM | 28 | NW SE | 7.3 |
| 23 S | 32 E | WM | 28 | SW SE | 12.1 |
| 23 S | 32 E | WM | 28 | SE SE | 10.7 |
| Total | | | | | 68.1 |

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

Certificate: 28656 in the name of WAYNE HOWES (perfected under Permit G-47)
Use: IRRIGATION of 150.1 ACRES
Priority Date: AUGUST 2, 1955
Rate: 0.56 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WAYNE HOWES WELL #2, a tributary of POISON CREEK SLOUGH (SILVIES RIVER)

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 27 | SE NW | WAYNE HOWES WELL #2 - 20.5 CHAINS SOUTH AND 21.0 CHAINS EAST FROM THE NW CORNER OF SECTION 27 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed Changes |
| 23 S | 32 E | WM | 27 | NE NW | 8.0 | APOA/POU |
| 23 S | 32 E | WM | 27 | NE NW | 30.0 | APOA |
| 23 S | 32 E | WM | 27 | NW NW | 5.1 | APOA/POU |
| 23 S | 32 E | WM | 27 | NW NW | 30.0 | APOA |
| 23 S | 32 E | WM | 27 | SW NW | 7.0 | APOA/POU |
| 23 S | 32 E | WM | 27 | SW NW | 30.0 | APOA |
| 23 S | 32 E | WM | 27 | SE NW | 10.0 | APOA/POU |
| 23 S | 32 E | WM | 27 | SE NW | 30.0 | APOA |
| Total | | | | | 150.1 | |

16. Transfer Application T-13395 proposes additional points of appropriation approximately 0.6 mile to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates/Measured Distances |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 28 | NW NE | WELL #3 -- LATITUDE: 43 DEG 33' 14.87" N LONGITUDE: -118 DEG 53' 16.62" W |
| 23 S | 32 E | WM | 28 | SW NE | WELL #2 - 2890 FEET NORTH AND 1520 FEET WEST FROM THE SE CORNER OF SECTION 28 |

17. Transfer Application T-13395 also proposes to change the place of use for a portion of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 23 S | 32 E | WM | 27 | NE SW | 7.5 |
| 23 S | 32 E | WM | 27 | NW SW | 7.6 |
| 23 S | 32 E | WM | 27 | SW SW | 7.5 |
| 23 S | 32 E | WM | 27 | SE SW | 7.5 |
| Total | | | | | 30.1 |

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

Certificate: 33151 in the name of L. L. JACOBS (perfected under Permit G-1484)
Use: SUPPLEMENTAL IRRIGATION of 154.0 ACRES
Priority Date: NOVEMBER 4, 1959
Rate: 1.93 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

acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: JACOBS WELL NO. 2; a tributary of SILVIES RIVER

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 28 | SW NE | JACOBS WELL NO. 2 - 2890 FEET NORTH AND 1520 FEET WEST FROM THE SE CORNER OF SECTION 28 |

Authorized Place of Use:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed Changes |
| 23 S | 32 E | WM | 28 | NE SE | 7.9 | APOA/POU |
| 23 S | 32 E | WM | 28 | NE SE | 29.7 | APOA |
| 23 S | 32 E | WM | 28 | NW SE | 7.3 | APOA/POU |
| 23 S | 32 E | WM | 28 | NW SE | 32.7 | APOA |
| 23 S | 32 E | WM | 28 | SW SE | 12.1 | APOA/POU |
| 23 S | 32 E | WM | 28 | SW SE | 27.6 | APOA |
| 23 S | 32 E | WM | 28 | SE SE | 10.7 | APOA/POU |
| 23 S | 32 E | WM | 28 | SE SE | 26.0 | APOA |
| Total | | | | | 154.0 | |

19. Transfer Application T-13395 proposes additional points of appropriation as follows:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates/Measured Distances | Approximate distance from original point of appropriation in miles (mi.) |
|------|------|-----|-----|-------|---|--|
| 23 S | 32 E | WM | 27 | SE NW | HOWES WELL #2 - 20.5 CHAINS SOUTH AND 21.0 CHAINS EAST FROM THE NW CORNER OF SECTION 27 | 0.6 mi. |
| 23 S | 32 E | WM | 28 | NW NE | WELL #3 - LATITUDE: 43 DEG 33' 14.87" N LONGITUDE: -118 DEG 53' 16.62" W | 0.3 mi. |

20. Transfer Application T-13395 also proposes to change the place of use for a portion of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 23 S | 32 E | WM | 27 | NE SW | 9.5 |
| 23 S | 32 E | WM | 27 | NW SW | 9.5 |
| 23 S | 32 E | WM | 27 | SW SW | 9.5 |
| 23 S | 32 E | WM | 27 | SE SW | 9.5 |
| Total | | | | | 38.0 |

21. The fifth right to be transferred is as follows:

Certificate: 33152 in the name of L. L. JACOBS (perfected under Permit S-25838)
Use: IRRIGATION of 154.0 ACRES
Priority Date: OCTOBER 28, 1958

Rate: 1.93 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: POISON CREEK SLOUGH, a tributary of SILVIES RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 28 | NW NE | POD 2 - 4880 FEET NORTH AND 1940 FEET WEST FROM THE SE CORNER OF SECTION 28 |

Authorized Place of Use:

| IRRIGATION | | | | | | |
|------------|------|-----|-----|-------|-------|------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed Changes |
| 23 S | 32 E | WM | 28 | NE SE | 7.9 | APOD/POU |
| 23 S | 32 E | WM | 28 | NE SE | 29.7 | APOD |
| 23 S | 32 E | WM | 28 | NW SE | 7.3 | APOD/POU |
| 23 S | 32 E | WM | 28 | NW SE | 32.7 | APOD |
| 23 S | 32 E | WM | 28 | SW SE | 12.1 | APOD/POU |
| 23 S | 32 E | WM | 28 | SW SE | 27.6 | APOD |
| 23 S | 32 E | WM | 28 | SE SE | 10.7 | APOD/POU |
| 23 S | 32 E | WM | 28 | SE SE | 26.0 | APOD |
| Total | | | | | 154.0 | |

22. Transfer Application T-13395 proposes an additional point of diversion approximately 0.7 mile upstream to:

| Twp | Rng | Mer | Sec | Q-Q | Survey Coordinates |
|------|------|-----|-----|-------|---|
| 23 S | 32 E | WM | 27 | SW NW | POD 4 – LATITUDE: 43 DEG 32' 54.84" N LONGITUDE: -118 DEG 52' 46.84" W |

23. Transfer Application T-13395 also proposes to change the place of use for a portion of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 23 S | 32 E | WM | 27 | NE SW | 9.5 |
| 23 S | 32 E | WM | 27 | NW SW | 9.5 |
| 23 S | 32 E | WM | 27 | SW SW | 9.5 |
| 23 S | 32 E | WM | 27 | SE SW | 9.5 |
| Total | | | | | 38.0 |

Transfer Review Criteria (OAR 690-380-4010)

24. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
25. A diversion structure and ditch 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-13395.
26. The proposed changes would not result in enlargement of the rights.
27. The proposed changes would not result in injury to other water rights.
28. All other application requirements are met.

Conclusions of Law

The additional points of diversion, additional points of appropriation, and change in places of use proposed in Transfer Application T-13395 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:


1. The additional points of diversion, additional points of appropriation, and change in places of use proposed in Transfer Application T-13395 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 1991, 1991, 11060, 28656, 33151, and 33152, and any related decree.
3. Water right Certificates 1991, 1991, 11060, 28656, 33151, and 33152 are cancelled. A new certificate will be issued describing that portion of Certificate 28656 not affected by this transfer.
4. The quantity of water, as authorized by Certificate 1991, diverted at the new additional point of diversion (POD 4), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. The quantity of water, as authorized by Certificate 11060, diverted at the new additional point of diversion (POD 4), together with that diverted at the original point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 3).

6. The quantity of water, as authorized by Certificate 28656, diverted at the new additional points of appropriation (Well #2 and Well #3), together with that diverted at the original point of appropriation (Wayne Howes Well #2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Wayne Howes Well #2).
7. The quantity of water, as authorized by Certificate 33151, diverted at the new additional points of appropriation (Well #3 and Howes Well #2), together with that diverted at the original point of appropriation (Jacobs Well No. 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Jacobs Well No. 2).
8. The quantity of water, as authorized by Certificate 33152, diverted at the new additional point of diversion (POD 4), together with that diverted at the original point of diversion (POD 2), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 2).
9. 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 diversion/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.
10. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
11. The former places 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, 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 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 in Salem, Oregon on

JAN 03 2022



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: JAN 04 2022