

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

In the Matter of Transfer Application )  
T-12693, Washington County )

**REVISED**  
PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF A  
CHANGE IN POINT OF DIVERSION  
AND 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**

PATRICK SPEER  
1657 NE 13<sup>TH</sup> STREET  
BEND, OR 97701

**Receiving Landowner**

WILLIAM DUYCK  
3050 SW 331 ST AVE  
HILLSBORO, OR 97123

**Findings of Fact**

1. On June 14, 2017, PATRICK SPEER filed an application to change the point of diversion and to change the place of use under Certificates 15472 and 88122. The Department assigned the application number T-12693.
2. WILLIAM DUYCK, 3050 SW 331<sup>ST</sup> AVE, HILLSBORO, OR 97123, is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on June 20, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On April 9, 2018, the Department contacted Patrick Speer by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by May 25, 2018.
5. On April 9, 2018, the U.S. Bureau of Reclamation was notified of the transfer application; no comments were received from the Bureau within 90 days of the notification.

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.

6. On May 1, 2018, the applicant's agent submitted revised maps to correctly identify the acres being transferred to the new place of use.
7. On May 4, 2018, the Tualatin Valley Irrigation District (District) certified that they consented to the applicant's proposed water right transfer application and maps. Transfer Application T-12693 proposes to transfer a water right(s) within the boundaries of the District and involving Certificate 88122 held by the U.S. Bureau of Reclamation.
8. On June 13, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12693 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 13, 2018, for the applicant to respond.
9. On June 27, 2018, the applicant's agent contacted the Department to correct the location of the proposed point of diversion, as it was identified in the application.
10. On June 27, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12693 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of July 30, 2018, for the applicant to respond.
11. On June 29, 2018, 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. The applicant also requested 5 years in order to complete full beneficial use of the water under T-12693.
12. On October 8, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12693 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 October 9, 2018, and in the Portland Tribune newspaper pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
13. On October 26, 2018, the Department determined specific findings needed to be included to identify the U.S. Bureau of Reclamation, as they are the certificate holder of record for Certificate 88122, which will be modified by this order. The Department determined a revised Preliminary Determination would need to be issued.
14. After proof of completion, any water right certificate issued to confirm the changes to certificate 88122 under Transfer T-12693 is to remain in the name of the U.S. Bureau of Reclamation. All other confirming certificates will be issued in the name of the receiving land owner.
15. The portion of the first right to be transferred is as follows:
  - Certificate:** 15472 in the name of C. B. BUCHANAN (perfected under Permit S-15058)
  - Use:** IRRIGATION of 54.0 ACRES
  - Priority Date:** AUGUST 20, 1941
  - Rate:** 0.68 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** TUALATIN RIVER, a tributary of WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
1 S	3 W	WM	3	SE SE	1

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	3	NE SE	49	24.9
1 S	3 W	WM	3	NW SE	49	6.2
1 S	3 W	WM	3	SW SE	49	2.3
1 S	3 W	WM	3	SE SE	49	20.6
					Total	54.0

16. Transfer Application T-12693 proposes to move the authorized point of diversion approximately 3.4 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	11	NE SE	R-46.1 - 540 FEET NORTH AND 1760 FEET EAST FROM THE SE CORNER OF DLC 49

Transfer Application T-12693 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	3 W	WM	11	SW NE		8.1
1 S	3 W	WM	11	SE NW		2.1
1 S	3 W	WM	11	NE SW	3	8.7
1 S	3 W	WM	11	SE SW	4	4.3
1 S	3 W	WM	11	NW SE		28.1
1 S	3 W	WM	11	SW SE		2.7
					Total	54.0

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

**Certificate:** 88122 in the name of US BUREAU OF RECLAMATION (perfected under Permit S-35792)

**Use:** IRRIGATION of 34.5 ACRES and SUPPLEMENTAL IRRIGATION of 52.8 ACRES

**Priority Date:** FEBRUARY 20, 1963

**Rate:** 1.09 CUBIC FEET PER SECOND, BEING 0.61 CFS FROM SCOGGINS CREEK AND RESERVOIR, 0.02 CFS FROM GALES CREEK, AND 0.46 CFS FROM THE TUALATIN RIVER

**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 ONE-

EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion of not to exceed 2.5 acre-feet for each acre irrigated during the irrigation season of each year from direct flow and storage from the reservoir constructed under Permit R-5777 and as evidenced by Certificate 81149; provided further that the right allowed herein 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 herein. The right is further limited to the use of stored water only on the lands described as supplemental irrigation.

**Source:** SCOGGINS CREEK, GALES CREEK, AND SCOGGINS RESERVOIR/HENRY HAGG LAKE (constructed under Permit R-5777), tributaries to the TUALATIN RIVER, and the TUALATIN RIVER, a tributary of the WILLAMATTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	3 W	WM	11	NE SE	540 FEET NORTH AND 1760 FEET EAST FROM THE SE CORNER OF DLC 49

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	3 W	WM	11	SW NE		7.8
1 S	3 W	WM	11	NE SW	3	2.3
1 S	3 W	WM	11	NE SE		0.2
1 S	3 W	WM	11	NW SE		23.4
1 S	3 W	WM	11	SW SE		0.8
Total						34.5

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	3	NE SE	49	26.5
1 S	3 W	WM	3	NW SE	49	6.4
1 S	3 W	WM	3	SW SE	49	2.3
1 S	3 W	WM	3	SE SE	49	17.6
Total						52.8

18. Transfer Application T-12693 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
1 S	3 W	WM	11	SE NW	49	12.4
1 S	3 W	WM	11	NE SW	49	21.0
1 S	3 W	WM	11	SE SW	49	1.1
Total						34.5

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	3 W	WM	11	SW NE	8.1
1 S	3 W	WM	11	SE NW	2.1
1 S	3 W	WM	11	NE SW	8.7
1 S	3 W	WM	11	SE SW	3.1
1 S	3 W	WM	11	NW SE	28.1
1 S	3 W	WM	11	SW SE	2.7
Total					52.8

19. 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)]***

20. 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.
21. 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-12693.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. All other application requirements are met.

**Determination and Proposed Action**

The change in point of diversion and change in place of use proposed in Transfer Application T-12693 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-12693 is approved, the final order will include the following:*

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-12693 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 15472 and 88122 and any related decree.*

3. *Water right Certificate 15472 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Water right certificate 88122 is modified. A superseding confirming-remaining water right certificate in the name of the U.S. Bureau of Reclamation will be issued when the Department determines it is necessary for record keeping.*
5. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
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 the point of diversion on the Tualatin River at the location described in Finding of Fact No. 16.*
  - 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.*
  - d. *The water user shall maintain and operate the existing measurement device for Certificate 88122 and shall make such improvements as may be required by the Department.*
7. *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.*
8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *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 receiving landowner to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.*

10. *Water right certificate 88122 is modified. After satisfactory proof of completion has been determined by the Department, a superseding confirming-remaining water right certificate in the name of the U.S. Bureau of Reclamation will be issued when the Department determines it is necessary for record keeping.*
11. *After satisfactory proof of completion has been determined by the Department, a new certificate confirming the changes to originating water right Certificate 15472 will be issued.*

Dated at Salem, Oregon this JAN 28 2019.

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

This revised Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@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

January 28, 2019

PATRICK SPEER  
19863 QUAIL PINE LOOP  
BEND, OR 97702

SUBJECT: Water Right Transfer Application T-12693

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12693. 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 Hillsboro Argus 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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12693  
Jacob W. Constans, District 18 Watermaster (*via e-mail*)  
Eric Urstadt, Agent for the applicant (*via e-mail*)  
William Duyck, Receiving Landowner  
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