

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12934, Harney County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS 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

WILLIAM AND JACKIE DUNBAR
9622 VICTOR RD
ANCHORAGE, AK 99515

Findings of Fact

1. On May 29, 2018, WILLIAM AND JACKIE DUNBAR filed an application to change the points of diversion and to change the place of use under adjudicated, un-certificated rights (Silvies River, 1926 Volume 9, Page 79). The Department assigned the application number T-12934.
2. Notice of the application for transfer was published on June 5, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 18, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12934 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of November 19, 2019, for the applicants to respond. The applicants 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.

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

Decree: Silvies River 1926 in the name of C. E. PARKER (Volume 9, Page 79)
Use: IRRIGATION of 64.0 ACRES
Priority Date: 1898
Rate: 0.80 CUBIC FOOT PER SECOND
Period of Use: USUALLY MARCH 20 TO SEPTEMBER 1
Source: SILVIES RIVER

Authorized Point of Diversion: SLOUGH AND PARKER DITCH

Authorized Place of Use:

PRIORITY DATE: 1898					
IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	30 E	WM	8	SW SE	15.0
22 S	30 E	WM	8	SE SE	20.0
22 S	30 E	WM	9	SW SW	20.0
22 S	30 E	WM	16	NE NW	3.0
22 S	30 E	WM	16	NW NW	5.0
22 S	30 E	WM	17	NE NE	1.0
Total					64.0

5. Transfer Application T-12934 proposes to move the point of diversion approximately 2.0 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	30 E	WM	8	SW SW	BRIDGE - 1250 FEET NORTH AND 700 FEET EAST FROM THE SW CORNER OF SECTION 8

6. Transfer Application T-12934 also proposes to change the place of use for 3.0 acres located in NE NW of Section 16 to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
22 S	30 E	WM	8	NW SW	1	1.7
22 S	30 E	WM	8	SW SE	4	1.3
Total						3.0

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

Decree: Silvies River 1926 in the name of LUTE PARKER (Volume 9, Page 79)
Use: IRRIGATION of 50.0 ACRES
Priority Date: 1898
Rate: 0.63 CUBIC FOOT PER SECOND
Period of Use: USUALLY MARCH 20 TO SEPTEMBER 1
Source: SILVIES RIVER

Authorized Point of Diversion: SLOUGH AND PARKER DITCH

Authorized Place of Use:

PRIORITY DATE: 1898					
IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	30 E	WM	8	NE SW	10.0
22 S	30 E	WM	8	NW SW	20.0
22 S	30 E	WM	8	SE SW	20.0
Total					50.0

8. Transfer Application T-12934 proposes to move the point of diversion approximately 2.0 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	30 E	WM	8	SW SW	BRIDGE - 1250 FEET NORTH AND 700 FEET EAST FROM THE SW CORNER OF SECTION 8

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

Decree: Silvies River 1926 in the name of E. P. SYLVESTER (Volume 9; Page 79)

Use: IRRIGATION of 84.0 ACRES

Priority Date: 1898

Rate: 1.05 CUBIC FEET PER SECOND

Period of Use: USUALLY MARCH 20 TO SEPTEMBER 1

Source: SILVIES RIVER

Authorized Point of Diversion: SLOUGHS

Authorized Place of Use:

PRIORITY DATE: 1898					
IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
22 S	30 E	WM	6	SE SE	12.0
22 S	30 E	WM	7	NE NE	22.0
22 S	30 E	WM	7	SE NE	20.0
22 S	30 E	WM	8	NW NW	10.0
22 S	30 E	WM	8	SW NW	20.0
Total					84.0

10. Transfer Application T-12934 proposes to move the point of diversion approximately 2.0 miles upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
22 S	30 E	WM	8	SW SW	BRIDGE - 1250 FEET NORTH AND 700 FEET EAST FROM THE SW CORNER OF SECTION 8

11. 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)]

12. 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.
13. 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-12934.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The change in points of diversion and change in place of use proposed in Transfer Application T-12934 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-12934 is approved, the final order will include the following:

1. *The change in points of diversion and change in place of use proposed in Transfer Application T-12934 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 the Silvies River 1926 Decree adjudicated, un-certificated rights (Silvies River, 1926 Volume 9, Page 79-210.*
3. *The Silvies River 1926 Decree contains descriptions of the rights to be transferred; the rights described and/or identified as C. E. Parker, Lute Parker, and E. P. Sylvester are cancelled.*
4. *The quantity of water diverted at the new point of diversion (Bridge), shall not exceed the quantity of water lawfully available at the original points of diversion (Slough and Parker Ditch).*
5. *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 new point of diversion.*
 - 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.*
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, being in the name of C. E. Parker, 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, 2021**. 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 in Salem, Oregon on **JAN 10 2020**



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

This 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

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
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(503) 986-0900
Fax (503) 986-0904

January 10, 2020

WILLIAM AND JACKIE DUNBAR
9622 VICTOR RD
ANCHORAGE, AK 99515

SUBJECT: Water Right Transfer Application T-12934

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12934. 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 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-12934
J.R. Johnson, District 10 Watermaster (via e-mail)
Scott D. Montgomery, Agent for the applicant (via e-mail)

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