



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

October 27, 2021

VIA CERTIFIED MAIL AND E-MAIL

**Applicant**

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

SUBJECT: Water Right Transfer Application T-13395

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13395. 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.

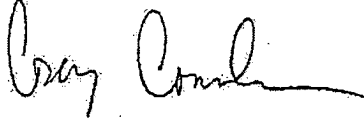
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer application file T-13395  
J R. Johnson, District 10 Watermaster (*via e-mail*)  
Scott D. Montgomery, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13395, Harney County	)	PROPOSING APPROVAL FOR ADDITIONAL
	)	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 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

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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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. 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	

7. 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

8. 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

9. 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

10. 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
23 S	32 E	WM	27	SE SW	23.0	APOD
Total					160.0	

11. 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

12. 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

13. 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

14. 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

15. 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

16. 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

17. 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	

18. 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.

19. 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	

20. 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	

21. 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

22. 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)**

23. 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.

24. 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.
25. The proposed changes would not result in enlargement of the rights.
26. The proposed changes would not result in injury to other water rights.
27. All other application requirements are met.

#### **Determination and Proposed Action**

The additional points of diversion, additional points of appropriation, and change in places of use proposed in Transfer Application T-13395 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

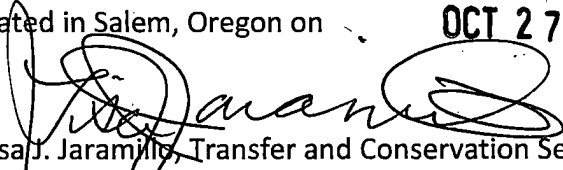
*If Transfer Application T-13395 is approved, the final order will include the following:*

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).*

13. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on

OCT 27 2021

  
Lisa J. Jaramila, 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 503-979-3917 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.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**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.

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.*