

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

In the Matter of Transfer Application) FINAL ORDER APPROVING OF
T-12417, Clackamas County) ADDITIONAL POINTS OF
) DIVERSION AND A REDESCRIPTION
) OF A WATER RIGHT

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

BRIGHT WORKS INC.
BURR BOUTWELL
920 FAIRWAY RD
LAKE OSWEGO, OR 97034

Findings of Fact

1. On July 1, 2016, BURR BOUTWELL /BRIGHT WORKS INC. filed an application for additional points of diversion under Certificate 30343. The Department assigned the application number T-12417.
2. Notice of the application for transfer was published on July 12, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 30, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12417 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2017, for the applicant to respond. The date for response was extended. The applicant requested that the Department proceed with the issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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.

4. On April 24, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12417 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on April 25, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 30343 in the name of HARVEY L. BROWN (perfected under Permit S- 26844)
Use: IRRIGATION OF 0.7 ACRE
Priority Date: JUNE 22, 1960
Rate: 0.006 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 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: KELLOGG CREEK, tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	1 E	WM	1	SW NE	47

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 E	WM	1	SW NE	47	0.70

6. Upon review of the submitted transfer application document, the Department determined that there are scrivener's errors in the ¼ ¼ section description of the authorized place of use and authorized point of diversion as described by Certificate 30343, shown in Finding No. 4. Tax lot maps from Clackamas County show the authorized place of use and authorized point of diversion as being located (the correct ¼ ¼ section shown in **bold** type:)

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Tax Lot	Proposed POD
2 S	1 E	WM	1	SE NE	47	0.35	1901	POD A
2 S	1 E	WM	1	SE NE	47	0.35	1902	POD C
2 S	1 E	WM	1	SE NE	47	0.36	1900	~

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	1 E	WM	1	SE NE	47

7. Applicant submitted information that better describes the authorized point of diversion as being located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
2 S	1 E	WM	1	SE NE	47	POD B - LATITUDE 45.42821° N LONGITUDE -122.62257° W

8. Transfer Application T-12417 proposes additional points of diversion located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates	Approximate Distance from Authorized POD
2 S	1 E	WM	1	SE NE	47	POD A- LATITUDE 45.42839 ° N LONGITUDE -122.62288° W	103 ft
2 S	1 E	WM	1	SE NE	47	POD C- LATITUDE 45.42813° N LONGITUDE -122.62241° W	50 ft

9. 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)]

10. 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.
11. A pump, pipeline, and sprinkler system 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-12417.
12. The proposed change would not result in enlargement of the rights.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

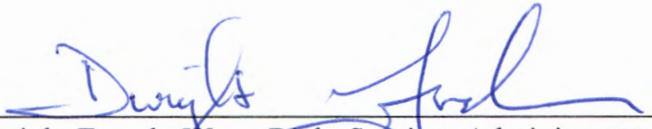
The additional points of diversion proposed in Transfer Application T-12417 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of diversion proposed in Transfer Application T-12417 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 30343 and any related decree.

3. Water right Certificate 30343 is cancelled. A new certificate will be issued correctly describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the proposed additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.
The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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 change and full beneficial use of the water.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 2 day of June 2017.



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

Mailing date: JUN 07 2017