# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application		)	FINAL ORDER
T-12917, Marion County	•	)	APPROVING CHANGES IN POINTS OF
		)	APPROPRIATION AND ADDITIONAL
		)	POINTS OF APPROPRIATION

## **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**

C & E BRENTANO FAMILY LP 5009 DAVIDSON ROAD NE ST PAUL, OR 97137

# **Findings of Fact**

- 1. On May 7, 2018, C & E BRENTANO FAMILY LP, filed an application to change the points of appropriation under Certificates 35370, 40094, 40215 and for additional points of appropriation under Certificates 35496, 35497, and 40094. The Department assigned the application number T-12917.
- 2. Notice of the application for transfer was published on May 15, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On February 7, 2019, the agent for the applicant submitted an amended application page for Certificate 40215.
- 4. On September 10, 2019 the Department approved Transfer Application T-12540, as evidenced by Special Order Volume 113, Pages 1108-1112, and a correcting order approved November 26, 2019, as evidence by Special Order Volume 114, Pages 379-381, which cancelled Certificate 40215. Remaining Right Certificate 94734 was issued for the portion of the right not involved in Transfer Application T-12540. Transfer Application T-12917 proposes to transfer only the acres associated with Certificate 94734.

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.

- 5. On June 29, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12917 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 1, 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 September 29, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-12917 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 5, 2021, and in the Woodburn Independent Newspaper on October 6 and 13, 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: 35370 in the name of MAURICE H. MERTEN (perfected under Permit G-2556)

Use: IRRIGATION of 86.2 ACRES

**Priority Date:** DECEMBER 19, 1963

Rate: 0.82 CUBIC FOOT PER SECOND (CFS)

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, 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:** A WELL a tributary of MISSION CREEK

#### **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	. Measured Distances		
15	2 W	WM	30	NW NE 63		POA 2 - 430 FEET SOUTH AND 1920 FEET WEST FROM		
45	∠ VV	VVIVI	30	IN VV INE	63	THE NE CORNER OF LAMBERT DLC 63		

#### **Authorized Place of Use:**

			IRRIGAT	ION		
Twp	Rng	Mer	Sec	<del>α</del>	DLC	Acres
4 S	2 W	WM	19	SE SW	63	0.8
4 S	Ź W	WM	19 1	SW SE	63	1.9
4 S	2 W	WM	19	SE SE	63	1.3
4 S	2 W	WM	30	NE NE	63	20.2
4 S	2 W	WM	30	NW NE	63	33.8
4 S	2 W	WM	30	SW NE	63	8.0
4 S	2 W	WM	30	SE NE	63	2.0
4 S	2 W	WM	30	NE NW	63	17.8
4 S	4 S 2 W WM			SE NW	63	0.4
					Total	86.2

8. Transfer Application T-12917 proposes additional points of appropriation, under Certificate 35370, both approximately 1.0 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	-2 W	WM	20	SW SE	94	APOA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

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

Certificate:

35496 in the name of EDWARD T. BRENTANO (perfected under Permit G-2885)

Use:

**IRRIGATION of 201.9 ACRES** 

Priority Date: APRIL 23, 1965

Rate:

1.78 CUBIC FEET PER SECOND (CFS)

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, 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:

A WELL a tributary of MISSION CREEK

# **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	
4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95	

#### Authorized Place of Use:

			IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	19	SE SE	94	9.1
4 S	2 W	WM	20	SW SW	94	23.4
4.5	2 W	WM	20	SE SW	94	24.2
4 S	2 W	WM	20	NE SE	86	34.4
4 S	2 W	WM	20	NW SE	86	4.0
4 S	2 W	WM	20	SW SE	86	1.8
4 S	2 W	WM	20	SW SE	94	24.8
4 S	2 W	WM .	20	SE SE	86	14.6
4 S	2 W	WM	20	SE SE	94	20.4
4 S	2 W	WM	29	NE NE	94	8.6
4 S	2 W	WM	29	NW NE	94	11.0
4 S	2 W	WM	29	NE NW	94	10.8
4 S	2 W	WM	29	NW NW	94	10.8
4 S	2 W	WM	30	NE NE	94	4.0
					Total	201.9

10. Transfer Application T-12917 proposes an additional point of appropriation under Certificate 35496, approximately 0.3 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

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

**Certificate:** 35497 in the name of EDWARD T. BRENTANO (perfected under Permit G-3171)

Use: IRRIGATION of 46.8 ACRES

Priority Date: FEBRUARY 1, 1966

Rate: 0.59 CUBIC FOOT PER SECOND (CFS)

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, 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:** A WELL a tributary of unnamed stream (MISSION CREEK)

### **Authorized Point of Appropriation:**

[	Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
	4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95

#### **Authorized Place of Use:**

	IRRIGATION												
Twp	Twp Rng Mer Sec Q-Q DLC												
4 S	2 W	WM	19	SE SW	Suave DLC 62	3.6							
4 S	2 W	WM	19	NE SE	St. Paul's Catholic Mission DLC 75	9.0							
4 S	2 W	WM	19	SW SE	Suave DLC 62	14.2							
4 S	2 W	WM	19	SE SE	St. Paul's Catholic Mission DLC 75	1.6							
4 S	2 W	WM	19	SE SE	Suave DLC 62	18.4							
					Total	46.8							

12. Transfer Application T-12917 proposes an additional point of appropriation under Certificate 35497, approximately 0.3 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	q-q	DLC	Measured Distances
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

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

Certificate: 40094 in the name of EDWARD T. BRENTANO (perfected under Permit G-3920)

Use: IRRIGATION of 47.8 ACRES

Priority Date: DECEMBER 28, 1967

Rate: 0.6 CUBIC FOOT PER SECOND (CFS)

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, 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:** A WELL a tributary of MISSION CREEK

# **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC Measured Distances	
4 \$	2 W	WM	29	NW NE	94	POA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

#### **Authorized Place of Use:**

	IRRIGATION											
Twp	Rng	Mer	Q-Q	DLC	Acres							
4 S	2 W	WM	29	NE NE	94	3.0						
4 S	2 W	WM	29	NW NE	94	14.0						
4 S	2 W	WM	29	SW NE	94	6.1						
4 S	2 W	WM	29	SE NE	94	0.9						
4 S	2 W	WM	29	NE NW	94	6.1						
4 S	2 W	WM	29	NW NW	94	17.7						
			•		Total	47.8						

14. Transfer Application T-12917 proposes to move a portion of the point of appropriation under Certificate 40094, approximately 0.3 to 0.7 mile from the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	SW NW	56	RD POA 5 - 3450 FEET NORTH AND 470 FEET EAST FROM THE NW CORNER OF DLC 56
4 S	2 W	WM	30	SE SE	62	RD POA 4 – 1565 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 30
4 S	2 W	WM	32	SE SE	62	RD POA 3 – 425 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 32

15. Transfer Application T-12917 proposes additional points of appropriation under Certificate 40094, approximately 0.3 mile from the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances		
4 S	2 W	WM	20	SW SE	95	APOA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF DLC 95		

16. Transfer Application T-12917 proposes to assign specific wells to specific acres under Certificate 40094 as follows:

	IRRIGATION										
Twp	wp Rng Mer		Sec	Q-Q	Acres	POA					
4.5	2 W	WM	29	NE NE	3.0	POA 4					
, , , , ,						APOA 3					
4 S	2 W	wm	29	NW NE	14.0	POA 4					
	2 **	****	2	1444 142	17.0	APOA 3					
4.5	2 W	VA / N //	29	SW NE	6.1	POA 4					
4 S		WM				APOA 3					
4.6	2 W	14/0.4	29	SE NE	0.9	POA 4					
4 S		WM				APOA 3					
4.6	2.147	VA / D /	20	N/C N/A/		POA 4					
4 S	2 W	WM	29	NE NW	5.0	, APOA 3					
,	2 W		29	NE NW		RD POA 5					
4 S		WM			1.1	RD POA 4					
				<u></u>		RD POA 3					

	IRRIGATION									
Twp	Rng	Acres	POA							
4 S	2 W	WM	29	NW NW	15.0	POA 4				
43	Z VV	VVIVI	29	1400 1400	15.0	APOA 3				
	2 W		29		2.7	RD POA 5				
4 S		WM		NW NW		RD POA 4				
						RD POA 3				

Total | 47.8 |

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

Certificate:

94734 in the name of RAYMOND T. DAVIDSON (perfected under Permit G-4085)

Use:

**IRRIGATION of 2.7 ACRES** 

Priority Date: APRIL 16, 1968

Rate:

0.02 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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; 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.

Source:

A WELL a tributary of WILLAMETTE RIVER

## **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances		
4 S	2 W	WM.	29	SW NW	94	POA 5 - 3450 FEET NORTH AND 470 FEET EAST FROM THE NW CORNER OF BERNIER DLC 56		

#### Authorized Place of Use:

IRRIGATION										
Twp Rng Mer Sec Q-Q DLC Acres										
4 S	2 W	WM	29	NE NW	94	1.2				
4 S	2 W	WM	29	SE NW	94	1.5				
					Total	2.7				

18. Transfer Application T-12917 proposes to move the point of appropriation under Certificate 94734, approximately 0.5 to 0.7 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec.	Q-Q	DLC	Measured Distances		
4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95		
4 S	2 W	WM	29	NW NE	94	POA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94		

# Transfer Review Criteria (OAR 690-380-4010)

- 19. 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.
- 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-12917.
- 21. The proposed changes would not result in enlargement of the rights
- 22. The proposed changes would not result in injury to other water rights.
- 23. All other application requirements are met.

#### **Conclusions of Law**

The changes in points of appropriation and additional points of appropriation proposed in Transfer Application T-12917 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 changes in points of appropriation and additional points of appropriation proposed in Transfer Application T-12917 are approved.

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- 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 35370, 35496, 35497, 40094, and 94734 and any related decree.
- 3. Water right Certificates 35370, 35496, 35497, 40094, and 94734 are cancelled.
- 4. The quantity of water diverted under Certificate 35370 at the new additional points of appropriation (APOA 3 and APOA 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 2).
- 5. The quantity of water diverted under Certificate 94734 at the new points of appropriation (POA 3, POA 4), together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 5).
- 6. The quantity of water diverted under Certificate 35496, at the new additional point of appropriation (APOA 4), together with that diverted at the original point of appropriation (POA 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (POA 3).
- 7. The quantity of water diverted under Certificate 35497, at the new additional point of appropriation (APOA 4), together with that diverted at the original point of appropriation (POA 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (POA 3).

- 8. The quantity of water diverted under Certificate 40094, at the new points of appropriation (RD POA 3, RD POA 4, RD POA 5), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 4).
- 9. The quantity of water diverted under Certificate 40094, at the new additional point of appropriation (APOA 3), together with that diverted at the original point of appropriation (POA 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 4).
- 10. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 11. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2025**. 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.
- 12. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

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DEC 27 2021

isa J. Jaramillo, Transfer and Conservation Section Manager, for

THOMAS M BYLER, DIRECTOR

**Oregon Water Resources Department** 

Mailing Date: DEC 2 8 2021