

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10933, Marion County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION, A CHANGE IN
)	PLACE OF USE, A CHANGE IN
)	CHARACTER OF USE, AND PARTIAL
)	CANCELLATION OF WATER RIGHTS

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

RIVER-BEND SAND AND GRAVEL CO.
ATTN: ED MCGILL
PO BOX 12095
SALEM OR 97309

Findings of Fact

Background

1. On July 29, 2009, RIVER-BEND SAND AND GRAVEL CO. filed an application for additional points of appropriation, to change the place of use, and to change the character of use under Certificates 30302 and 83893, and for partial cancellation of Certificates 83034 and 83893. The Department assigned the application number T-10933.
2. On February 26, 2010, Ed McGill submitted supporting documents to the affidavit attesting to the use of water.
3. The applicant initially proposed to change the character of use to storage for off-season mining and industrial use under Certificate 30302. On April 20, 2010, the agent amended the application to change the character of use to include pond maintenance.

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 portion of the first right to be transferred is as follows:

Certificate: 30302 in the name of ANNA ETZEL (perfected under Permit G-795)
Use: IRRIGATION of 13.4 ACRES
Priority Date: MARCH 19, 1958
Rate: 0.13 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, is 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.
Source: A WELL within the MILL CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	2 W	WM	33	SW SE	WELL 1 (MARI 11267) - NORTH 61°56' WEST 2459.97 FEET FROM THE SE CORNER OF SECTION 33 (ALSO DESCRIBED AS 1150 FEET NORTH AND 2050 FEET WEST FROM THE SE CORNER OF SECTION 33)

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	33	NE SE	13.4

5. Transfer Application T-10933 proposes additional points of appropriation between approximately 1980 and 2425 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
8 S	2 W	WM	33	SW NE SE NE NE SE	100 100 200	PORTABLE PUMPING
8 S	2 W	WM	33	SE NE	100	WELL 3 - 3600 FEET NORTH AND 1290 FEET WEST FROM THE SE CORNER OF SECTION 33
8 S	2 W	WM	33	NE SE	300	WELL 4 - 380 FEET SOUTH AND 2590 FEET EAST FROM THE C¼ CORNER OF SECTION 33
8 S	2 W	WM	33	SE SE	300	WELL 2 - 1170 FEET NORTH AND 90 FEET WEST FROM THE SE CORNER OF SECTION 33

6. Transfer Application T-10933 proposes to change the character of use to 13.4 acre-feet for storage for industrial and mining uses and 20.1 acre-feet for pond maintenance.

7. Transfer Application T-10933 also proposes to change the place of use of the right to:

STORAGE AND POND MAINTENANCE				
Twp	Rng	Mer	Sec	Q-Q
8 S	2 W	WM	33	SE NE
8 S	2 W	WM	33	SW NE

8. Certificate 30302 sets an annual duty of 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. The annual duty of water for 13.4 acres of equivalent irrigation use would be 33.5 acre feet (13.4 acres x 2.5 acre-feet per acre).

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

Certificate: 83893 in the name of RIVER-BEND SAND AND GRAVEL (perfected under Permit G-9364)

Use: IRRIGATION of 64.8 ACRES

Priority Date: MAY 21, 1981

Rate: 0.37 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, is 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 in the event of a request for a change in point of appropriation, an additional point of appropriation, or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right.

Source: A WELL within the MILL CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	2 W	WM	33	NE SE	WELL 4 - 380 FEET SOUTH AND 2590 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	33	SW NE	26.8
8 S	2 W	WM	33	SE NE	27.5
8 S	2 W	WM	33	NE SE	10.0
8 S	2 W	WM	34	NW SW	0.5

10. Transfer Application T-10933 proposes additional points of appropriation between approximately 1200 and 2425 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
8 S	2 W	WM	33	SW NE SE NE NE SE	100 100 200	PORTABLE PUMPING (SUMP)
8 S	2 W	WM	33	SE NE	100	WELL 3: 3600 FEET NORTH AND 1290 FEET WEST FROM THE SE CORNER OF SECTION 33
8 S	2 W	WM	33	SW SE	300	WELL 1: 1150 FEET NORTH AND 2050 FEET WEST FROM THE SE CORNER OF SECTION 33
8 S	2 W	WM	33	SE SE	300	WELL 2: 1170 FEET NORTH AND 90 FEET WEST FROM THE SE CORNER OF SECTION 33

11. Transfer Application T-10933 proposes to change the character of use to industrial/manufacturing use and mining.
12. Transfer Application T-10933 also proposes to change the place of use of the right to:

INDUSTRIAL/MANUFACTURING USE AND MINING				
Twp	Rng	Mer	Sec	Q-Q
8 S	2 W	WM	33	SE NE
8 S	2 W	WM	33	SW NE
8 S	2 W	WM	33	NE SE
8 S	2 W	WM	34	NW SW

13. Certificate 83893 sets an annual duty of 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. The annual duty of water for 64.8 acres of equivalent irrigation use would be 162 acre feet (64.8 acres x 2.5 acre-feet per acre) for industrial/manufacturing and mining uses.
14. Notice of the application for transfer was published on August 18, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
15. On September 14, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10933 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 18, 2011, 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.

Transfer Review Criteria (OAR 690-380-4010)

16. 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.
17. 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-10933.

18. The proposed changes, as conditioned, would not result in enlargement of the rights.
19. The proposed changes, as conditioned, would not result in injury to other water rights.
20. Transfer Application T-10933 is contingent upon approval of Reservoir Application R-87643.

Partial Cancellation of Certificates 83893 and 83034

21. On July 29, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of a portion of the right under Certificate 83893 and 83034 was received from Ed McGill of River-Bend Sand & Gravel Company.
22. The portion of the first right to be cancelled is as follows:

Certificate: 83893 in the name of RIVER-BEND SAND AND GRAVEL (perfected under Permit G-9364)

Use: SUPPLEMENTAL IRRIGATION of 13.4 ACRES

Priority Date: MAY 21, 1981

Rate: 0.08 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, is 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 in the event of a request for a change in point of appropriation, an addition point or appropriation or repair of this well, the quantity of water allowed herein together with any other right from this point of appropriation shall not exceed the capacity of this well at the time of perfection of this right.

Source: A WELL in the MILL CREEK BASIN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	2 W	WM	33	NE SE	WELL 4 - 380 FEET SOUTH AND 2590 FEET EAST FROM THE C ¹ / ₄ CORNER OF SECTION 33

Authorized Place of Use to be cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	33	NE SE	13.4

23. The affidavit for the partial cancellation of Certificate 83893 lists 0.168 cubic foot per second (cfs) to be cancelled. However, the portion of the right to be cancelled, 13.4 acres, at a rate of diversion of 1/80 cfs per acre, is equal to 0.08 cfs.

24. The portion of the second right to be cancelled is as follows:

Certificate: 83034 in the name of DONALD J. ETZEL and the DEPARTMENT OF VETERAN'S AFFAIRS (perfected under Permit G-10764)
Use: IRRIGATION of 0.8 ACRE
Priority Date: SEPTEMBER 25, 1987
Rate: 0.01 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, is 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. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.
Source: THREE WELLS in the MILL CREEK BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	2 W	WM	33	SW SE	WELL 1 - 1150 FEET NORTH AND 2050 FEET WEST FROM SE CORNER OF SECTION 33
8 S	2 W	WM	33	SE SE	WELL 2 - 1170 FEET NORTH AND 90 FEET WEST FROM SE CORNER OF SECTION 33
8 S	2 W	WM	33	SE NE	WELL 3 - 3600 FEET NORTH AND 1290 FEET WEST FROM SE CORNER OF SECTION 33

Authorized Place of Use to be cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	2 W	WM	34	NW SW	0.8

Determination and Proposed Action

The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-10933 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

If Transfer Application T-10933 is approved, the final order will include the following:

- The additional points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-10933 are approved. The portions of the rights that have been abandoned are cancelled.*

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 30302, 83034, and 83893 and any related decree.*
3. *Approval of Transfer Application T-10933 is contingent upon approval of Reservoir Application R-87643.*
4. *Water right certificates 30302, 83034, and 83893 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.*
5. *The quantity of water diverted at the additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
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 each point of appropriation.*
 - 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*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred rights shall no longer receive water under the right.*
9. *The quantity of water allowed for storage and pond maintenance under the right described by Certificate 30302 is limited to an annual duty of 33.5 acre feet between March 1 and October 31 of each year, being 13.4 AF for storage for industrial and mining uses, and 20.1 AF for pond maintenance.*
10. *The quantity of water allowed for industrial/manufacturing and mining under the right described by Certificate 83893 is limited to an annual duty of 162 acre feet between March 1 and October 31 of each year.*
11. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 28 day of November, 2011.


Dwight French, Water Services Division Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have any questions about the information in this document, you may reach me at 503-986-0881 or teri.k.hranac@wrd.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.