



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 14, 2012

RENDATA INDUSTRIAL PARK LLC
700 MERLIN RD
GRANTS PASS, OR 97526

SUBJECT: Water Right Transfer Application T-11353

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11353. 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 Daily Courier 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 503-986-0881 or teri.k.hranac@wrд.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-11353
Kathy A. Smith, District 14 Watermaster (*via e-mail*)
James Desmet, Agent for the applicant (*via e-mail at quantumeng@cda.twcbc.com*)



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

In the Matter of Instream Transfer)	PRELIMINARY DETERMINATION
Application T-11353, Josephine County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE; AND PARTIAL
)	CANCELLATION OF CERTIFICATE
)	31332

Authority

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

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

RENDATA INDUSTRIAL PARK, LLC
700 MERLIN RD
GRANTS PASS, OR 97526

Findings of Fact

Background

1. On February 9, 2012, Rendata Industrial Park, LLC filed an application to change the place of use and character of use under Certificates 27802 and 31332 to instream use. The Department assigned the application number T-11353.
2. This instream transfer is to provide mitigation for ground water modifications in Transfer Applications T-11293 and T-11294.
3. On July 16, 2012, the applicant amended the application to adjust the quantity of water to be transferred instream under Certificate 31332.

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.

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

Certificate: 27802 in the name of BATE LUMBER CO. (perfected under Permit S-24598)

Use: MAINTENANCE OF BATE LUMBER CO. RESERVOIR
CONSTRUCTED UNDER PERMIT R-1969

Priority Date: JANUARY 7, 1957

Rate: 0.1 CUBIC FOOT PER SECOND (CFS)

Source: LOUSE CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	SW NE

Authorized Place of Use:

MILL POND				
Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	SW NE
35 S	6 W	WM	21	NW SE

5. Certificate 27802 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	6 W	WM	21	SW NE	1210 FEET NORTH 58.9 DEGREES EAST FROM THE CENTER OF SECTION 21

6. Certificate 27802 describes Louse Creek as being tributary to the Rogue River. Louse Creek is actually tributary to Jump-Off Joe Creek, which is tributary to the Rogue River.
7. Certificate 27802 does not specify a period of use.
8. A total of up to 72.4 acre-feet (AF) of water annually may be beneficially used under the existing right.
9. The second right to be transferred is as follows:

Certificate: 31332 in the name of BATE LUMBER CO. (confirmed by the Rogue River Decree)

Use: MANUFACTURING

Priority Date: JUNE 25, 1893

Rate: 0.10 CFS

Period of Use: APRIL 1 TO NOVEMBER 1 OF EACH YEAR

Source: LOUSE CREEK, tributary to JUMP-OFF-JOE CREEK

Authorized Point of Diversion: Not specified in Certificate

Authorized Place of Use:

MANUFACTURING				
Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	SW NE

10. Certificate 31332 does not describe the location of the point of diversion, however information is available from the Certified Water Right Examiner indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	6 W	WM	21	SW NE	1210 FEET NORTH 58.9 DEGREES EAST FROM THE CENTER OF SECTION 21

11. Certificate 31332 was issued to confirm a change in use and place of use approved by an order of the State Engineer entered January 9, 1961, recorded at Special Order Vol. 11, Page 5, pursuant to the provisions of ORS 540.510 to 540.530, and superseded certificate of water right recorded at page 16509, Volume 13, State Record of Water Right Certificates. No specific duty of water was listed in the Rogue River Decree or Certificate 16509 and subsequent Certificate 31332.
12. The original use of water confirmed by the Rogue River Decree under Certificate 16509 was for 0.25 cfs for irrigation of 15.0 acres.
13. Certificate 31332 does not describe an annual volume limit for the right.
14. Application T-11353 proposes to change the character of use under Certificates 27802 and 31332 to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values.
15. Application T-11353 proposes to change the place of use of Certificates 27802 and 31332 to a point located at the authorized point of diversion as described in Findings of Fact #5 and #10.
16. The applicant proposes the quantities water to be transferred instream be protected as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
27802	1/1 to 12/31	0.10	72.4
31332	1/1 to 12/31	0.06	42.6
Totals		0.16	115.0

17. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach or point established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing

instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

18. The applicant did not provide notice of the intent to transfer Certificates 27802 and 31332 to instream use to Josephine County prior to submission of the transfer application. However, the Department provided notification of the proposed action to Josephine County upon receipt of Transfer Application T-11351. The applicant provided to Josephine County the notice of the intent to transfer these rights to instream use on May 3, 2012.
19. The Department identified that the application did not include sufficient information to evaluate the quantity of water that could be transferred to instream use considering beneficial use without waste for manufacturing under Certificate 31332. Additional information was provided by the applicant on June 11, 2012, which resolved this deficiency.
20. Notice of the application for transfer was published on February 21, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
21. On July 18, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11353 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 20, 2012, 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.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

22. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
23. A pump and pipeline sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-11353.
24. Water use under the existing rights is subject to beneficial use without waste in accordance with ORS 536.310. The Department has identified that for Certificate 27802, 72.4 AF may be transferred to instream use beneficially and without waste. However, absent the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total quantity appropriated at the place of use under Certificate 31332 during the period April 1 through October 31 would be as follows:

Rate (CFS)	Volume AF)
0.25	106.12

Based upon further analysis and information from the applicant and department records, the total volume at full face value of the right could be beneficially used. Therefore, the

requested rate and volume can be transferred instream without enlargement as described in Finding of Fact #26. In addition, the applicant is proposing to cancel the remaining balance of Certificate 31332.

25. The applicant requested to transfer Certificate 31332 to year-round instream use. The current season of use for Certificate 31332 is April 1 to November 1. While this change may be made without enlarging the right, it has the potential to injure other water right holders by protecting water instream outside of period of allowed use authorized under Certificate 31332. Based upon evaluation of the source stream, other exiting water rights, and consultation with the Department's Watermaster, the Department has determined that the change may be made without injury. However to avoid any injury to other water rights, the instream rate has been reduced by the applicant to account for the larger season of use and not protect more water than could be beneficially used, 42.6 AF. Based on the annual volume limitation, the year 'round rate would be 0.06 cfs.
26. Based on Findings of Fact #8 and #25, on July 16, 2012, the applicant agreed to modify the quantities to be transferred and protected instream as follows:

Certificate	Period	Rate (cfs)	Volume (acre-feet)
27802	1/1 to 12/31	0.10	72.4
31332	1/1 to 12/31	0.06	42.6
Totals		0.16	115.0

27. The proposed changes, as modified, would not result in enlargement of the rights.
28. The proposed changes, as modified, would not result in injury to other water rights.
29. The amount and timing of the proposed instream flow, as modified, is allowable within the limits and use of the original water rights.
30. The protection of flows at the authorized point of diversion is appropriate, considering:
 - a) The instream water rights begin at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water rights.
31. There is an existing instream water right within a reach on Louse Creek that includes the proposed instream point under T-11353. Certificate 73037 was established under ORS 537.341 (state agency application process) for the purpose of providing required stream flows for migration, spawning, egg incubation, fry emergence, and juvenile rearing, and

carries a priority date of December 7, 1990. There do not appear to be any additional instream rights within this stretch of Louse Creek.

32. The existing instream water right established under ORS 537.341 (state agency application process), is sufficient to protect the monthly quantities of water necessary for providing the required stream flows for migration, spawning, egg incubation, fry emergence and juvenile rearing, but is not always met.
33. Therefore, by replacing a portion of instream water rights established under the state agency application process or under the minimum streamflow conversion process, any instream water right created as a result of this transfer will provide protection of streamflows previously identified as necessary for migration, spawning, egg incubation, fry emergence and juvenile rearing under earlier priority dates.
34. In addition, by adding to any instream water rights established in the future under the instream transfer or allocation of conserved water process for the same location, the instream right will provide protection for additional streamflows necessary for aquatic life and fish habitat, unless otherwise identified in a subsequent order establishing a new instream water right under those statutes.
35. The total monthly quantities of water to be protected under the existing and proposed instream rights at the point will provide for a beneficial purpose and do not exceed the estimated average natural flow.

Partial Cancellation of a Water Right

36. On July 16, 2012, the applicant submitted an affidavit partially cancelling a portion of Certificate 31332 as follows:

Certificate: 31332 in the name of BATE LUMBER CO. (confirmed by the Rogue River Decree)
Use: MANUFACTURING
Priority Date: JUNE 25, 1893
Rate: 0.15 CFS
Period of Use: APRIL 1 TO NOVEMBER 1 OF EACH YEAR
Source: LOUSE CREEK, tributary to JUMP-OFF-JOE CREEK
Authorized Point of Diversion: Not specified in Certificate
Authorized Place of Use:

MANUFACTURING				
Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	SW NE

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-11353 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR

690-380-5000, and OAR 690-077-0075, and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

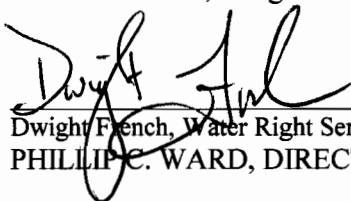
If Transfer Application T-11353 is approved, the final order will include the following:

1. *The changes in character of use and place of use to instream use proposed in application T-11353 are approved and the abandoned right should be cancelled.*
2. *Water right certificates 27802 and 31332 are cancelled. New certificates confirming the instream water rights shall be issued.*
3. *The instream water rights shall provide for the protection of streamflows for a point located in the SWNE of Section 21, Township 35 S, R 6 W, W.M., described as 1210 Feet North 58.9 Degrees East from the Center of Section 21.*
4. *The quantities of water to be protected under the instream water right are:*

<i>Certificate</i>	<i>Period</i>	<i>Rate (cfs)</i>
<i>27802</i>	<i>1/1 to 12/31</i>	<i>0.10</i>
<i>31332</i>	<i>1/1 to 12/31</i>	<i>0.06</i>
<i>Totals</i>		<i>0.16</i>

5. *Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.*
6. *Within the specified stream reach, the amount of water to which these rights are entitled shall not exceed the quantity of water legally available at the original point of diversion.*
7. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470, unless otherwise specified by an order approving a new instream water right under these statutes.*
8. *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 27802 and 31332 and any related decree.*

Dated at Salem, Oregon this 14 day of September, 2012.


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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrд.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.