



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 19, 2012

VIA E-MAIL

Applicant

John G. & Mary Beth Bernards
14295 SW Masonville Road
Mcminnville, OR 97128
johng@viclink.com

SUBJECT: Water Right Transfer Application T-11426

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11426. 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 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 Department's notice.

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@wr.d.state.or.us, if I may be of assistance.

Sincerely,

Teri Hranac
Transfer Specialist
Transfer and Conservation Section

Enclosures

cc: T-11426
Mike L. McCord, District 16 Watermaster (*via e-mail*)
James M. Schuette, Agent for the applicant (*via e-mail at jmsengineering@questoffice.net*)



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

In the Matter of Transfer Application T-11426, Yamhill County)))))	PRELIMINARY DETERMINATION PROPOSING APPROVAL OF A CHANGE IN PLACE OF USE; AND PARTIAL CANCELLATION OF PERMIT S-51712
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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.

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

John G. and Mary Beth Bernards
14295 SW Masonville Road
McMinnville, OR 97128

Agent

James M. Schuette
3000 Market St NE, Suite 426
Salem, OR 97301

Findings of Fact

Background

1. On May 30, 2012, John G. and Mary Beth Bernards filed an application to change the place of use under Certificates 40415 and 45126. The Department assigned the application number T-11246.

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

- Certificate:** 40415 in the name of EZEKIEL WILLIAMS (perfected under Permit S-22231)
- Use:** IRRIGATION OF 23.0 ACRES
- Priority Date:** APRIL 3, 1953
- Rate:** 0.29 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

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.

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: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	12	NW NW	3300 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF MILLER DLC 64

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	11	NE NE	64	0.3
5 S	5 W	WM	11	NE NE	65	1.8
5 S	5 W	WM	11	SE NE	64	0.5
5 S	5 W	WM	11	SE NE	65	6.6
5 S	5 W	WM	12	NW NW	64	3.6
5 S	5 W	WM	12	SW NW	64	10.2
Total						23.0

3. Certificate 40415 describes the point of diversion; however, additional information is available from the application and the Certified Water Right Examiner that indicates the point of diversion is also described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	12	NW NW	850 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 12

4. Transfer Application T-11426 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	11	NW NE	65	5.3
5 S	5 W	WM	11	SW NE	65	3.1
5 S	5 W	WM	11	NE NW	65	6.5
5 S	5 W	WM	11	SE NW	65	8.1
Total						23.0

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

Certificate: 45126 in the name of CHARLES AND VIVIAN HEADD (perfected under Permit S-36991)

Use: IRRIGATION OF 38.4 ACRES

Priority Date: JUNE 13, 1972

Rate: 0.48 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

2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SOUTH YAMHILL RIVER, tributary to the YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	12	NW NW	850 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	11	NE NE	64	0.1
5 S	5 W	WM	11	NE NE	65	13.8
5 S	5 W	WM	11	NW NE	65	2.8
5 S	5 W	WM	11	SW NE	65	9.5
5 S	5 W	WM	11	SE NE	65	11.6
5 S	5 W	WM	12	NW NW	64	0.6
Total						38.4

6. Transfer Application T-11426 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	5 W	WM	11	NE NW	65	9.0
5 S	5 W	WM	11	NW NW	65	8.9
5 S	5 W	WM	11	SW NW	65	10.6
5 S	5 W	WM	11	SE NW	65	9.9
Total						38.4

7. Notice of the application for transfer was published on June 5, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On September 18, 2012, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11426 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 18, 2012, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and had previously provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer. The applicants requested the deadline to apply water to full beneficial use be extended to October 1, 2016.

Transfer Review Criteria [OAR 690-380-4010(2)]

9. 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.
10. 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-11426.

11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right Permit

13. On September 13, 2012, an affidavit certifying that a portion of a water right permit has been abandoned and requesting cancellation of the right was received from John G. and Mary Beth Bernards. The permit to be cancelled is as follows:

Permit: In the name of JOHN G. BERNARDS (Application S-69760)
Use: IRRIGATION OF 61.4 ACRES
Priority Date: NOVEMBER 17, 1988
Rate: 0.77 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.
Period of Use: APRIL 1 THROUGH APRIL 30
Source: SOUTH YAMHILL RIVER, tributary of YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	5 W	WM	12	NW NW	850 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 12

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	5 W	WM	11	NW NE	5.3
5 S	5 W	WM	11	SW NE	3.1
5 S	5 W	WM	11	NE NW	15.5
5 S	5 W	WM	11	NW NW	8.9
5 S	5 W	WM	11	SW NW	10.6
5 S	5 W	WM	11	SE NW	18.0
Total					61.4

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11426 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of Permit S-51712 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned portion of Permit S-51712 will be cancelled.

If Transfer Application T-11426 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11426 is approved. The portion of Permit S-51712 that has been abandoned is 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 40415 and 45126, and any related decree.*
3. *Water right certificates 40415 and 45126 are cancelled.*
4. *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 the point of diversion.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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 change and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 19 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@wrđ.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.