

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-11742, Lane County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION,
	)	PLACE OF USE, CHARACTER OF USE
	)	AND PARTIAL CANCELLATION OF
	)	A WATER RIGHT

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

SENECA NOTI, LLC
PO BOX 851
EUGENE, OR 97440

Findings of Fact

1. On February 18, 2014, SENECA NOTI, LLC filed an application to change the point of diversion, place of use, character of use and cancel a portion of the water right under Certificate 5013. The Department assigned the application number T-11742.
2. Notice of the application for transfer was published on February 25, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 10, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11742 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 11, 2014, 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.

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 right to be transferred is as follows:

Certificate: 5013 in the name of FORCIA AND LARSEN (perfected under Permit S-5495)
Use: LOG POND AND FLUMING TIMBER
Priority Date: OCTOBER 1, 1921
Rate: 1.0 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-eighth of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: ELK CREEK and RESERVOIR to be constructed under Permit R-530, Certificate 5012, tributary of the LONG TOM RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	
17 S	7 W	WM	25		RESERVOIR
17 S	6 W	WM	30	SE SE	FLUME TERMINATION

5. Certificate 5013 does not describe the location of the point of diversion, however information is available from the applicant and Permit S-5495 map, indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	7 W	WM	25	NE NE	SOUTH 52° 24' EAST 1745 FEET FROM THE NORTH 1/4 CORNER OF SECTION 25

6. Transfer Application T-11742 proposes to move the authorized point of diversion approximately 1.85 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	6 W	WM	31	NE NE	40 FEET SOUTH AND 60 FEET WEST FROM THE NE CORNER OF SECTION 31

7. Transfer Application T-11742 also proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q
17 S	6 W	WM	29	SW SW
17 S	6 W	WM	30	SE SE
17 S	6 W	WM	30	NE SE
17 S	6 W	WM	31	NE NE
17 S	6 W	WM	32	NW NW

8. Transfer Application T-11742 proposes to change the character of use to General Industrial use.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. 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 diversion structure 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-11742.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

On February 18, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Rick Re, Vice-President and General Manager of Seneca Sawmill Company and Seneca Noti, LLC. The right to be cancelled is as follows:

Certificate: 5013 in the name of FORCIA & LARSEN (perfected under Permit S-5495)
Use: LOG POND AND FLUMING TIMBER
Priority Date: OCTOBER 1, 1921
Rate: 11.0 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 ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent in case of rotation.
Source: ELK CREEK AND RESERVOIR to be constructed under Permit R-530, Certificate 5012, tributary of LONG TOM RIVER

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	
17 S	7 W	WM	25		RESERVOIR
17 S	6 W	WM	30	SE SE	FLUME TERMINATION

Determination and Proposed Action

The change in point of diversion, place of use and character of use proposed in Transfer Application T-11742 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right 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 the right will be cancelled.

If Transfer Application T-11742 is approved, the final order will include the following:

- 1. The change in point of diversion, place of use, and character of use proposed in Transfer Application T-11742 are approved. The portion of the right 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 Certificate 5013 and any related decree.*
- 3. Water right Certificate 5013 is cancelled.*
- 4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 5. 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 diversion (new and existing).*
 - 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 meters or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 6. 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.
- 7. The former place of use of the transferred right shall no longer receive water under the right, except as listed in Finding of Fact No. 7.*
- 8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 19 day of August, 2014.


Dwight French, Water Right Services Division Administrator, for
Director, Oregon Water Resources Department

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Sarah Henderson at 503-986-0890 or Sarah.A.Henderson@wrds.state.or.us.

Protests should be addressed to the attention of Water Right Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.