



Oregon

Kate Brown, Governor

Water Resources Department

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August 6, 2015

JAMES A. AND JANET L. BIENIUS
AND BIZZY B SEVEN LLC
15350 SW SEQUOIA PARKWAY SUITE 250
PORTLAND, OR 97224

SUBJECT: Water Right Transfer Application T-11996

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11996. 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.

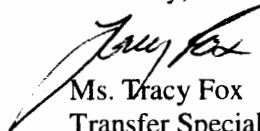
A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing 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 Tracy.L.Fox@ wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11996
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Shonee Langford, Agent for the applicant (*via e-mail*)
Steven Bruce, CWRE #430 (*via e-mail*)

enclosures

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

In the Matter of Transfer Application)
T-11996, Clackamas County)
)
)
)
)

**PRELIMINARY DETERMINATION
PROPOSING A CHANGE IN PLACE
OF USE AND PARTIAL
CANCELLATION OF A WATER
RIGHT**

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (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.

Applicants

JAMES A. AND JANET L. BISENIUS;
AND BIZZY B SEVEN LLC
15350 SW SEQUOIA PARKWAY SUITE 250
PORTLAND, OR 97224

Findings of Fact

1. On March 2, 2015, JAMES A. AND JANET L. BISENIUS; AND BIZZY B SEVEN LLC, filed an application to change the place of use under Certificate 20412. The Department assigned the application number T-11996.
2. Notice of the application for transfer was published on March 17, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Transfer Application T-11997 was filed on March 2, 2015, by MORNINGSTAR 2006 LLC, JAMES A. BISENIUS, to modify water right Permit S-54707. Permit S-54707 is appurtenant to some of the same lands to be modified in T-11996.
4. On April 30, 2015, the Department contacted the applicant’s agent by telephone with regard to a missing Affidavit for the Partial Cancellation of a Water Right as requested in the application.

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.

5. On June 9, 2015, the Department received the Affidavit for the Partial Cancellation of a Water Right.
6. On June 17, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11996 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 20, 2015, for the applicants to respond. The deadline was extended upon request of the applicants. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
7. The portion of the right to be transferred is as follows:

Certificate: 20412 in the name of WILLIAM RHODE (perfected under Permit S-17753)

Use: IRRIGATION of 9.8 ACRES

Priority Date: MAY 17, 1947, for 0.19 cubic foot per second, and MAY 28, 1947, for 0.108 cubic foot per second

Rate: 0.122 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: UNNAMED STREAM and CORRAL CREEK, a tributary of WILLIAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	20	NE NE
3 S	1 W	WM	20	NE NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	20	NE NE	5.6
3 S	1 W	WM	20	NW NE	4.2

8. Certificate 20412 does not describe the location of the points of diversion, however information is available from the applicant and their Certified Water Right Examiner (CWRE) indicating that the authorized points of diversion are better described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	20	NE NE	UNNAMED CREEK: 330 FEET SOUTH AND 1250 FEET WEST FROM THE NE CORNER OF SECTION 20
3 S	1 W	WM	20	NE NE	CORRAL CREEK: 890 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 20

9. The applicant proposes to relocate the point of diversion on Corral Creek to follow the movements of a naturally changing stream channel as allowed in ORS 540.510(5). The adjusted point of diversion for Corral Creek is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	20	NE NE	CORRAL CREEK: 780 FEET SOUTH AND 850 FEET WEST FROM THE NE CORNER OF SECTION 20

10. Transfer Application T-11996 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	20	NE NE	6.5
3 S	1 W	WM	20	NW NE	3.3

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

11. 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.
12. A pump, pipeline, and sprinkler system 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-11996.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

15. On June 9, 2015, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from James A. and Janet L. Bisenius; and Bizzy B Seven LLC.
16. The portion of the right to be cancelled is as follows:

Certificate: 20412 in the name of WILLIAM RHODE (perfected under Permit S-17753)
Use: IRRIGATION of 2.2 ACRES
Priority Date: MAY 17, 1947, for 0.018 cfs and MAY 28, 1947, for 0.010 cfs
Rate: 0.028 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: UNNAMED STREAM and CORRAL CREEK, tributary of WILLIAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
3 S	1 W	WM	20	NE NE
3 S	1 W	WM	20	NE NE

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	20	NE NE	1.9
3 S	1 W	WM	20	NW NE	0.3

Determination and Proposed Action


The change in place of use proposed in Transfer Application T-11996 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11996 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11996 is 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 20412 and any related decree.*
3. *Water right Certificate 20412 is modified and will be canceled upon approval or denial of T-11997. A new certificate will be issued describing that portion of the right not affected by Transfer T-11996 and cancellation and T-11997.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.*

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

Dated at Salem, Oregon this 6 day of August, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director,
Oregon Water Resources Department

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266