



Oregon

Kate Brown, Governor

Water Resources Department

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May 2, 2016

VIA E-MAIL

WAIBEL RANCHES LLC
3672 SW JUNIPER CANYON RD
PRINEVILLE, OR 97754
twenty1cows@yahoo.com

SUBJECT: Water Right Transfer Application T-12217

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12217. 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 Central Oregonian 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 503-986-0886 or Patrick.K.Starnes@wrд.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12217
Jeremy T. Giffin, Watermaster District 11 (*via e-mail*)
Bruce Estes, Agent/CWRE for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12217, Crook County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION,
)	CHANGES IN POINTS OF
)	DIVERSION, A CHANGE IN PLACE
)	OF USE, PARTIAL CANCELLATION
)	OF A WATER RIGHT AND A
)	CORRECTION OF A SCRIVENER'S
)	ERROR IN A WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement 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

WAIBEL RANCHES LLC
3672 SW JUNIPER CANYON RD
PRINEVILLE, OR 97754

Findings of Fact

1. On December 14, 2015, WAIBEL RANCHES LLC filed an application for an additional point of diversion, to change the points of diversion, to change the place of use, and cancellation of a portion of a water right under Certificates 606 and 51366. The Department assigned the application number T-12217.
2. Notice of the application for transfer was published on December 22, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 22, 2016, the agent for the applicant submitted a revised application and map and an affidavit for partial cancellation of water right certificate 606.

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. On April 7, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12217 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 9, 2016, 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.
5. The first right to be transferred is as follows:

Certificate: 606 in the name of JOSEPH LISTER (confirmed by Crooked River Decree)
Use: IRRIGATION OF 111.0 ACRES, AND STOCK AND DOMESTIC USE
Priority Dates: 1882 FOR 40.0 ACRES, 1895 FOR 30.0 ACRES, 1898 FOR 41.0 ACRES
Rate: 1.4 CUBIC FEET PER SECOND
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a reasonable amount for domestic and stock use, and 1.4 cubic feet per second for irrigation from February 1st to December 1st of each year.
Source: NORTH FORK CROOKED RIVER, tributary to the CROOKED RIVER

Authorized Point of Diversion:

Ditch Name
BINO COMMITTEE DITCH

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	NE SW	38.0
16 S	21 E	WM	22	SE SW	20.0
16 S	21 E	WM	28	NE NE	20.0
16 S	21 E	WM	28	NE SE	33.0
Total					111.0

6. The proposed points of diversion are described in the table below with the approximate measured distances from the authorized point of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Authorized Point of Diversion (miles)
16 S	21 E	WM	22	SW SW	480 FEET NORTH AND 250 FEET EAST FROM THE SW CORNER OF SECTION 22	0.79
16 S	21 E	WM	27	SW NW	1900 FEET SOUTH AND 280 FEET EAST FROM THE SW CORNER OF SECTION 22	1.05
17 S	21 E	WM	5	NW NE	10 FEET SOUTH AND 260 FEET EAST FROM THE N ¹ / ₄ CORNER OF SECTION 5	3.30

7. Transfer Application T-12217 also proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Acres	Priority Date
16 S	21 E	WM	21	SW SE	0.1	1895
16 S	21 E	WM	21	SE SE	5.5	1895
16 S	21 E	WM	22	NW SW	0.4	1895
16 S	21 E	WM	22	SW SW	9.2	1895
16 S	21 E	WM	28	NE NE	13.2	1895
16 S	21 E	WM	28	NW NE	1.6	1895
16 S	21 E	WM	28	SW NE	0.1	1898
16 S	21 E	WM	28	SE NE	3.8	1898
16 S	21 E	WM	28	NE SE	10.9	1898
16 S	21 E	WM	28	NE SE	5.8	1882
16 S	21 E	WM	28	NW SE	19.8	1882
16 S	21 E	WM	28	NW SE	10.0	1898
16 S	21 E	WM	28	SW SE	8.8	1898
16 S	21 E	WM	28	SW SE	13.0	1882
16 S	21 E	WM	28	SE SE	1.4	1882
17 S	21 E	WM	4	SE SW	7.4	1898
Total					111.0	

8. A scrivener's error was found in Certificate 606. The irrigation season was described from July 1st to September 15th, however information is available in the Crooked River Decree that states the irrigation season is in fact from February 1st until December 1st of each year.

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

Certificate: 51366 in the name of LES SCHWAB TIRE CENTERS OF OREGON INC. (perfected under Permit S-26731)

Use: IRRIGATION OF 51.8 ACRES

Priority Date: JANUARY 29, 1960

Rates: 1.30 CUBIC FEET PER SECOND (CFS); BEING 1.19 CFS FROM THE NORTH FORK CROOKED RIVER AND 0.11 CFS FROM COMMITTEE CREEK

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-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Sources: NORTH FORK CROOKED RIVER AND COMMITTEE CREEK, tributary to the CROOKED RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	21 E	WM	14	NE SW	DIVERSION 1 - 1820 FEET NORTH AND 2670 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	23	NW NW	DIVERSION 2 - 880 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	22	SE NE	DIVERSION 3 - 2310 FEET SOUTH AND 590 FEET WEST FROM THE NW CORNER OF SECTION 23

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	21	SW SE	0.4
16 S	21 E	WM	21	SE SE	2.8
16 S	21 E	WM	22	SW SW	3.2
16 S	21 E	WM	28	NW NE	0.6
16 S	21 E	WM	28	SW NE	0.1
16 S	21 E	WM	28	SE NE	1.6
16 S	21 E	WM	28	SE SW	1.2
16 S	21 E	WM	28	NW SE	28.3
16 S	21 E	WM	28	SW SE	13.4
16 S	21 E	WM	33	NE NW	0.2
Total					51.8

10. Certificate 51366 describes the location of the points of diversion as listed above, however information is available from the CWRE on site survey indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	21 E	WM	14	NW SE	DIVERSION 1 - 1820 FEET NORTH AND 2670 FEET EAST FROM THE SW CORNER OF SECTION 14
16 S	21 E	WM	23	NW NW	DIVERSION 2 - 850 FEET SOUTH AND 130 FEET EAST FROM THE NW CORNER OF SECTION 23
16 S	21 E	WM	22	SE NE	DIVERSION 3 - 2310 FEET SOUTH AND 590 FEET WEST FROM THE NW CORNER OF SECTION 23

11. The proposed additional point of diversion is described in the table below with the approximate measured distances from the authorized points of diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from authorized points of diversion miles (mi)		
						Div. 1	Div. 2	Div. 3
16 S	21 E	WM	22	SE NE	2540 FEET NORTH AND 2640 FEET EAST FROM THE SW CORNER OF SECTION 22	1.35 mi	0.66 mi	0.40 mi

12. Transfer Application T-12217 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	SW NE	4.1
16 S	21 E	WM	22	SE NE	7.9
16 S	21 E	WM	22	SE NW	14.6
16 S	21 E	WM	22	NE SW	23.0
16 S	21 E	WM	22	SE SW	2.2
Total					51.8

13. 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)]

14. 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 rights are subject to forfeiture under ORS 540.610.
15. 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-12217.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

Partial Cancellation of a Water Right

1. On February 22, 2016 an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Brad Waibel. The right to be cancelled is as follows:

Certificate: 606 in the name of JOSEPH LISTER (confirmed by Crooked River decree)

Use: IRRIGATION of 9.0 ACRES of LAND, AND STOCK AND DOMESTIC USE

Priority Date: 1898

Rate: 0.11 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed a reasonable amount for domestic and stock use, and 0.11 cubic feet per second for irrigation from February 1st until December 1st of each year.

Source: NORTH FORK CROOKED RIVER, tributary to the CROOKED RIVER

Authorized Point of Diversion:

Ditch Name
BINO COMMITTEE DITCH

Authorized Place of Use to be Cancelled:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	21 E	WM	22	NE SW	2.0
16 S	21 E	WM	28	NE SE	7.0
Total					9.0

Determination and Proposed Action

The additional point of diversion, change in points of diversion, change in place of use, and partial cancellation of a water right proposed in Transfer Application T-12217 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the requested portion of 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 portion of the right will be cancelled.


If Transfer Application T-12217 is approved, the final order will include the following:

- 1. The additional point of diversion, change in points of diversion, and change in place of use proposed in Transfer Application T-12217 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 Certificates 606 and 51366 and any related decree.*
- 3. Water right Certificate 606 is cancelled.*
- 4. Water right Certificate 51366 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 5. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.*
- 6. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*

7. *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 new point of diversion.*
 - 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.*
8. *The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determined 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.*
9. *The former place of use of the transferred rights shall no longer receive water under the rights.*
10. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.*

11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 3 day of May, 2016.


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@wr.d.state.or.us.

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>