



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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April 24, 2017

BRIGHT WORKS INC.
BURR BOUTWELL
920 FAIRWAY RD
LAKE OSWEGO, OR 97034

SUBJECT: Water Right Transfer Application T-12417

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12417. 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 503-986-0827 or duff.a.martin@oregon.gov if I may be of assistance.

Sincerely,

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12417
Amy J. Kim, District 20 Watermaster (via e-mail)
Peter D. Mohr, Agent for the applicant (via e-mail)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12417, Clackamas County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	DIVERSION AND A REDESCRIPTION
)	OF 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.

Applicant

BRIGHT WORKS INC.
BURR BOUTWELL
920 FAIRWAY RD
LAKE OSWEGO, OR 97034

Findings of Fact

1. On July 1, 2016, BURR BOUTWELL /BRIGHT WORKS INC. filed an application for additional points of diversion under Certificate 30343. The Department assigned the application number T-12417.
2. Notice of the application for transfer was published on July 12, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 30, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12417 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2017, for the applicant to respond. The date for response was extended. The applicant requested that the Department proceed with the 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 portion of the right to be transferred is as follows:

Certificate: 30343 in the name of HARVEY L. BROWN (perfected under Permit S- 26844)
Use: IRRIGATION OF 0.7 ACRE
Priority Date: JUNE 22, 1960
Rate: 0.006 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 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: KELLOGG CREEK, tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	1 E	WM	1	SW NE	47

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
2 S	1 E	WM	1	SW NE	47	0.70

5. Upon review of the submitted transfer application document, the Department has determined that there are scrivener's errors in the ¼ ¼ section description of the authorized place of use and authorized point of diversion as described by Certificate 30343, shown in Finding No. 4. Tax lot maps from Clackamas County show the authorized place of use and authorized point of diversion as being located (the correct ¼ ¼ section shown in **bold** type:)

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Tax Lot	Proposed POD
2 S	1 E	WM	1	SE NE	47	0.35	1901	POD A
2 S	1 E	WM	1	SE NE	47	0.35	1902	POD C
2 S	1 E	WM	1	SE NE	47	0.36	1900	~

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
2 S	1 E	WM	1	SE NE	47

6. Applicant submitted information that better describes the authorized point of diversion as being located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distance
2 S	1 E	WM	1	SE NE	47	POD B - LATITUDE 45.42821° N LONGITUDE -122.62257° W

7. Transfer Application T-12417 proposes additional points of diversion located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate Distance from Authorized POD
2 S	1 E	WM	1	SE NE	47	POD A- LATITUDE 45.42839 ° N LONGITUDE -122.62288° W	103 ft
2 S	1 E	WM	1	SE NE	47	POD C- LATITUDE 45.42813° N LONGITUDE -122.62241° W	50 ft

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 10. 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-12417.
- 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.

Determination and Proposed Action

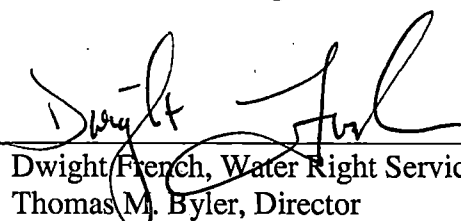
The additional points of diversion proposed in Transfer Application T-12417 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12417 is approved, the final order will include the following:

- 1. *The additional points of diversion proposed in Transfer Application T-12417 are approved.*
- 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 30343 and any related decree.*
- 3. *Water right Certificate 30343 is cancelled. A new certificate will be issued correctly describing that portion of the right not affected by this transfer.*

4. *The quantity of water diverted at the proposed additional points of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *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.
6. *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.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 24th day of April 2017.


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

This Preliminary Determination was prepared by Duff Martin. If you have questions about the information in this document, you may reach me at 503-986-0827 or Duff.A.Martin@oregon.gov.

Protests should be addressed to the attention of Water Rights Services 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>