



Oregon
Kate Brown, Governor

Water Resources Department

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February 2, 2018

BREITENBUSH HOT SPRINGS
PO BOX 578
DETROIT, OR 97342

SUBJECT: Water Right Transfer Application T-12440

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12440. 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 Stayton Mail 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 503-986-0890 or sarah.a.henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer application T-12440
Joel M. Plahn, District 16 Watermaster *via e-mail*
4B Engineering and Consulting LLC, 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-12440, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND A
	)	CHANGE IN CHARACTER OF USE

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

BREITENBUSH HOT SPRINGS
PO BOX 578
DETROIT, OR 97342

Findings of Fact

1. On July 21, 2016, Breitenbush Hot Springs filed an application to change the character of use under Certificate 81391. The Department assigned the application number T-12440.
2. Notice of the application for transfer was published on July 26, 2016, and June 13, 2017, pursuant to OAR 690-380-4000.
3. On May 2, 2017, the Department contacted the applicant to notify them of deficiencies in the application. The point of diversion, the measured distance of the point of diversion, and the place of use proposed to be changed were unclear. On May 5, 2017, the agent submitted revised application pages.
4. On May 9, 2017, the Department contacted the agent requesting additional information about the place of use and the transfer application map. On May 22, 2017, the agent submitted revised application pages and application map.
5. On May 23, 2017, the Department contacted the agent confirming the revised application was changing the place of use in addition to the character of use. The Department informed the agent an additional fee would need to be submitted by the applicant. On June 5, 2017, the applicant submitted the additional fees.

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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6. On August 29, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12440 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 28, 2017, for the applicant to respond. On October 25, 2017, 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.
7. The portion of the right to be transferred is as follows:

Certificate: 81391 in the name of BREITENBUSH COMMUNITY; BREITENBUSH SPRINGS UPPER CAMP (perfected under Permit S-34347)
Use: RECREATION (SWIMMING POOL AND FOOT BATHS)
Priority Date: APRIL 24, 1969
Rate: 0.1 CUBIC FOOT PER SECOND
Source: BREITENBUSH RIVER, tributary of the NORTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	7 E	WM	20	SE NE	NORTH 50 DEGREES 40 MINUTES EAST 1780 FEET FROM THE C¼ CORNER OF SECTION 20

Authorized Place of Use:

RECREATION				
Twp	Rng	Mer	Sec	Q-Q
9 S	7 E	WM	20	NW NE
9 S	7 E	WM	20	SW NE

8. Transfer Application T-12440 proposes to change the character of use to domestic use.
9. Transfer Application T-12440 also proposes to change the place of use of the right to:

DOMESTIC				
Twp	Rng	Mer	Sec	Q-Q
9 S	7 E	WM	20	NE NE
9 S	7 E	WM	20	NW NE
9 S	7 E	WM	20	SW NE
9 S	7 E	WM	20	SE NE

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 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-12440.
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.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-12440 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-12440 is approved, the final order will include the following:

- 1. The change in place of use and change in character of use proposed in Transfer Application T-12440 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 81391 and any related decree.*
- 3. Water right Certificate 81391 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
- 5. The former place of use of the transferred right shall no longer receive water under the right.*
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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 on FEB 02 2018.


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>