

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

| | | |
|---------------------------------------|---|--------------------------------|
| In the Matter of Transfer Application |) | PRELIMINARY DETERMINATION |
| T-13112, Clackamas County |) | PROPOSING APPROVAL OF |
| |) | CHANGES IN POINTS OF DIVERSION |
| |) | AND PLACES OF USE, A CHANGE IN |
| |) | POINT OF APPROPRIATION, |
| |) | PARTIAL DIMINUTION OF A WATER |
| |) | RIGHT PERMIT AND PARTIAL |
| |) | CANCELLATION OF A WATER |
| |) | RIGHT CERTIFICATE |

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

ROBERT W. GABRIEL
8474 HAZELGREEN RD NE
SILVERTON, OR 97381

Findings of Fact

1. On January 24, 2019, ROBERT W. GABRIEL filed an application to change the points of diversion and to change the places of use under Certificates 15413 and 54224, and to change the point of appropriation and place of use under Certificate 54225. The Department assigned the application number T-13112.
2. Notice of the application for transfer was published on October 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

| |
|--|
| 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. |
|--|

3. On February 18, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-13112 to the applicant, due to the proposed points of appropriation under Certificate 54225 not developing the same source as the authorized point of appropriation. The draft Preliminary Determination cover letter set forth a deadline of March 19, 2020, for the applicant to respond.
4. On February 19, 2020, the applicant's agent requested to place T-13112 on administrative hold, so the applicant could work with the Department to resolve the deficiencies for proposing a denial of T-13112. The Department does not have authority to place applications on administrative hold, so the Department set forth an extended deadline to, April 20, 2020.
5. On April 21, 2020, the Department extended the deadline to May 22, 2020, as the applicant was waiting for a response from the Department's Groundwater section.
6. On May 21, 2020, it was determined that the Department's Groundwater section would conduct a re-review of the proposed points of appropriation.
7. On November 30, 2020, the Department completed a groundwater re-review. The Department determined that a revised draft Preliminary Determination would need to be issued, as the draft Preliminary Determination issued on February 18, 2020, did not address Certificates 54224 and 54225.
8. On February 1, 2021, the applicant requested to extend the date for completion of the water to full beneficial use to October 1, 2024, in order to construct the new well, and the new point of diversion with an Oregon Department of Fish and Wildlife approved screen.
9. On January 28, 2021, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-13112 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 1, 2021, 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.

10. The first right to be transferred is as follows:

Certificate: 15413 in the name of ROSS L. RIDER (perfected under Permit S-13974)
Use: IRRIGATION of 8.4 ACRES
Priority Date: AUGUST 15, 1939
Rate: 0.11 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: PUDDING RIVER, a tributary of MOLALLA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Point of Diversion (POD) |
|-----|-----|-----|-----|-------|--------------------------|
| 3 S | 1 E | WM | 30 | SW SE | 1 |
| 3 S | 1 E | WM | 31 | NW NE | 2 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 1 E | WM | 30 | SW SE | 2.0 |
| 3 S | 1 E | WM | 31 | NW NE | 6.4 |
| Total | | | | | 8.4 |

11. Transfer Application T-13112 proposes to move the authorized points of diversion downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Approximate distance from the original points of diversion in miles (mi.) | |
|-----|-----|-----|-----|-------|---|---|---------|
| 3 S | 1 E | WM | 30 | SW NE | POD 3 - 2330 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 30 | POD 1 | POD 2 |
| | | | | | | 0.7 mi. | 0.8 mi. |

12. Transfer Application T-13112 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 1 E | WM | 30 | SW NW | 8.4 |

13. The second right to be transferred is as follows:

Certificate: 54224 in the name of LEROY BEALS (perfected under Permit S-39026)

Use: IRRIGATION of 55.2 ACRES

Priority Date: APRIL 11, 1974

Rate: 0.69 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: PUDDING RIVER, a tributary of MOLALLA RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 3 S | 1 E | WM | 30 | SW SE | POD 1 - 1000 FEET NORTH AND 2080 FEET WEST FROM THE SE CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 1 E | WM | 30 | SW SE | 15.2 |
| 3 S | 1 E | WM | 30 | SE SE | 40.0 |
| Total | | | | | 55.2 |

14. Transfer Application T-13112 proposes to move the authorized point of diversion approximately 0.6 mile downstream to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 3 S | 1 E | WM | 30 | SW NE | POD 3 - 2330 FEET SOUTH AND 1790 FEET WEST FROM THE NE CORNER OF SECTION 30 |

15. Transfer Application T-13112 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 1 E | WM | 30 | SW NW | 6.66 |
| 3 S | 1 E | WM | 30 | NE SW | 6.20 |
| 3 S | 1 E | WM | 30 | NW SW | 42.34 |
| Total | | | | | 55.20 |

16. The third right to be transferred is as follows:

Certificate: 54225 in the name of LEROY BEALS (perfected under Permit G-8557)

Use: IRRIGATION of 31.6 ACRES and SUPPLEMENTAL IRRIGATION of 55.2 ACRES

Priority Date: MARCH 6, 1979

Rate: 1.09 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 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: A WELL a tributary of PUDDING RIVER

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 3 S | 1 E | WM | 30 | SE SE | WELL 1 - 880 FEET NORTH AND 350 FEET WEST FROM THE SE CORNER OF SECTION 30 |

Authorized Place of Use:

| PRIMARY IRRIGATION | | | | | | | |
|--------------------|-----|-----|-----|-------|-----|-------|--------------|
| Twp | Rng | Mer | Sec | Q-Q | DLC | Acres | Proposed POA |
| 3 S | 1 E | WM | 29 | SW SW | 58 | 27.0 | WELL 7 |
| 3 S | 1 E | WM | 29 | SE SW | 58 | 4.6 | WELL 7 |
| Total | | | | | | 31.6 | |

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-------|-------------------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POA |
| 3 S | 1 E | WM | 30 | SW SE | 15.2 | WELLS 2, 3, 4, 5, and 6 |
| 3 S | 1 E | WM | 30 | SE SE | 40.0 | WELLS 2, 3, 4, 5, and 6 |
| Total | | | | | 55.2 | |

17. Transfer Application T-13112 proposes to move the authorized point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Approximated distance from original point of appropriation in miles (mi.) |
|-----|-----|-----|-----|-------|---|---|
| 3 S | 1 E | WM | 29 | SW SW | WELL 7 - 450 FEET NORTH AND 90 FEET EAST FROM THE SW CORNER OF SECTION 29 | 0.1 mi. |
| 3 S | 1 E | WM | 30 | SW NE | WELL 5 - 1645 FEET SOUTH AND 1605 FEET WEST FROM THE NE CORNER OF SECTION 30 | 0.6 mi. |
| 3 S | 1 E | WM | 30 | SW NW | WELL 2 - 2470 FEET SOUTH AND 75 FEET EAST FROM THE NW CORNER OF SECTION 30 | 1.0 mi. |
| 3 S | 1 E | WM | 30 | SW NW | WELL 3 - 1560 FEET SOUTH AND 1400 FEET EAST, FROM THE NW CORNER OF SECTION 30 | 0.9 mi. |
| 3 S | 1 E | WM | 30 | SW NW | WELL 4 - 2170 FEET SOUTH AND 1400 FEET EAST FROM THE NW CORNER OF SECTION 30 | 0.8 mi. |
| 3 S | 1 E | WM | 30 | SE NW | WELL 6 - 1560 FEET SOUTH AND 1560 FEET EAST FROM THE NW CORNER OF SECTION 30 | 0.9 mi. |

18. Transfer Application T-13112 also proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION | | | | | | |
|-------------------------|-----|-----|-----|-------|-------|--------------|
| Twp | Rng | Mer | Sec | Q-Q | Acres | Proposed POA |
| 3 S | 1 E | WM | 30 | SW NW | 6.66 | WELLS 2-6 |
| 3 S | 1 E | WM | 30 | NE SW | 6.20 | WELLS 2-6 |
| 3 S | 1 E | WM | 30 | NW SW | 42.34 | WELLS 2-6 |
| Total | | | | | 55.20 | |

19. 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)]

20. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
21. A pump, pipeline, and sprinkler system 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-13112.
22. The proposed changes would not result in enlargement of the rights.
23. The proposed changes would not result in injury to other water rights.
24. On November 30, 2020, the Department determined the proposed points of appropriation (POA) under Certificate 54225 will develop the same aquifer (source) as the existing authorized POA.

The authorized From-POA (Well 1, CLAC 9792) is completed in an unconfined aquifer comprised of recent alluvium deposited in the floodplain between the Pudding River (to the west) and the Molalla River (to the east). The proposed To-POA Well 7 would be completed in the same unconfined alluvial aquifer based on its proposed construction. However, the proposed To-POA Wells 2-6 are or would be completed on a terrace west of the Pudding River, into a confined aquifer comprised of older sands and gravels overlain by ~80 ft or more of fine-grained sediments, all deposited across the broader Willamette lowland by the Missoula floods (Gannett and Caldwell, 1998; O'Connor et al., 2001). However, hydraulic conductivity and specific storage are similar in both the unconfined recent alluvium and the confined older sands and gravels, and both systems are hydraulically connected to the Pudding River. Based on the definition of "aquifer" provided in OAR 690-200-0050(9), the authorized and proposed POA can be considered to develop the same source for purposes of the proposed transfer.

25. All other application requirements are met.

Partial Cancellation of a Water Right

26. On November 8, 2019, an affidavit certifying that a portion of a water use permit has been abandoned and requesting cancellation of the permit was received from Bob Gabriel. The portion of the permit to be cancelled is as follows:

Application: G-17988, Permit G-17557 in the name of BOB GABRIEL
Use: PRIMARY IRRIGATION of 53.36 ACRES
Priority Date: JANUARY 27, 2015
Period of Use: MARCH 1 THROUGH OCTOBER 31
Source: WELL 1, WELL 2, WELL 3 (CLAC 20355), WELL 4 (CLAC 20344),
WELL 5, AND WELL 7 IN PUDDING RIVER BASIN

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 3 S | 1 E | WM | 30 | SE NW | WELL 4 (CLAC 20344) - 750 FEET SOUTH AND 1430 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 1 - 1080 FEET SOUTH AND 65 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 2 - 1155 FEET SOUTH AND 75 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 3 (CLAC 20355) - 150 FEET SOUTH AND 1415 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 5 - 340 FEET SOUTH AND 45 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 7 - 425 FEET SOUTH AND 105 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |

Authorized Place of Use to be Cancelled:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 1 E | WM | 30 | SW NW | 6.66 |
| 3 S | 1 E | WM | 30 | NE SW | 6.20 |
| 3 S | 1 E | WM | 30 | NW SW | 40.50 |
| Total | | | | | 53.36 |

27. The applicant requested to cancel a portion of acres under Permit G-17557. The Department determined a portion of the rate authorized by Permit G-17557 would not be cancelled, as the right was considered to have a deficient rate, and enlargement of the right would not occur.

Partial Diminution of a Water Right Permit

28. On November 8, 2019, the applicant's agent submitted an Affidavit for the Voluntary Partial Diminution of a Water Right Permit from Robert Gabriel. The portion of water use permit to be diminished is as follows:

Application: G-17988, Permit G-17557 in the name of BOB GABRIEL

Use: IRRIGATION of 8.4 ACRES

Priority Date: JANUARY 27, 2015

Rate: 0.02 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL 1, WELL 2, WELL 3 (CLAC 20355), WELL 4 (CLAC 20344), WELL 5, AND WELL 7 IN PUDDING RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 3 S | 1 E | WM | 30 | SE NW | WELL 4 (CLAC 20344) - 750 FEET SOUTH AND 1430 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 1 - 1080 FEET SOUTH AND 65 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 2 - 1155 FEET SOUTH AND 75 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 3 (CLAC 20355) - 150 FEET SOUTH AND 1415 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 5 - 340 FEET SOUTH AND 45 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |
| 3 S | 1 E | WM | 30 | SW NW | WELL 7 - 425 FEET SOUTH AND 105 FEET EAST FROM THE NW CORNER OF THE SWNW OF SECTION 30 |

Authorized Place of Use to be Diminished:

| SUPPLEMENTAL IRRIGATION | | | | | |
|-------------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q - Q | Acres |
| 3 S | 1 E | WM | 30 | SW NW | 8.4 |

Determination and Proposed Action

The change in points of diversion, change in point of appropriation, and change in places of use proposed in Transfer Application T-13112 appears to be consistent with the requirements of ORS 537.705, 540.505 to 540.580 and OAR 690-380-5000 and the abandoned permit should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned permit will be cancelled.

If Transfer Application T-13112 is approved, the final order will include the following:

1. *The changes in points of diversion and in place of use proposed in Transfer Application T-13112 are approved. The portion of the permit that has been abandoned is cancelled. The portion of the permit is diminished to supplemental irrigation.*
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 15413, 54224, and 54225, and any related decree.*
3. *Water right Certificates 15413, 54224, and 54225 are cancelled.*
4. *The quantity of water, as authorized under Certificate 15413, diverted at the new point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and 2).*

5. *The quantity of water, as authorized under Certificate 54224, diverted at the new point of diversion (POD 3), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).*
6. *The quantity of water, as authorized under Certificate 54225, diverted at the new points of appropriation (Wells 2, 3, 4, 5, 6, and 7), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
7. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
8. *The former place of use of the transferred rights shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.*

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

Dated in Salem, Oregon on

MAY 05 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

May 5, 2021

ROBERT W. GABRIEL
8474 HAZELGREEN RD NE
SILVERTON, OR 97381

SUBJECT: Water Right Transfer Application T-13112

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13112. 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 Wilsonville Spokesman 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.

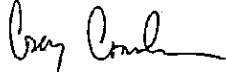
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,



Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13112
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Doann Hamilton, Agent for the applicant (*via e-mail*)

encs