



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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September 27, 2021

Applicant

CANNON VIEW PARK, INC.
ATTN.: RICHARD GIBSON
80478 CARNAHAN RD
ARCH CAPE, OR 97102

SUBJECT: Water Right Transfer Application T-13655

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13655. 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 Cannon Beach Gazette 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 contact me at scott.a.grew@oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13655
Nikki M. Hendricks, District 1 Watermaster (via e-mail)
Ronan V Igloria, Agent 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-13655, Clatsop County	)	PROPOSING APPROVAL OF
	)	CHANGES IN CHARACTER OF USE
	)	AND PLACE 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.

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Findings of Fact

1. On March 22, 2021, CANNON VIEW PARK, INC., ATTN: RICHARD GIBSON filed an application to change the character of use and the place of use and under Certificates 33136, 39030 and 86775. The Department assigned the application number T-13655.
2. Notice of the application for transfer was published on March 30, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On July 2, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13655 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 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.
4. The first right to be transferred is as follows:

Certificate:	33136 in the name of WESTERN SHOREWAYS, INC. (perfected under Permit S-17241)
Use:	DOMESTIC

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.

Priority Date: AUGUST 21, 1946

Rate: 0.06 CUBIC FOOT PER SECOND

Source: AN UNNAMED SPRING, a tributary of UNNAMED CREEK (PACIFIC OCEAN)

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	10 W	WM	19	NE NW	1425 FEET NORTH AND 980 FEET EAST FROM THE SE CORNER OF LOT 2

Authorized Place of Use:

DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	GLot
4 N	10 W	WM	19	NE NW	
4 N	10 W	WM	19	NW NW	1
4 N	10 W	WM	19	SW NW	2
4 N	10 W	WM	19	SE NW	

5. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 33136 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	10 W	WM	19	NE NW	1270 FEET SOUTH AND 885 FEET EAST FROM MEANDER CORNER OF SECTIONS 18 AND 19

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

Certificate: 39030 in the name of CANNON VIEW PARK, INC. (perfected under Permit S-28277)

Use: DOMESTIC USE OF THREE FAMILIES

Priority Date: JULY 6, 1962

Rate: 0.01 CUBIC FOOT PER SECOND

Source: AN UNNAMED SPRING, a tributary to UNNAMED CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	10 W	WM	19	NE NW	1276.9 FEET SOUTH AND 944.1 FEET EAST FROM THE MEANDER CORNER OF SECTIONS 18 AND 19

Authorized Place of Use:

DOMESTIC USE OF THREE FAMILIES					
Twp	Rng	Mer	Sec	Q-Q	GLot
4 N	10 W	WM	19	NE NW	
4 N	10 W	WM	19	SW NW	2
4 N	10 W	WM	19	SE NW	

7. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 39030 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	10 W	WM	19	NE NW	1270 FEET SOUTH AND 885 FEET EAST FROM MEANDER CORNER OF SECTIONS 18 AND 19

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

Certificate: 86775 in the name of CANNON VIEW PARK INC., C/O ELMER SIMPSON (perfected under Permit S-51550)

Use: DOMESTIC USE FOR 18 FAMILIES

Priority Date: DECEMBER 14, 1992

Rate: 0.02 CUBIC FOOT PER SECOND

Source: AN UNNAMED SPRING, a tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	10 W	WM	19	NE NW	1270 FEET SOUTH AND 885 FEET EAST FROM MEANDER CORNER OF SECTIONS 18 AND 19

Authorized Place of Use:

DOMESTIC USE FOR 18 FAMILIES				
Twp	Rng	Mer	Sec	Q-Q
4 N	10 W	WM	19	NW NW
4 N	10 W	WM	19	SW NW

9. Transfer Application T-13655 proposes to change the character of use for Certificates 33136, 39030 and 86775 to quasi-municipal use, to be serviced by Cannon View Park, Inc.
10. Transfer Application T-13655 also proposes to change the place of use for Certificates 33136, 39030 and 86775 to:

QUASI-MUNICIPAL USE
WITHIN THE SERVICE AREA OF CANNON VIEW PARK, INC.

11. Certificates 33136, 39030, and 86775 do not specify a total quantity of water to be diverted annually for domestic use for each right; however, ORS 540.610 states "beneficial use shall be the basis, the measure and the limit of all rights to the use of water in this state."

If the domestic use, under Certificate 33136, was diverted continuously at the authorized rate of 0.06 cfs for 365 days per year (0.06 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 43.4 acre-feet per year), is the maximum that could have been diverted under Certificate 33136.

If the domestic use, under Certificate 39030, was diverted continuously at the authorized rate of 0.01 cfs for 365 days per year (0.01 cfs x 60 sec/min x 60 min/hr x 24 hr/day x 365 days/year ÷ 43,560 square feet per acre = 7.2 acre-feet per year x 3 families = 21.6 acre-feet per year), is the maximum that could have been diverted under Certificate 39030.

If the domestic use, under Certificate 86775, was diverted continuously at the authorized rate of 0.02 cfs for 365 days per year ($0.02 \text{ cfs} \times 60 \text{ sec/min} \times 60 \text{ min/hr} \times 24 \text{ hr/day} \times 365 \text{ days/year} \div 43,560 \text{ square feet per acre} = 14.5 \text{ acre-feet per year} \times 18 \text{ families} = 261.0 \text{ acre-feet per year}$), is the maximum that could have been diverted under Certificate 86775.

However, water for domestic use is not continuously diverted for 24 hours per day, 365 days per year.

12. Use of more water per year than what could have been used for maximum beneficial use for the original domestic use would constitute enlargement of the right, which is not allowed. Therefore, to avoid enlarging the right under the proposed quasi-municipal use, an annual volume limit should be added to the right based on the best available estimate of the maximum amount of water that could have been beneficially diverted and used for domestic use during a year.
13. Estimates of in-house domestic use available from agencies such as the United States Geological Survey (USGS), American Water Works Association (AWWA) and Penn State Cooperative Extension indicate an average in-house domestic water use of approximately 70 gallons per person per day, or approximately 0.47 acre-feet per year for a household that includes six people.

Therefore, the annual volume limitation to be placed on the domestic use for Certificate 33136 is 14.1 acre-feet per year ($0.47 \text{ acre-feet per year} \times 30 \text{ homes} = 14.1 \text{ acre feet per year}$), the annual volume limitation to be placed on the domestic use for Certificate 39030 is 1.41 acre-feet per year ($0.47 \text{ acre-feet per year} \times 3 \text{ families} = 1.41 \text{ acre feet per year}$), the annual volume limitation to be placed on the domestic use for Certificate 86775 is 8.46 acre-feet per year ($0.47 \text{ acre-feet per year} \times 18 \text{ families} = 8.46 \text{ acre feet per year}$).

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

14. Water has been used within the last five years. There is no information in the record that would demonstrate that the right are subject to forfeiture under ORS 540.610.
15. A pipeline and distribution 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-13655.
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.
18. All other application requirements are met.

Determination and Proposed Action

The changes in character of use and place of use proposed in Transfer Application T-13655 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.

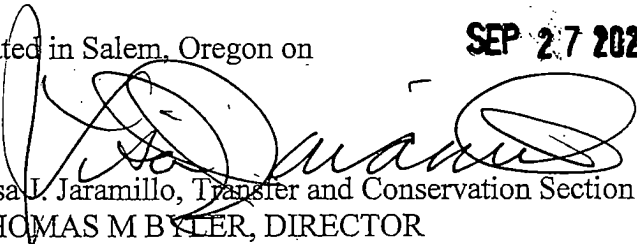
If Transfer Application T-13655 is approved, the final order will include the following:

1. *The changes in place of use and changes in character of use proposed in Transfer Application T-13655 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 Certificates 33136, 39030 and 86775 and any related decree.*
3. *Water right Certificates 33136, 39030 and 86775 are cancelled.*
4. *The rate of diversion for the change in character of use from domestic to the proposed quasi-municipal use, under Certificate 33136, shall be limited to 0.06 cubic foot per second and shall be further limited, as identified in Finding of Fact 10, to a total volume diverted of 0.47 acre-feet of each year.*
5. *The rate of diversion for the change in character of use from domestic to the proposed quasi-municipal use, Certificate 39030, shall be limited to 0.01 cubic foot per second and shall be further limited, as identified in Finding of Fact 10, to a total volume diverted of 1.41 acre-feet of each year.*
6. *The rate of diversion for the change in character of use from domestic to the proposed quasi-municipal use, Certificate 86775, shall be limited to 0.02 cubic foot per second and shall be further limited, as identified in Finding of Fact 10, to a total volume diverted of 8.46 acre-feet of each year.*
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 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. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*

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

Dated in Salem, Oregon on

SEP 27 2021


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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

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.