



Oregon

Kate Brown, Governor

Water Resources Department

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September 29, 2021

C AND E BRENTANO FAMILY LP
5009 DAVIDSON ROAD NE
SAINT PAUL, OR 97137

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12858. This document is an intermediate step in the approval process; water may not be used legally as proposed in the groundwater registration modification 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 Woodburn Independent 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 Department's notice or 30 days after the last date of newspaper publication, whichever is later.

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 by email at arla.l.davis@oregon.gov

Sincerely,

Arla L Davis
Groundwater Registration Modification Specialist
Transfer and Conservation Section

cc: GR Modification T-12858
Joel M. Plahn, District 16 Watermaster (via e-mail)
William E. McGill, 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-12917, Marion County)	PROPOSING APPROVAL OF CHANGES IN
)	POINTS OF APPROPRIATION AND
)	ADDITIONAL POINTS OF APPROPRIATION

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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

C & E BRENTANO FAMILY LP
5009 DAVIDSON ROAD NE
ST PAUL, OR 97137

Findings of Fact

1. On May 7, 2018, C & E BRENTANO FAMILY LP, filed an application to change the points of appropriation under Certificates 35370, 40094, 40215 and for additional points of appropriation under Certificates 35496, 35497, and 40094. The Department assigned the application number T-12917.
2. Notice of the application for transfer was published on May 15, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 7, 2019, the agent for the applicant submitted an amended application page for Certificate 40215.
4. On September 10, 2019 the Department approved Transfer Application T-12540, as evidenced by Special Order Volume 113, Pages 1108-1112, and a correcting order approved November 26, 2019, as evidence by Special Order Volume 114, Pages 379-381, which cancelled Certificate 40215. Remaining Right Certificate 94734 was issued for the portion of the right not involved in Transfer Application T-12540. Transfer Application T-12917 proposes to transfer only the acres associated with Certificate 94734.
5. On June 29, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12917 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.

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.

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

Certificate: 35370 in the name of MAURICE H. MERTEN (perfected under Permit G-2556)
Use: IRRIGATION of 86.2 ACRES
Priority Date: DECEMBER 19, 1963
Rate: 0.82 CUBIC FOOT PER SECOND (CFS)
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, 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 MISSION CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	30	NW NE	63	POA 2 - 430 FEET SOUTH AND 1920 FEET WEST FROM THE NE CORNER OF LAMBERT DLC 63

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	19	SE SW	63	0.8
4 S	2 W	WM	19	SW SE	63	1.9
4 S	2 W	WM	19	SE SE	63	1.3
4 S	2 W	WM	30	NE NE	63	20.2
4 S	2 W	WM	30	NW NE	63	33.8
4 S	2 W	WM	30	SW NE	63	8.0
4 S	2 W	WM	30	SE NE	63	2.0
4 S	2 W	WM	30	NE NW	63	17.8
4 S	2 W	WM	30	SE NW	63	0.4
Total						86.2

7. Transfer Application T-12917 proposes additional points of appropriation, under Certificate 35370, both approximately 1.0 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	20	SW SE	94	APOA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

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

Certificate: 35496 in the name of EDWARD T. BRENTANO (perfected under Permit G-2885)
Use: IRRIGATION of 201.9 ACRES
Priority Date: APRIL 23, 1965
Rate: 1.78 CUBIC FEET PER SECOND (CFS)
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, 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 MISSION CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	19	SE SE	94	9.1
4 S	2 W	WM	20	SW SW	94	23.4
4 S	2 W	WM	20	SE SW	94	24.2
4 S	2 W	WM	20	NE SE	86	34.4
4 S	2 W	WM	20	NW SE	86	4.0
4 S	2 W	WM	20	SW SE	86	1.8
4 S	2 W	WM	20	SW SE	94	24.8
4 S	2 W	WM	20	SE SE	86	14.6
4 S	2 W	WM	20	SE SE	94	20.4
4 S	2 W	WM	29	NE NE	94	8.6
4 S	2 W	WM	29	NW NE	94	11.0
4 S	2 W	WM	29	NE NW	94	10.8
4 S	2 W	WM	29	NW NW	94	10.8
4 S	2 W	WM	30	NE NE	94	4.0
Total						201.9

9. Transfer Application T-12917 proposes an additional point of appropriation under Certificate 35496, approximately 0.3 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

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

Certificate: 35497 in the name of EDWARD T. BRENTANO (perfected under Permit G-3171)

Use: IRRIGATION of 46.8 ACRES

Priority Date: FEBRUARY 1, 1966

Rate: 0.59 CUBIC FOOT PER SECOND (CFS)

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, 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 unnamed stream (MISSION CREEK)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	19	SE SW	Suave DLC 62	3.6
4 S	2 W	WM	19	NE SE	St. Paul's Catholic Mission DLC 75	9.0
4 S	2 W	WM	19	SW SE	Suave DLC 62	14.2
4 S	2 W	WM	19	SE SE	St. Paul's Catholic Mission DLC 75	1.6
4 S	2 W	WM	19	SE SE	Suave DLC 62	18.4
Total						46.8

11. Transfer Application T-12917 proposes an additional point of appropriation under Certificate 35497, approximately 0.3 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	NW NE	94	APOA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

12. The fourth right to be transferred is as follows:

Certificate: 40094 in the name of EDWARD T. BRENTANO (perfected under Permit G-3920)
Use: IRRIGATION of 47.8 ACRES
Priority Date: DECEMBER 28, 1967
Rate: 0.6 CUBIC FOOT PER SECOND (CFS)
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, 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 MISSION CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	NW NE	94	POA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	29	NE NE	94	3.0
4 S	2 W	WM	29	NW NE	94	14.0
4 S	2 W	WM	29	SW NE	94	6.1
4 S	2 W	WM	29	SE NE	94	0.9
4 S	2 W	WM	29	NE NW	94	6.1
4 S	2 W	WM	29	NW NW	94	17.7
Total						47.8

13. Transfer Application T-12917 proposes to move a portion of the point of appropriation under Certificate 40094, approximately 0.3 to 0.7 mile from the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	SW NW	56	RD POA 5 - 3450 FEET NORTH AND 470 FEET EAST FROM THE NW CORNER OF DLC 56
4 S	2 W	WM	30	SE SE	62	RD POA 4 - 1565 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF SECTION 30
4 S	2 W	WM	32	SE SE	62	RD POA 3 - 425 FEET SOUTH AND 180 FEET EAST FROM THE NW CORNER OF SECTION 32

14. Transfer Application T-12917 proposes additional points of appropriation under Certificate 40094, approximately 0.3 mile from the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	20	SW SE	95	APOA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF DLC 95

15. Transfer Application T-12917 proposes to assign specific wells to specific acres under Certificate 40094 as follows:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
4 S	2 W	WM	29	NE NE	3.0	POA 4 APOA 3
4 S	2 W	WM	29	NW NE	14.0	POA 4 APOA 3
4 S	2 W	WM	29	SW NE	6.1	POA 4 APOA 3
4 S	2 W	WM	29	SE NE	0.9	POA 4 APOA 3
4 S	2 W	WM	29	NE NW	5.0	POA 4 APOA 3
4 S	2 W	WM	29	NE NW	1.1	RD POA 5 RD POA 4 RD POA 3
4 S	2 W	WM	29	NW NW	15.0	POA 4 APOA 3
4 S	2 W	WM	29	NW NW	2.7	RD POA 5 RD POA 4 RD POA 3
Total					47.8	

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

Certificate: 94734 in the name of RAYMOND T. DAVIDSON (perfected under Permit G-4085)
Use: IRRIGATION of 2.7 ACRES
Priority Date: APRIL 16, 1968
Rate: 0.02 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.

Source: A WELL a tributary of WILLAMETTE RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	29	SW NW	94	POA 5 - 3450 FEET NORTH AND 470 FEET EAST FROM THE NW CORNER OF BERNIER DLC 56

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	29	NE NW	94	1.2
4 S	2 W	WM	29	SE NW	94	1.5
Total						2.7

17. Transfer Application T-12917 proposes to move the point of appropriation under Certificate 94734, approximately 0.5 to 0.7 mile from authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	2 W	WM	20	SW SE	94	POA 3 - 490 FEET SOUTH AND 2230 FEET WEST FROM THE NW CORNER OF LEARD DLC 95
4 S	2 W	WM	29	NW NE	94	POA 4 - 1840 FEET SOUTH AND 3270 FEET EAST FROM THE NW CORNER OF SERVANT DLC 94

Transfer Review Criteria (OAR 690-380-4010)

- 18. 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.
- 19. 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-12917.
- 20. The proposed changes would not result in enlargement of the rights
- 21. The proposed changes would not result in injury to other water rights.
- 22. All other application requirements are met.

Determination and Proposed Action

The changes in points of appropriation and additional points of appropriation proposed in Transfer Application T-12917 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

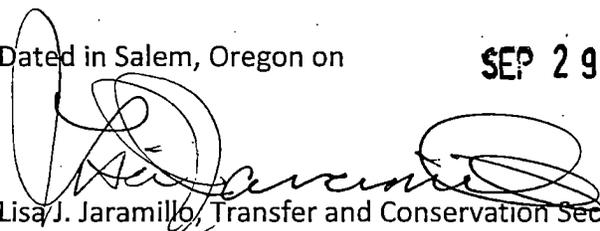
If Transfer Application T-12917 is approved, the final order will include the following:

- 1. The changes in points of appropriation and additional points of appropriation proposed in Transfer Application T-12917 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 35370, 35496, 35497, 40094, and 94734 and any related decree.*
- 3. Water right Certificates 35370, 35496, 35497, 40094, and 94734 are cancelled.*
- 4. The quantity of water diverted under Certificate 35370 at the new additional points of appropriation (APOA 3 and APOA 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 2).*
- 5. The quantity of water diverted under Certificate 94734 at the new points of appropriation (POA 3, POA 4), together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 5).*
- 6. The quantity of water diverted under Certificate 35496, at the new additional point of appropriation (APOA 4), together with that diverted at the original point of appropriation (POA 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (POA 3).*
- 7. The quantity of water diverted under Certificate 35497, at the new additional point of appropriation (APOA 4), together with that diverted at the original point of appropriation (POA 3), shall not exceed the quantity of water lawfully available at the original points of appropriation (POA 3).*
- 8. The quantity of water diverted under Certificate 40094, at the new points of appropriation (RD POA 3, RD POA 4, RD POA 5), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 4).*
- 9. The quantity of water diverted under Certificate 40094, at the new additional point of appropriation (APOA 3), together with that diverted at the original point of appropriation (POA 4), shall not exceed the quantity of water lawfully available at the original point of appropriation (POA 4).*
- 10. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*

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

Dated in Salem, Oregon on

SEP 29 2021


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

This Preliminary Determination was prepared by Arla Davis. If you have any questions about the information in this document you may reach me by email at arla.l.davis@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.