

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-7599, Marion County) CHANGE IN POINT OF
) APPROPRIATION AND ADDITIONAL
) POINTS OF APPROPRIATION

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

Norpac Foods, Inc.
4755 Brooklake Road NE
Salem, Oregon 97305

Findings of Fact

Background

1. On July 18, 1996, Norpac Foods, Inc., filed an application to change the point of appropriation of Well 2 under Certificates 35772, 40112, 40113, 40114, 45424, and Permit G-11974. The Department assigned the application number T-7599.
2. On August 8, 1996, Norpac Foods, Inc., withdrew Permit G-11974 from application T-7599 and filed Permit Amendment application T-7607 to amend Permit G-11974.
3. On October 9, 1996, Special Order Volume 50, Pages 694-695, was entered approving Permit Amendment T-7607.
4. On April 10, 2001, a letter was received from Larry Jebousek, Certified Water Right Examiner and agent for the applicant. The letter amended application T-7599 to include additional points of appropriation for Certificates 40113, 50311, and 63706.
5. Certificates 35772, 40112, 40114, and 45424 were cancelled by Special Order Volume 46, Pages 318-321, approving Transfer Application T-6540.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

6. On July 20, 2007, the Department issued Certificates 83429, 83430, 83431, and 83432, to confirm the changes authorized under Special Order Volume 46, Pages 318-321, dated July 6, 1992, approving Transfer Application T-6540.

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

Certificate: 83429 in the name of Norpac Foods, Inc. (perfected under Permit G-2172)

Use: Irrigation of 163.4 acres

Priority Date: June 13, 1962

Rate: 1.77 cubic feet per second (cfs), if available at the original point of appropriation; provided further that the total quantity of water appropriated by all rights perfected under T-6540 delivered to the cannery shall not exceed 2.09 cfs

Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: Eight wells, in the Little Pudding River Basin

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	17	NE NW	65	340 feet North and 2850 feet East from the SW Corner of Martel DLC 65

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	2 W	WM	8	SW SW	65	11.2
6 S	2 W	WM	8	SW SW	61	8.6
6 S	2 W	WM	8	SE SW	61	0.1
6 S	2 W	WM	17	SW NE	64	3.8
6 S	2 W	WM	17	SW NE	65	0.1
6 S	2 W	WM	17	NE NW	65	15.3
6 S	2 W	WM	17	NW NW	65	31.4
6 S	2 W	WM	17	SW NW	64	33.2
6 S	2 W	WM	17	SW NW	65	2.8
6 S	2 W	WM	17	SE NW	65	4.2
6 S	2 W	WM	17	SE NW	64	33.6
6 S	2 W	WM	17	NE SW	64	2.6
6 S	2 W	WM	17	NW SW	64	1.4
6 S	2 W	WM	18	SE NE	64	15.0
6 S	2 W	WM	18	NE SE	64	0.1

8. Application T-7599 proposes to change the authorized point of appropriation of Well 2 approximately 600 feet West from the existing point of appropriation of Well 2 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 2 - 1050 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61

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

Certificate: 83432 in the name of Norpac Foods, Inc. (perfected under Permit G-3560)

Use: Irrigation of 161.1 acres

Priority Date: January 16, 1967

Rate: 2.01 cubic feet per second (cfs), if available at the original point of appropriation; provided further that the total quantity of water appropriated by all rights perfected under T-6540 delivered to the cannery shall not exceed 2.09 cfs

Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year

Source: Eight wells, in the Little Pudding River Basin

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE NE	61	2220 feet South and 1000 feet West from the NE corner of Lambert DLC 61

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
6 S	2 W	WM	5	SW SE		61	6.3
6 S	2 W	WM	5	SE SE		61	16.9
6 S	2 W	WM	5	SE SE	8		0.6
6 S	2 W	WM	8	NE NE		61	35.0
6 S	2 W	WM	8	NW NE		61	25.3
6 S	2 W	WM	8	SW NE		61	26.2
6 S	2 W	WM	8	SE NE		61	25.3
6 S	2 W	WM	8	NE SE		61	6.8
6 S	2 W	WM	8	NW SE		61	18.7

10. Application T-7599 proposes to change the authorized point of appropriation of Well 2 approximately 600 feet West from the existing point of appropriation of Well 2 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 2 - 1050 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61

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

Certificate: 83430 in the name of Norpac Foods, Inc. (perfected under Permit G-4422)

Use: Industrial use in a cannery

Priority Date: December 2, 1968

Rate: 1.0 cubic feet per second (cfs), if available at the original point of appropriation; provided further that the total quantity of water appropriated by all rights perfected under T-6540 delivered to the cannery shall not exceed 2.09 cfs

Source: Eight wells, in the Little Pudding River Basin

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	South 65° 32' East 2635 feet from the re-entrant corner of the West line of Lambert DLC 61

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

INDUSTRIAL USE IN A CANNERY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	2 W	WM	8	SE SW	65
6 S	2 W	WM	17	NE NW	65

12. Application T-7599 proposes to change the authorized point of appropriation of Well 2 approximately 600 feet West from the existing point of appropriation of Well 2 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 2 - 1050 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61

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

Certificate: 83431 in the name of Norpac Foods, Inc. (perfected under Permit G-4424)

Use: Industrial use in a cannery

Priority Date: December 2, 1968

Rate: 1.09 cubic feet per second (cfs), if available at the original point of appropriation; provided further that the total quantity of water appropriated by all rights perfected under T-6540 delivered to the cannery shall not exceed 2.09 cfs

Source: Eight wells, in the Little Pudding River Basin

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	South 63° 57' East 2519 feet from the re-entrant corner of the West line of Lambert DLC 61

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

INDUSTRIAL USE IN A CANNERY						
Twp	Rng	Mer	Sec	Q-Q	DLC	
6 S	2 W	WM	8	SE SW	65	
6 S	2 W	WM	17	NE NW	65	

14. Application T-7599 proposes to change the authorized point of appropriation of Well 2 approximately 600 West feet from the existing point of appropriation of Well 2 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 2 - 1050 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61

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

Certificate: 40113 in the name of Stayton Canning Co., Co-Op. (perfected under Permit G-4423)

Use: Industrial use in a cannery

Priority Date: December 2, 1968

Rate: 2.67 cubic feet per second (cfs)

Source: Well 2, in the Little Pudding River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SW SE	65	Well 2 - South 71° 34' East 2984 feet from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

INDUSTRIAL USE IN A CANNERY					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	2 W	WM	8	SE SW	65
6 S	2 W	WM	17	NE NW	65

16. Application T-7599 proposes to change the authorized point of appropriation of Well 2 approximately 600 feet West from the existing point of appropriation of Well 2 to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 2 - 1050 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61

17. Application T-7599 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

18. The sixth right to be transferred is as follows:

Certificate: 50311 in the name of Stayton Canning Company Coop. (perfected under Permit G-7902)

Use: Industrial use (cannery)

Priority Date: December 13, 1977

Rate: 1.1 cubic feet per second (cfs)

Source: Well 4, in the Little Pudding River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SE SW	65	Well 4 - South 68° 34' East 2512 feet from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

INDUSTRIAL USE (CANNERY)					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	2 W	WM	8	SE SW	65
6 S	2 W	WM	17	NE NW	65

19. Application T-7599 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

20. The seventh right to be transferred is as follows:

Certificate: 63706 in the name of Stayton Canning Company Co-Op. (perfected under Permit G-9943)

Use: Cannery use

Priority Date: November 17, 1982

Rate: 1.57 cubic feet per second (cfs)

Source: Well 4, in the Little Pudding River Basin

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	SW SE	65	Well 5 - South 74° 5' East 3167 feet from the re-entrant corner of the West line of Lambert DLC 61

Authorized Place of Use:

CANNERY USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
6 S	2 W	WM	8	SE SW	65
6 S	2 W	WM	17	NE NW	65

21. Application T-7599 proposes additional points of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	2 W	WM	8	NW SE	61	Well 1 - 570 feet North and 2850 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 2 - 925 feet South and 2800 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NW NE	65	Well 3 - 2840 feet South and 2710 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE SW	65	Well 4 - 920 feet South and 2280 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SW SE	65	Well 5 - 890 feet South and 2990 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	SE NE	61	Well 6 - 2380 feet North and 3930 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	17	NE NW	65	Well 7 - 2640 feet South and 1390 feet East from the re-entrant corner of the West line of Lambert DLC 61
6 S	2 W	WM	8	NE SW	61	Well 8 - 210 feet South and 1680 feet East from the re-entrant corner of the West line of Lambert DLC 61

22. Notice of the application for transfer was published on July 30, 1996, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

23. On October 1, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-7599 to the applicant. The cover letter that accompanied the draft Preliminary Determination set forth a deadline of November 16, 2007, for the applicant to respond with comments. 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.

24. On November 28, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-7599 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on December 4, 2007, and in the Statesmen Journal Newspaper on December 6, 13, and 20, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

25. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

26. 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 Application T-7599.

27. The proposed changes would not result in enlargement of the rights.

28. The proposed changes would not result in injury to other water rights.

Conclusions of Law

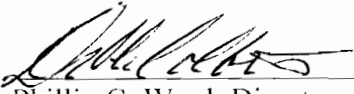
The change in point of appropriation of Well 2 for the rights described by Certificates 83429, 83432, 83430, 83431, and 40113 and additional points of appropriation for the rights described by Certificates 40113, 50311, and 63706, proposed in application T-7599 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation and additional points of appropriation proposed in application T-7599 are approved.
2. Water right certificates 83429, 83432, 83430, 83431, 40113, 50311, and 63706 are cancelled.
3. 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 83429, 83432, 83430, 83431, 40113, 50311, and 63706, and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
5. The quantity of water diverted at the new point of appropriation for Well 2 shall not exceed the quantity of water lawfully available at the original point of appropriation for Well 2.
6. The quantity of water diverted at the additional points of appropriation, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available and the original point of appropriation.
7. When required by the Department, the water user shall install, maintain and operate an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water Rights 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. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 22 day of January 2008.



Phillip C. Ward, Director

Mailing Date: Feb, 4 2008