

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12630, Polk County)	ADDITIONAL POINTS OF DIVERSION
)	AND ADDITIONAL POINTS OF
)	APPROPRIATION AND A RE-
)	DESCRIPTION OF A WATER RIGHT

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

ACMPC OREGON 1, LLC
35711 HELMS DRIVE (PO BOX 717)
JEFFERSON, OR 97352

Agent

ERIC M. POND
35711 HELMS DRIVE (PO BOX 717)
JEFFERSON, OR 97352

Findings of Fact

1. On April 5, 2017, ACMPC Oregon 1, LLC, filed an application for additional points of diversion and additional points of appropriation under Certificates 39081 and 81572. The Department assigned the application number T-12630.
2. Notice of the application for transfer was published on April 11, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 20, 2017, the Department sent the applicant, by written e-mail correspondence the proposal to deny Transfer Application T-12630. Pursuant to OAR 690-380-2110 (2), the Department determined that the request for additional points of diversion from Humbug Lake to the Willamette River was a change in source and would lead to enlargement of the right. On October 25, 2017, the agent for the applicant requested the transfer application be amended to withdraw the request for the additional points of diversion on the Willamette River under Certificate 81572. The agent also submitted new application pages and a new revised map supporting the request.

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.

4. On November 8, 2017, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12630 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 7, 2017, 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.
5. On May 2, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12630 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on May 8, 2018, and in the Dallas Polk County Itemizer-Observer newspaper on May 9, and 16, 2018 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 39081 in the name of JOHN N. HOOPER (perfected under Permit G-4769)
Use: IRRIGATION of 54.8* ACRES
Priority Date: DECEMBER 17, 1969
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, is 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.

Source: A WELL within the WILLAMETTE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	4 W	WM	15	NE SE	1980 FEET NORTH AND 10 FEET WEST FROM SE CORNER OF SECTION 15

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	14	NE SW	3	15.6
8 S	4 W	WM	14	NW SW	3	38.0
8 S	4 W	WM	15	NE SE	--	1.2
Total						54.8*

*Note: see Findings #16 and #17 below for correction and re-description of these 54.8 acres.

7. Transfer Application T-12630 proposes two additional points of appropriation under Certificate 39081. Proposed Well #1 is located approximately 1 1/8 miles northwest and proposed Well #2 is located approximately 1 mile west from the original [now Setniker] well. The new proposed wells are located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	4 W	WM	9	SE SE	40	WELL #1 - 30 FEET NORTH AND 1370 FEET WEST FROM THE NE CORNER OF BURBANK DLC 41
8 S	4 W	WM	16	SE NE	41	WELL #2 - 2620 FEET SOUTH AND 1770 FEET WEST FROM THE NE CORNER OF BURBANK DLC 41

8. The Department has determined that the proposed additional points of appropriation develop the same source of water as the authorized existing well (POLK 2890) under Certificate 39081.

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

Certificate: 81572 in the name of MARGARET F. LACHMUND (perfected under Permit S-8615)

Use: IRRIGATION 4.5 ACRES

Priority Date: JULY 19, 1928

Rate: 0.06 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, 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: HUMBUG LAKE, which is a slough connected with Willamette River at high water, a tributary of the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	4 W	WM	15	NE NE	40

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	4.5

10. Certificate 81572 does not describe the location of the point of diversion. However, information is available from the current Certified Water Rights Examiner's map, based on a recent field visit and subsequent survey indicates that the original authorized diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	4 W	WM	10	SE SE	40	LAKE POD 2 - 30 FEET NORTH AND 400 WEST FROM THE NW CORNER OF SECTION 14

11. Transfer Application T-12630 proposes two additional points of diversion northeast approximately 600 feet and south approximately one quarter mile on Humbug Lake to:

Twp	Rng	Mer	Sec	Q-Q	DLC	GLot	Measured Distances
8 S	4 W	WM	11	SW SW	--	9	LAKE POD 1 – 520 FEET NORTH AND 50 EAST FROM THE NW CORNER OF SECTION 14
8 S	4 W	WM	15	SE NE	40	--	LAKE POD 3 – 1460 FEET SOUTH AND 470 WEST FROM THE NW CORNER OF SECTION 14

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

12. Water has been used within the last five years prior to submittal of the transfer application 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.
13. A well, diversion structures, delivery system and sprinkler systems 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-12630.
14. The proposed changes would not result in enlargement of the rights.
15. The proposed changes would not result in injury to other water rights.

Re-description of Lands

16. Water right Certificate 39081 describes the authorized place of use as 15.6 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 38.0 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, and 1.2 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T8S, R4W, WM, Polk County.
- a) The transfer application depicts the place of use and footprint under Certificate 39081 as being 6.9 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 38.7 acres in the NW $\frac{1}{4}$ SW $\frac{1}{4}$ of Section 14, and 4.6 in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T8S, R4W, WM.
 - b) Based on the Polk County Tax Assessor's map, recent field survey by CWRE Will McGill, and Don Knauer's survey and Final Proof Report, the Department is lead to conclude that the land to which the right has always been appurtenant should be re-described as: 6.9 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$ and 38.7 acres in the NW $\frac{1}{4}$ SW of Section 14, and 4.6 acres in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 15, T8S, R4W, WM.
 - c) The shift in footprint of the subject right for 54.8 acres does not change the quarter quarters described within Sections 14 and/or 15. There has been no change in ownership. This leads the Department to conclude that the land to which this right has always been appurtenant should be re-described. The re-described lands would also be in agreement with the newly issued 54.8 acres supplemental water right Certificate 91986.

17. The following table lists the place of use as described in existing Certificate 39081 and a proposed re-description based on the findings above. The re-described lands also include the neighbor's property not involved in the transfer, for a total of 54.8 acres.

39081 Original Description of Place of Use							39081 Proposed Re-Description of Place of Use							Acres (Setniker)
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	
8S	4W	WM	14	NE SW	3	15.6	8S	4W	WM	14	NE SW	3	6.9	--
8S	4W	WM	14	NW SW	3	38.0	8S	4W	WM	14	NW SW	3	38.7	1.3*
8S	4W	WM	15	NE SE	--	1.2	8S	4W	WM	15	NE SE	--	4.6	3.3*
						Total							Total	4.6*
						54.8							50.2	

*Note: these acres will be issued a remaining right certificate for that portion not involved in the transfer

Conclusions of Law


The additional points of diversion and additional points of appropriation proposed in Transfer Application T-12630 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in additional points of appropriation and additional points of diversion proposed in Transfer Application T-12630 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 re-described Certificate 39081 and Certificate 81572 and any related decree.
3. Water right Certificates 39081 and 81572 are cancelled. A new certificate will be issued describing that re-described portion of the water right Certificate 39081 not affected by this transfer.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation. Proposed Well #1 (POLK 2853) and Well #2 (POLK 2900) shall appropriate the same alluvial aquifer system as the original point of appropriation.
5. The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. The quantity of water diverted at the new additional points of diversion, together with that diverted at the original point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.

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

Dated at Salem, Oregon this day JUN 21 2018.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: JUN 22 2018