# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-13281, Marion County	)	ADDITIONAL POINT 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

LOMBARD WATER CO. LLC PO BOX 699 NEWBERG, OR 97132

# **Findings of Fact**

- On October 31, 2019, HILAND WC-LOMBARD WS filed an application for an additional point of appropriation under Certificate 35771. The Department assigned the application number T-13281.
- 2. Notice of the application for transfer was published on November 5, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On May 8, 2020 the Department notified the applicant that the ½½ were not identified on the map, table 1 had the authorized well in the wrong ½½ ¼ and table 2 did not include all the lands of Certificate 35771. On June 15, 2020 the agent for the applicant provided the necessary corrections.

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 July 15, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13281 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 14, 2020, 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 August 4, 2020, the applicant submitted a request to amend the applicants name on the application from HILAND WC-LOMBARD WS to LOMBARD WATER CO. LLC
- 6. On September 3, 2020, the Department issued a Preliminary Determination proposing to approve Transfer Application T-13281 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on September 8, 2020, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 7. The right to be transferred is as follows:

Certificate: 35771 in the name of LEONARD G. and PATRICIA L. WITTENBERG

(perfected under Permit G-169)

Use: DOMESTIC USE IN 86 HOUSES, 4 THREE-UNIT APARTMENTS, 1

SIX-UNIT APARTMENT, 1 TWO-UNIT APARTMENT, AND 1

CHURCH, AND FIRE PROTECTION

Priority Date: MARCH 12, 1956

Rate: 0.50 CUBIC FOOT PER SECOND

Source: A WELL, A TRIBUTARY OF AN UNNAMED STREAM (LITTLE

PUDDING RIVER)

#### Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	18	NE SW	41	NORTH 16 DEGREES 10 MINUTES EAST 3129.12 FEET FROM SE CORNER OF TOWNER SAVAGE DLC 37

#### Authorized Place of Use:

DOMESTIC USE AND FIRE PROTECTION							
Twp	Rng	Mer	Sec	Q-Q	DLC		
7 S	2 W	WM	18	SE NW	41		
7 S	2 W	WM	18	NE SW	41		

8. Transfer Application T-13281 proposes an additional point of appropriation approximately 65.0 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	2 W	WM	18	NE SW	LATITUDE: 44°57'43.81", LONGITUDE: 122°58'49.56"

# Transfer Review Criteria (OAR 690-380-4010)

- 9. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 10. A water distribution system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13281.
- 11. The proposed change would not result in enlargement of the right.
- 12. The proposed change would not result in injury to other water rights.
- 13. All other application requirements are met.

#### Conclusions of Law

The additional point of appropriation proposed in Transfer Application T-13281 is 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 additional point of appropriation proposed in Transfer Application T-13281 is 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 Certificate 35771 and any related decree.
- 3. Water right Certificate 35771 is cancelled.
- 4. The quantity of water diverted at the new additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1**, 2021. 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 change and full beneficial use of the water.

7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on

OCT 2 7 2020

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

OCT **2 8** 2020

Mailing date: