



**Oregon**  
Kate Brown, Governor

**Water Resources Department**

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Salem, OR 97301

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October 12, 2017

ACMPC OREGON 3 LLC  
PO BOX 717  
35711 HELMS DR  
JEFFERSON, OR 97352

SUBJECT: Water Right Transfer Application T-12306

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12306. 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 News Register 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 do not hesitate to contact me at 503-986-0806 or [arla.l.heard@oregon.gov](mailto:arla.l.heard@oregon.gov) if I may be of assistance.

Sincerely,

Arla L Heard  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12306  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
Will McGill, Agent for the applicant, CWRE (*via e-mail*)



6. The portion of the right to be transferred is as follows:

- Certificate:** 31321 in the name of LOWELL M. NEWMAN (perfected under Permit S-27293)  
**Use:** SUPPLEMENTAL IRRIGATION of 18.0 ACRES  
**Priority Date:** APRIL 5, 1961  
**Rate:** 0.23 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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:** LAMBERT SLOUGH, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Q-Q	DLC
5 S	3 W	WM	SE NW	52

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	21	NE NW	49	10.6
4 S	3 W	WM	21	SE NW	49	7.2
4 S	3 W	WM	21	NW NW	49	0.2
Total						18.0

7. Transfer Application T-12306 proposes an additional point of diversion approximately 3.5 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
4 S	3 W	WM	16	SW SE	1200	APOD NO. 1 – 950 FEET NORTH AND 1980 FEET WEST FROM THE SE CORNER OF SECTION 16

8. Transfer Application T-12306 does not propose a change in source to divert water from the Yamhill River. The owner will continue to divert water at the authorized point of diversion on Lambert Slough and convey the water through Palmer Creek which flows into the Yamhill River. An additional point of diversion will be used to withdraw the water out of the Yamhill River below the confluence of Palmer Creek.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
10. To prevent enlargement of the water right and injury to other water rights, the watermaster is requiring totalizing flow meters at the original point of diversion on Lambert Slough and at the proposed additional point of diversion on the Yamhill River. The Director may require the water user to install additional totalizing flow meters or other suitable measuring devices to prevent injury to other water rights. If the Director notifies the water user to install

totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.

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

11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12306.
13. The proposed change, as conditioned, would not result in enlargement of the right.
14. The proposed change, as conditioned, would not result in injury to other water rights.

**Determination and Proposed Action**


The additional point of diversion proposed in Transfer Application T-12306 appears 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.

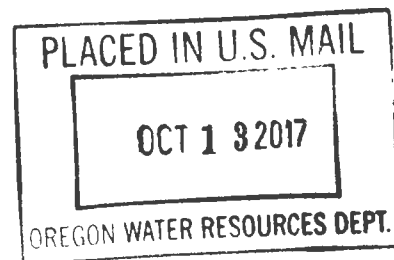
*If Transfer Application T-12306 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-12306 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 31321 and any related decree.*
3. *Water right Certificate 31321 is cancelled.*
4. *The quantity of water diverted at the additional point 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.*
5. *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 (new and original).
  - 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 device(s); provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *The Director may require the water user to install additional totalizing flow meters or other suitable measuring devices to prevent injury to other water rights. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
  
6. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*  
  
*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
  
7. *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 change and full beneficial use of the water.*
  
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of October, 2017.

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



This Preliminary Determination was prepared by Arla Heard. If you have questions about the information in this document, you may reach me at 503-986-0860 or [Arla.L.Heard@oregon.gov](mailto:Arla.L.Heard@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.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>