



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. 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:**

| 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 #15 and #16 below for correction and re-description of these 54.8 acres.

6. Transfer Application T-12630 proposes to add 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 |

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

8. 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:**

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

9. 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 |

10. Transfer Application T-12630 proposes to add 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)]**

11. 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.
12. 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.

13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.

**Re-description of Lands**

15. Water right Certificate 39081 describes the authorized place of use as 15.6 acres in the NE¼ SW¼ and 38.0 acres in the NW¼ SW¼ of Section 14, and 1.2 acres in the NE¼ SE¼ of Section 15, Township 8 South, Range 4 West, W.M., Polk County.
  - a) The transfer application depicts the place of use and footprint under Certificate 39081 as being 6.9 acres in the NE¼ SW¼ and 38.7 acres in the NW¼ SW¼ of Section 14, and 4.6 in the NE¼ SE¼ of Section 15, Township 8 South, Range 4 West, W.M..
  - 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 NE¼ SW¼ and 38.7 acres in the NW¼ SW of Section 14, and 4.6 acres in the NE¼ SE¼ of Section 15, Township 8 South, Range 4 West, W.M..
  - 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.
16. 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 |     |     |     |       |      |             |                  |
|--|-----|-----|-----|-------|------|-------------|---|-----|-----|-----|-------|------|-------------|------------------|
| Twp  | Rng | Mer | Sec | Q - Q | GLot | Acres       | Twp   | Rng | Mer | Sec | Q - Q | GLot | Acres       | Acres (Setniker) |
| 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*             |
| <b>Total:</b>                              |     |     |     |       |      | <b>54.8</b> | <b>Total:</b>                                 |     |     |     |       |      | <b>50.2</b> | <b>4.6*</b>      |

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

**Determination and Proposed Action**

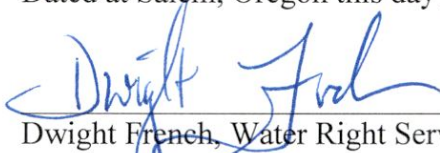
The changes in additional points of appropriation and additional points of diversion proposed in Transfer Application T-12630 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12630 is approved, the final order will include the following:*

- 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           MAY 02 2018          .



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or [Ken.D.Dowden@oregon.gov](mailto:Ken.D.Dowden@oregon.gov).

*Protests should be addressed to the attention of Water Rights 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>