

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12781, Crook County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	CHARACTER OF USE

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

MCDUGAL WATER SYSTEM ASSOCIATION
ATTN: RON YORK
2434 NW MCDUGAL COURT
PRINEVILLE, OR 97754-9302

Agent

PACIFIC HYDRO-GEOLOGY, INC.
ATTN: DOANN HAMILTON
18487 S. VALLEY VISTA ROAD
PRINEVILLE, OR 97754

Findings of Fact

1. On December 8, 2017, McDougal Water System Association filed an application to change the character of use under Certificate 93321. The Department assigned the application number T-12781.
2. Notice of the application for transfer was published on December 19, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 1, 2018, the Department sent out correspondence to the applicant requesting revisions to the application and map. On June 8, 2018, the agent for the applicant submitted a revised application requesting to include a change in place of use under Certificate 93321 and submitted the additional fee required. The additional fee for the use was received on June 13, 2018.
4. On June 21, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12781 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 21, 2018, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
- 5.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

6. The right to be transferred is as follows:

Certificate: 93321 in the name of McDOUGAL WATER SYSTEM (perfected under Permit G-13516)
Use: GROUP DOMESTIC FOR 20 HOMES INCLUDING IRRIGATION OF LAWNS AND NON-COMMERCIAL GARDENS NOT TO EXCEED ½ ACRE IN AREA EACH
Priority Date: NOVEMBER 8, 1993
Rate: 0.056 CUBIC FOOT PER SECOND
Period of Use: YEAR ROUND
Source: A WELL within the OCHOCO CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	36	SW NE	1828 FEET SOUTH AND 108 FEET EAST FROM THE N¼ CORNER OF SECTION 36

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q
14 S	15 E	WM	36	SW NE

7. Transfer Application T-12781 proposes to change the character of use from group domestic for 20 homes including irrigation of lawns and non-commercial gardens not to exceed ½ acre in area each to quasi-municipal use.
8. Transfer Application T-12781 also proposes to change the place of use of the right to:

QUASI-MUNICIPAL
WITHIN THE McDOUGAL WATER SYSTEM ASSOCIATION BOUNDARY

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-12871 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 well, pump, pipeline, and sprinkler 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-12781.
11. The proposed changes would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. The proposed change from group domestic for 20 households to quasi-municipal use has the potential to result in enlargement of the right. The total face value of the water right is for 40.47 acre-feet per year. The applicant requested that the transfer be conditioned to include a duty of 20.3 acre-feet per year to prevent enlargement of the water right.
14. All other application requirements are met.

Determination and Proposed Action

The change in place of use and change in character of use proposed in Transfer Application T-12781 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12781 is approved, the final order will include the following:

1. *The change in place of use and change in character of use proposed in Transfer Application T-12781 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 Certificate 93321 and any related decree.*
3. *Water right Certificate 93321 is cancelled.*
4. *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 the existing point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
5. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
6. *This use may be regulated if analysis of data available discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of this right or as those quantities may be subsequently reduced.*
7. *If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this right, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior or senior appropriators to jointly develop plans to mitigate interference.*
8. *The use of water for quasi-municipal use will be conditioned to include a duty of 20.3 acre-feet of water per year.*

9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*
10. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this SEP 10 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.

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>



Oregon

Kate Brown, Governor

Water Resources Department

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September 4, 2018

MCDUGAL WATER SYSTEM ASSOCIATION
ATTN: RON YORK
2434 NW MCDUGAL COURT
PRINEVILLE, OR 97754-9302

SUBJECT: Water Right Transfer Application T-12781

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12781. 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 Bend Bulletin 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12781
Jeremy T. Giffin, Watermaster 11 District *(via e-mail)*
Doann Hamilton, Agent/CWRE for the applicant *(via e-mail)*

encs