

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-12835, Yamhill County                        )    PROPOSING APPROVAL OF AN  
  )    ADDITIONAL POINT OF DIVERSION

**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 3, LLC  
PO BOX 717  
JEFFERSON, OR 97352

**Findings of Fact**

1. On January 30, 2018, ACMPC OREGON 3, LLC filed an application for an additional point of diversion under Certificates 64644 and 64645. The Department assigned the application number T-12835.
2. Notice of the application for transfer was published on February 6, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The first right to be transferred is as follows:

**Certificate:** 64644 in the name of DOUGLAS B. AND JOANN FRIES perfected under Permit S-41479)

**Use:** IRRIGATION of 84.2 ACRES

**Priority Date:** FEBRUARY 18, 1977

**Rate:** 1.05 CUBIC FEET PER SECOND

**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** WILLAMETTE RIVER, a tributary of the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	1	SE NW	72	POD 1 - 1950 FEET SOUTH AND 2310 FEET EAST FROM THE NW CORNER OF SECTION 1
4 S	3 W	WM	1	NE SW	72	POD 2 - 3850 FEET SOUTH AND 2600 FEET EAST FROM THE NW CORNER OF SECTION 1

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	2	NE NE	72	11.6
4 S	3 W	WM	2	SE NE	72	23.8
4 S	3 W	WM	2	NE SE	72	39.2
4 S	3 W	WM	2	SE SE	72	9.6
Total						84.2

4. Transfer Application T-12835 proposes an additional point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in feet (ft.)	
4 S	3 W	WM	12	SW NE	APOD 3 - 1450 FEET SOUTH AND 520 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 12	POD 1	POD 2
						4820 ft.	2970 ft.

5. The second right to be transferred is as follows:

**Certificate:** 64645 in the name of DOUGLAS B. AND JOANN FRIES (perfected under Permit S-22063)

**Use:** IRRIGATION of 315.6 ACRES

**Priority Date:** JANUARY 29, 1953

**Rate:** 2.5 CUBIC FEET PER SECOND

**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Source:** WILLAMETTE RIVER, a tributary of the COLUMBIA RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	1	SE NW	72	POD 1 - 1950 FEET SOUTH AND 2310 FEET EAST FROM THE NW CORNER OF SECTION 1
4 S	3 W	WM	1	NE SW	72	POD 2 - 3850 FEET SOUTH AND 2600 FEET EAST FROM THE NW CORNER OF SECTION 1

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
4 S	3 W	WM	1	NE NW		72	16.2
4 S	3 W	WM	1	NW NW		72	34.0
4 S	3 W	WM	1	SW NW		72	40.0
4 S	3 W	WM	1	SE NW		72	14.6
4 S	3 W	WM	1	NE SW		72	21.2
4 S	3 W	WM	1	NW SW		72	40.0
4 S	3 W	WM	1	SW SW		72	21.5
4 S	3 W	WM	1	SE SW		72	13.3
4 S	3 W	WM	2	NE NE		72	21.1
4 S	3 W	WM	2	NW NE		72	3.8
4 S	3 W	WM	2	SW NE		72	4.4
4 S	3 W	WM	2	SW NE		73	18.0
4 S	3 W	WM	2	SE NE		72	16.2
4 S	3 W	WM	2	SE NW		73	2.3
4 S	3 W	WM	2	NE SW		73	1.6
4 S	3 W	WM	2	NW SE		72	5.6
4 S	3 W	WM	2	NW SE		73	14.9
4 S	3 W	WM	2	NW SE	4		24.4
4 S	3 W	WM	2	SW SE		72	0.6
4 S	3 W	WM	2	SW SE	5		1.9
Total							315.6

6. Transfer Application T-12835 proposes an additional point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original points of diversion in feet (ft.)	
4 S	3 W	WM	12	SW NE	APOD 3 - 1450 FEET SOUTH AND 520 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 12	POD 1	POD 2
						4820 ft.	2970 ft.

7. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the old points of diversion to prevent fish from entering the diversion and that the diversions are currently equipped with an appropriate fish screen.
8. 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.

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

9. Water has been used within the last five years 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.

10. A pump, pipeline, and sprinkler system 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-12835.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

### **Determination and Proposed Action**

The additional point of diversion proposed in Transfer Application T-12835 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.

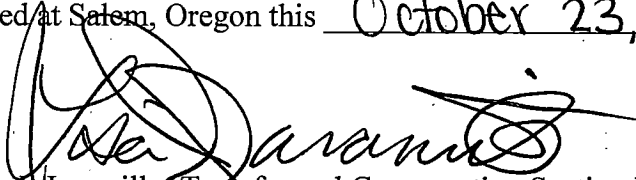
*If Transfer Application T-12835 is approved, the final order will include the following:*

1. *The additional point of diversion proposed in Transfer Application T-12835 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 Certificates 64644 and 64645 and any related decree.*
3. *Water right Certificates 64644 and 64645 are cancelled.*
4. *The quantity of water diverted at the proposed additional point of diversion (APOD 3), together with that diverted at the original points of diversion (POD 1 and POD 2), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and POD 2).*
5. *The water user shall operate and maintain an approved fish screen at the old points of diversion. If Oregon Department of Fish and Wildlife (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.*
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, 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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this October 23, 2019.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@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

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 23, 2019

ACMPC OREGON 3, LLC  
PO BOX 717  
JEFFERSON, OR 97352

SUBJECT: Water Right Transfer Application T-12835

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12835. 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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: T-12835  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
William E. McGill, Agent for the applicant (*via e-mail*)

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