

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12744, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINTS OF
	)	APPROPRIATION, 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**

ACM II OREGON 2, LLC  
PO BOX 717  
JEFFERSON, OR 97352

**Findings of Fact**

1. On September 14, 2017, ACM II OREGON 2, LLC filed an application to change the points of appropriation, change the place of use, and to change the character of use under Certificates 80997 and 80998. The Department assigned the application number T-12744.
2. Notice of the application for transfer was published on September 19, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 18, 2019, the applicant's agent submitted revisions to the application.
4. On July 29, 2019, the Department contacted the applicant's agent to notify the applicant that the acres designated to change character of use to industrial were not correctly identified in the application.
5. On August 5, 2019, the applicant's agent submitted a revised Table 2 for Certificates 80997 and 80998, and a map, resolving the deficiency.

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.
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6. On September 20, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12744 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 21, 2019, 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.

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

**Certificate:** 80997 in the name of JAMES AND SHIRLEY HEATER (perfected under Permit G-5718)  
**Use:** IRRIGATION of 10.42 ACRES  
**Priority Date:** MARCH 16, 1973  
**Rate:** 0.05 CUBIC FOOT PER SECOND (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION DESCRIBED AS WELL 1)  
**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:** WELLS 1, 2, AND 3, in the BEAVER CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	1 W	WM	14	SE SW	59	WELL 1 - 630 FEET NORTH AND 1620 FEET EAST FROM THE SW CORNER OF DLC 59
8 S	1 W	WM	14	SE SW	59	WELL 2 - 620 FEET NORTH AND 730 FEET EAST FROM THE SW CORNER OF DLC 59
8 S	1 W	WM	14	SE SW	59	WELL 3 - 780 FEET NORTH AND 480 FEET EAST FROM THE SW CORNER OF DLC 59

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	1 W	WM	14	NE SW	59	1.67
8 S	1 W	WM	14	SW SW	59	1.68
8 S	1 W	WM	14	SE SW	59	1.23
8 S	1 W	WM	14	NW SE	59	0.16
8 S	1 W	WM	14	SW SE	59	0.56
8 S	1 W	WM	23	NE NW	59	1.12
8 S	1 W	WM	23	NW NW	59	4.00
Total						10.42

8. Transfer Application T-12744 proposes to move the authorized point of appropriation for 2.48 acres from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximated distance from the original points of appropriation in feet (ft.)		
							WELL 1	WELL 2	WELL 3
8 S	1 W	WM	14	SW SW	59	WELL 4 - 810 FEET NORTH AND 470 FEET EAST FROM THE SW CORNER OF DLC 59	1163 ft.	321 ft.	30 ft.

9. Transfer Application T-12744 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	1 W	WM	14	NE SW	59	0.13
8 S	1 W	WM	14	NW SW	59	3.08
8 S	1 W	WM	14	SW SW	59	0.38
8 S	1 W	WM	14	NE SE	59	0.65
8 S	1 W	WM	14	NW SE	59	3.70
Total						7.94

10. Transfer Application T-12744 also proposes to change the place of use and character of use for 2.48 acres of the right to:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	1 W	WM	14	SW SW	59

11. The proposed INDUSTRIAL use shall be limited to a rate of not to exceed 0.01 cfs and shall be further limited to a total volume diverted of 6.2 Acre-Feet (AF) per year, being 2.5 AF per acre per year.
12. Certificate 80997 does not specify the period of allowed use, however irrigation is considered to be a use with the season being from May 1 through September 30, as stated in the Mill Creek (F) Decree. The change in character of use to industrial is limited to May 1 through September 30.
13. The portion of the second right to be transferred is as follows:

**Certificate:** 80998 in the name of JAMES AND SHIRLEY HEATER (perfected under Permit G-10629)

**Use:** SUPPLEMENTAL IRRIGATION of 10.42 ACRES

**Priority Date:** JUNE 18, 1986

**Rate:** 0.08 CUBIC FOOT PER SECOND (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION DESCRIBED AS WELL 2)

**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. This right is limited to any deficiency in the available supply of any prior right existing for the same land.

**Source:** WELLS 1, 2, AND 3, in the BEAVER CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
8 S	1 W	WM	14	SE SW	59	WELL 1 - 630 FEET NORTH AND 1620 FEET EAST FROM THE SW CORNER OF DLC 59
8 S	1 W	WM	14	SE SW	59	WELL 2 - 620 FEET NORTH AND 730 FEET EAST FROM THE SW CORNER OF DLC 59
8 S	1 W	WM	14	SE SW	59	WELL 3 - 780 FEET NORTH AND 480 FEET EAST FROM THE SW CORNER OF DLC 59

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	1 W	WM	14	NE SW	59	1.67
8 S	1 W	WM	14	SW SW	59	1.68
8 S	1 W	WM	14	SE SW	59	1.23
8 S	1 W	WM	14	NW SE	59	0.16
8 S	1 W	WM	14	SW SE	59	0.56
8 S	1 W	WM	23	NE NW	59	1.12
8 S	1 W	WM	23	NW NW	59	4.00
Total						10.42

14. Transfer Application T-12744 proposes to move the authorized point of appropriation for 2.48 acres from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximated distance from the original points of appropriation in feet (ft.)		
							WELL 1	WELL 2	WELL 3
8 S	1 W	WM	14	SW SW	59	WELL 4 - 810 FEET NORTH AND 470 FEET EAST FROM THE SW CORNER OF DLC 59	1163 ft.	321 ft.	30 ft.

15. Transfer Application T-12744 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	1 W	WM	14	NE SW	59	0.13
8 S	1 W	WM	14	NW SW	59	3.08
8 S	1 W	WM	14	SW SW	59	0.38
8 S	1 W	WM	14	NE SE	59	0.65
8 S	1 W	WM	14	NW SE	59	3.70
Total						7.94

16. Transfer Application T-12744 also proposes to change the place of use and character of use for 2.48 acres of the right to:

INDUSTRIAL USE					
Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	1 W	WM	14	SW SW	59

17. This right is limited to any deficiency in the available supply of any prior right existing for the same land; therefore, the proposed INDUSTRIAL use shall be limited to a rate of not to exceed 0.02 cfs and shall be further limited to a total volume diverted of 6.2 Acre-Feet (AF) per year, being 2.5 AF per acre per year. The use of water for supplemental irrigation may only be used when water for the primary right is not available.
18. Certificate 80998 does not specify the period of allowed use, however irrigation is considered to be a use with the season being from May 1 through September 30, as stated in the Mill Creek (F) Decree. The change in character of use to industrial is limited to May 1 through September 30.

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

19. 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.
20. 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-12744.
21. The proposed change, as conditioned, would not result in enlargement of the rights.
22. The proposed change, as conditioned, would not result in injury to other water rights.
23. All other application requirements are met.

**Determination and Proposed Action**

The change in points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12744 appear 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.

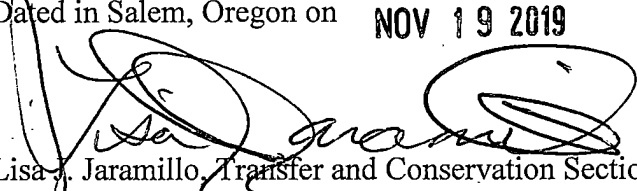
*If Transfer Application T-12744 is approved, the final order will include the following:*

- 1. The change in points of appropriation, change in place of use, and change in character of use proposed in Transfer Application T-12744 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 Certificates 80997 and 80998, and any related decree.*

3. *Water right Certificates 80997 and 80998 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation (Well 4), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1, 2, and 3).*
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 appropriation (new and existing).*
  - 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 devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
7. *The former place of use of the transferred rights shall no longer receive water under the right.*
8. *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 changes and full beneficial use of the water.*

9. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on **NOV 19 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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. **The Oregon Military Department does not have a toll free number.**



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

November 19, 2019

ACM II OREGON 2, LLC  
PO BOX 717  
JEFFERSON, OR 97352

SUBJECT: Water Right Transfer Application T-12744

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12744. 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 Stayton Mail 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-12744  
Joel M. Plahn, District 16 Watermaster (*via e-mail*)  
William E. McGill, Agent for the applicant (*via e-mail*)

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