

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13281, Marion County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF
	)	APPROPRIATION

**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**

LOMBARD WATER CO. LLC  
PO BOX 699  
NEWBERG, OR 97132

**Findings of Fact**

1. On October 31, 2019, HILAND WC-LOMBARD WS filed an application for an additional point of appropriation under Certificate 35771. The Department assigned the application number T-13281.
2. Notice of the application for transfer was published on November 5, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On May 8, 2020 the Department notified the applicant that the ¼ ¼ were not identified on the map, table 1 had the authorized well in the wrong ¼ ¼ and table 2 did not include all the lands of Certificate 35771. On June 15, 2020 the agent for the applicant provided the necessary corrections.
4. On July 15, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13281 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 14, 2020, 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.

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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5. On August 4, 2020, the applicant submitted a request to amend the applicants name on the application from HILAND WC-LOMBARD WS to LOMBARD WATER CO. LLC

6. The right to be transferred is as follows:

**Certificate:** 35771 in the name of LEONARD G. and PATRICIA L. WITTENBERG (perfected under Permit G-169)

**Use:** DOMESTIC USE IN 86 HOUSES, 4 THREE-UNIT APARTMENTS, 1 SIX-UNIT APARTMENT, 1 TWO-UNIT APARTMENT, AND 1 CHURCH, AND FIRE PROTECTION

**Priority Date:** MARCH 12, 1956

**Rate:** 0.50 CUBIC FOOT PER SECOND

**Source:** A WELL, A TRIBUTARY OF AN UNNAMED STREAM (LITTLE PUDDING RIVER)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
7 S	2 W	WM	18	NE SW	41	NORTH 16 DEGREES 10 MINUTES EAST 3129.12 FEET FROM SE CORNER OF TOWNER SAVAGE DLC 37

**Authorized Place of Use:**

DOMESTIC USE AND FIRE PROTECTION					
Twp	Rng	Mer	Sec	Q-Q	DLC
7 S	2 W	WM	18	SE NW	41
7 S	2 W	WM	18	NE SW	41

7. Transfer Application T-13281 proposes an additional point of appropriation approximately 65.0 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
7 S	2 W	WM	18	NE SW	LATITUDE: 44°57'43.81", LONGITUDE: 122°58'49.56"

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

8. 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.

9. A water distribution 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-13281.

10. The proposed change would not result in enlargement of the right.

11. The proposed change would not result in injury to other water rights.

12. All other application requirements are met.

## **Determination and Proposed Action**

The additional point of appropriation proposed in Transfer Application T-13281 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-13281 is approved, the final order will include the following:*

- 1. The additional point of appropriation proposed in Transfer Application T-13281 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 35771 and any related decree.*
- 3. Water right Certificate 35771 is cancelled.*
- 4. The quantity of water diverted at the new additional point of appropriation (Well 2), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 6. 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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on

SEP 03 2020

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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov) or 503-986-0890.

*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.*

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

**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

September 3, 2020

### **Applicant**

LOMBARD WATER CO. LLC

PO BOX 699

NEWBERG, OR 97132

SUBJECT: Water Right Transfer Application T-13281

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13281. 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, 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 Department's notice.

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 contact me at [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov) or 503-986-0890 if I may be of assistance.

Sincerely,

*Scott Grew*

Transfer Specialist

cc: Transfer Application file T-13281  
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)

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