

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-12149, Polk County) **CHANGE IN CHARACTER OF USE**

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

HAMILTON FARMS, LLC
C/O STEVE HAMILTON
14190 AIRLIE RD,
MONMOUTH, OR 97361

Findings of Fact

1. On August 31, 2015, HAMILTON FARMS LLC filed an application to change the character of use under Certificates 41746, 41747, and 81452. The Department assigned the application number T-12149.
2. Notice of the application for transfer was published on September 1, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 2, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12149 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 5, 2016, 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.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

4. On July 22, 2016, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12149 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 26, 2016, and in the Polk Itemizer-Observer newspaper on August 3 and 10, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 41746 in the name of LOUIS HAMILTON (perfected under Permit R-5616)
Use: STOCK
Priority Date: MARCH 31, 1970
Limit/Duty: The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 7.8 ACRE-FEET (AF), being 6.0 AF in Reservoir No. 1 and 1.8 AF in Reservoir 3.
Source: Two unnamed drainageways, tributaries of SOAP CREEK

The Reservoirs are Located in:

Twp	Rng	Mer	Sec	Q-Q	DLC	Reservoir
9 S	5 W	WM	32	SE NE	66	No. 1
9 S	5 W	WM	32	SE SE	66	No. 3

6. Certificate 41746 does not provide measured distances for the location of the point of the reservoir, however the Certified Water Right Examiner (CWRE) has provided information further describing the locations as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	5 W	WM	32	SE NE	66	RESERVOIR NO. 1: 1145 FEET SOUTH AND 855 FEET WEST FROM THE NORTHERLY CORNER OF STAATS DLC 66
9 S	5 W	WM	32	SE SE	66	RESERVOIR NO. 3: 1320 FEET NORTH AND 240 FEET WEST FROM THE SE CORNER OF SEC 32

7. Transfer Application T-12149 proposes to change the character of use to multipurpose, including but not limited to, stock.

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

Certificate: 41747 in the name of LOUIS HAMILTON (perfected under Permit R-5617)
Use: STOCK
Priority Date: MARCH 31, 1970
Rate: 3.0 AF
Limit/Duty: The amount of water entitled to be stored each year under such right, for the purposes aforesaid, shall not exceed 3.0 AF.
Source: An unnamed drainageway, tributary of SOAP CREEK

The Reservoir is Located in:

Twp	Rng	Mer	Sec	Q-Q	Reservoir
9 S	5 W	WM	28	NW SW	No. 4

9. Certificate 41747 does not provide measured distances for the location of the point of the reservoir, however the CWRE has provided information further describing the location as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	5 W	WM	28	NW SW	RESERVOIR NO. 4: 2860 FEET NORTH AND 660 FEET EAST FROM THE NORTHERLY CORNER OF STAATS DLC 66

10. Transfer Application T-12149 proposes to change the character of use to multipurpose, including but not limited to, stock.

11. The portion of the third right to be transferred is as follows:

Certificate: 81452 in the name of LOUIS HAMILTON (perfected under Application R-75387)

Use: LIVESTOCK, FIRE PROTECTION and FLOOD CONTROL

Priority Date: JANUARY 1, 1993

Limit/Duty: The amount of water entitled to be stored and used each year under this right is not more than 3.0 ACRE-FEET, being 1.0 AF in Hamilton 5 Reservoir and 2.0 AF in Hamilton 7 Reservoir.

Source: UNNAMED STREAMS, tributaries of BERRY CREEK

The Reservoirs are Located in:

Twp	Rng	Mer	Sec	Q-Q	Reservoir
9 S	5 W	WM	32	SW NE	Hamilton 5 Reservoir
9 S	5 W	WM	32	SE SE	Hamilton 7 Reservoir
10 S	5 W	WM	5	NE NE	Hamilton 7 Reservoir

12. Certificate 81452 does not provide measured distances for the location of the point of the reservoir, however the CWRE has provided information further describing the locations as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	5 W	WM	32	SW NE	HAMILTON RESERVOIR 5: 735 FEET SOUTH AND 1880 FEET WEST FROM THE NORTHERLY CORNER OF STAATS DLC 66
9 S	5 W	WM	32	SE SE	HAMILTON RESERVOIR 7: 90 FEET NORTH AND 255 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 32

13. Transfer Application T-12149 proposes to change the character of use to multipurpose, including but not limited to, livestock, fire protection and flood control.

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

14. 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.

15. The proposed change would not result in enlargement of the rights.

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


Conclusion of Law

The change in character of use proposed in Transfer Application T-12149 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in character of use proposed in Transfer Application T-12149 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 41746, 41747, 81452, and any related decree.
3. Water right Certificates 41746, 41747, and 81452 are canceled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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.
5. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16 day of September, 2016.



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

Mailing Date: 9/30/16