



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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July 22, 2016

VIA E-MAIL

HAMILTON FARMS, LLC
C/O STEVE HAMILTON
14190 AIRLIE RD
MONMOUTH, OR 97361
hamiltonfarms@hotmail.com

SUBJECT: Water Right Transfer Application T-12149

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12149. 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.

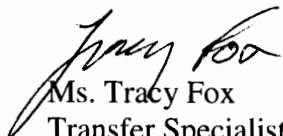
A public notice is being published in the Department's weekly publication and in the Polk Itemizer-Observer newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department 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 Tracy.L.Fox@wrд.state.or.us or (503) 986-0827 if I may be of assistance.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tracy Fox".

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-12149
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Jeanne Boatwright, Agent for the applicant (*via e-mail*)
Corbey Boatwright, CWRE #208 (*via e-mail*)

enclosure

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12149, Polk County) **PROPOSING APPROVAL OF A**
) **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.
4. 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

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.

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

5. 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

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

7. 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

8. 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

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

10. 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

11. 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

12. 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)]

13. 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.

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

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

Determination and Proposed Action

The change in character of use proposed in Transfer Application T-12149 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-12149 is approved, the final order will include the following:

- 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 22 day of July, 2016.



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

This Preliminary Determination was prepared by a Reimbursement Authority Contractor and reviewed by Tracy Fox. If you have questions about the information in this document, you may reach Tracy at 503 986-0827 or Tracy.L.Fox@wr.d.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, 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>