



Oregon
Kate Brown, Governor

Water Resources Department
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September 25, 2018

MATTHEW STASHIN
21762 SW MOUNTAIN HOME RD
SHERWOOD, OR 97140

SUBJECT: Water Right Transfer Application T-12812

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12812. 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 Burns Times Herald 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12812
JR Johnson, District 10 Watermaster *(via e-mail)*
John A. Short, Agent for the applicant *(via e-mail)*

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12812, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION AND A CHANGE IN
)	PLACE 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

MATTHEW F. STASHIN
21762 SW MOUNTAIN HOME RD
SHERWOOD, OR 97140

Findings of Fact

1. On December 29, 2017, MATTHEW F. STASHIN filed an application to change the points of appropriation and to change the place of use under Certificates 67672, 92313 and 93123. The Department assigned the application number T-12812.
2. On December 26, 2017, WRIGHT FARMS LLC filed an application for additional points of appropriation and to change the place of use also under Certificate 67672. The Department assigned the application number T-12807.
3. Notice of the application for transfer was published on January 9, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On June 12, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12812 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 12, 2018, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2023 and for the Department to 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.

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

Certificate: 67672 in the name of HELEN M. BARRUS (perfected under Permit G-10914)
Use: IRRIGATION OF 20.0 ACRES
Priority Date: MAY 23, 1989
Rate: 0.25 CUBIC FOOT PER SECOND
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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Source: ONE WELL within the SAGE HEN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
25 S	31 E	WM	5	NW NW	4	35 FEET SOUTH AND 1377 FEET WEST FROM THE N¼ CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
25 S	31 E	WM	5	NE NW	3	17.3
25 S	31 E	WM	5	NW NW	4	2.7
Total						20.0

6. Transfer Application T-12812 proposes to move the authorized points of appropriation approximately 16.5 miles for Well #1 and 16.75 miles for Well #2 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
24 S	33 E	WM	30	NW NW	3	WELL #1 - 1380 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF SECTION 30
24 S	33 E	WM	30	SE SW		WELL #2 - 1180 FEET NORTH AND 1680 FEET EAST FROM THE SW CORNER OF SECTION 30

7. Transfer Application T-12812 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	30	NE SW	15.4
24 S	33 E	WM	30	SE SW	4.6
Total					20.0

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

Certificate: 92313 in the name of MATTHEW F. STASHIN AND NORTHWEST FARM CREDIT SERVICES, FLCA (perfected under Permit G-17595)

Use: IRRIGATION OF 87.0 ACRES

Priority Date: AUGUST 18, 1975

Rate: 1.05 CUBIC FEET PER SECOND

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 and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: THREE WELLS within the MALHEUR LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
24 S	33 E	WM	18	NW NE	WELL 2 - 32 FEET NORTH AND 28.7 FEET WEST FROM THE SE CORNER OF THE NWNE OF SECTION 18
24 S	33 E	WM	18	SW SE	WELL 3 - 42.7 FEET SOUTH AND 32.9 FEET WEST FROM THE NE CORNER OF THE SWSE OF SECTION 18
24 S	33 E	WM	18	NE SW	WELL 4 - 60.5 FEET NORTH AND 304.75 FEET EAST FROM THE SW CORNER OF THE NESW OF SECTION 18

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	33 E	WM	18	NE NE		5.3
24 S	33 E	WM	18	NW NE		6.1
24 S	33 E	WM	18	SW NE		7.1
24 S	33 E	WM	18	SE NE		6.4
24 S	33 E	WM	18	NE SW		10.2
24 S	33 E	WM	18	NW SW	3	7.1
24 S	33 E	WM	18	SW SW	4	6.1
24 S	33 E	WM	18	SE SW		9.1
24 S	33 E	WM	18	NE SE		7.4
24 S	33 E	WM	18	NW SE		8.6
24 S	33 E	WM	18	SW SE		7.4
24 S	33 E	WM	18	SE SE		6.2
					Total	87.0

9. Transfer Application T-12812 proposes to move the authorized points of appropriation. The proposed points of appropriation are described in the table below with the approximate measured distances from the authorized points of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from original well locations measured in miles (mi)		
						Well 2	Well 3	Well 4
24 S	33 E	WM	30	NW NW	WELL #1 - 1380 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF SECTION 30	2.6	2.1	2.0
24 S	33 E	WM	30	SE SW	WELL #2 - 1180 FEET NORTH AND 1680 FEET EAST FROM THE SW CORNER OF SECTION 30	2.5	2.1	2.0

10. Transfer Application T-12812 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
24 S	33 E	WM	30	NE NW		1.7
24 S	33 E	WM	30	NW SW	3	28.7
24 S	33 E	WM	30	SW SW	4	28.7
24 S	33 E	WM	30	SE SW		27.9
Total						87.0

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

Certificate: 93123 in the name of FIVE GUYS GOOSE CLUB (perfected under Permit G-17603)

Use: IRRIGATION OF 14.4 ACRES

Priority Date: JANUARY 23, 2009

Rate: 0.15 CUBIC FOOT 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 and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: A WELL within the MALHEUR SLOUGH BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	33 E	WM	5	NE SW	WELL 2 - 1285 FEET SOUTH AND 210 FEET WEST FROM THE C ¹ / ₄ CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	33 E	WM	5	NE SW	3.6
25 S	33 E	WM	5	SE SW	3.6
25 S	33 E	WM	5	NW SE	3.6
25 S	33 E	WM	5	SW SE	3.6
Total					14.4

12. Transfer Application T-12812 proposes to move the authorized points of appropriation approximately 2.4 miles for WELL #1 and 2.25 miles for WELL #2 from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
24 S	33 E	WM	30	NW SW	3	WELL #1 - 1380 FEET NORTH AND 140 FEET EAST FROM THE SW CORNER OF SECTION 30
24 S	33 E	WM	30	SE SW		WELL #2 - 1180 FEET NORTH AND 1680 FEET EAST FROM THE SW CORNER OF SECTION 30

13. Transfer Application T-12812 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
24 S	33 E	WM	30	NE SW	14.4

Transfer Review Criteria (OAR 690-380-4010)

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. 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-12812.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.
18. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation and change in place of use proposed in Transfer Application T-12812 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-12812 is approved, the final order will include the following:

1. *The change in points of appropriation and change in place of use proposed in Transfer Application T-12812 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 67672, 92313 and 93123 and any related decree.*

3. *Water right Certificates 67672 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer or transfer T-12807.*
4. *Water right Certificates 92313 and 93123 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*
5. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation.*
6. *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.*
7. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the rights.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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.*

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

Dated at Salem, Oregon this SEP 27 2018


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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@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>