

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12682, Lake County)	PROPOSING APPROVAL OF CHANGES
)	IN POINTS OF APPROPRIATION AND
)	A CHANGES IN PLACES 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

RUSSELL B. MATTIS
PO BOX 87
FORT ROCK, OR 97735

Findings of Fact

1. On June 5, 2017, JERALD AND VERLINDA SIMMONS filed an application to temporarily change the place of use and change the point of appropriation to serve the proposed place of use under Certificate 82685 and 82158 for a period of 5 years. The Department assigned the application number T-12682
2. Notice of the application for transfer was published on November 14, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 9, 2017 the applicants JERALD AND VERLINDA SIMMONS submitted a request for assignment to reflect the transfer holder of record as RUSSELL B. MATTIS, PO BOX 87, FORT ROCK, OR 97735.
4. On October 23, 2017 the agent for the applicant submitted a revised application and map and an additional fee to change the temporary transfer to a permanent transfer.
5. On October 23, 2017 RUSSELL B. MATTIS filed an application for a permanent change in point of appropriation and place of use under Certificates 82685 and 82158. The Department re-assigned the application number T-12682.
6. On January 3, 2018, the Watermaster provided an updated review for transfer application T-12682.

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.

7. On August 30, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12682 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 1, 2018, 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.
8. On February 7, 2019 the Department contacted the agent for the applicant regarding a deficiency with the report of land ownership provided to the Department. Specifically the report was not dated and the report showed the land belonged to John and Susan Cole.
9. On February 14, 2019 the agent for the applicant provided a new report of land ownership, partially satisfying the deficiency. On May 31, 2019 the agent for the applicant provided the Department with a notarized Consent by Deeded Landowner form signed by the current land owners John and Susan Cole, authorizing Russell Mattis to move forward with the transfer.
10. The first right to be transferred is as follows:

Certificate: 82685 in the name of HIDE OUT RANCH (perfected under Permit G-10706)
Use: IRRIGATION of 157.5 ACRES
Priority Date: JUNE 17, 1984
Rate: 1.96 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 (or its equivalent) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Source: A WELL within the SILVER LAKE BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	14 E	WM	33	NW NE	30 FEET SOUTH AND 1370 FEET EAST FROM THE NW CORNER OF THE NENW OF SECTION 33

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	14 E	WM	28	SE SW	40.0
27 S	14 E	WM	28	SW SE	40.0
27 S	14 E	WM	33	NW NE	39.0
27 S	14 E	WM	33	NE NW	38.5
Total					157.5

11. Transfer Application T-12682 proposes to move the authorized point of appropriation approximately 15.2 miles north, to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	14 E	WM	16	NE NW	1312 FEET SOUTH AND 1358 FEET EAST FROM THE NW CORNER OF SECTION 16
25 S	14 E	WM	16	NW SW	2660 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 16

12. Transfer Application T-12682 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	14 E	WM	16	SE SW	29.4
25 S	14 E	WM	16	NE NW	25.1
25 S	14 E	WM	16	NW NW	0.5
25 S	14 E	WM	16	SW NW	28.7
25 S	14 E	WM	16	NE SW	31.5
25 S	14 E	WM	16	NW SW	30.7
25 S	14 E	WM	16	SW SW	11.6
Total					157.5

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

Certificate: 82158 in the name of OREGON DEPARTMENT OF VETERANS AFFAIRS (perfected under Permit G-10708)

Use: IRRIGATION of 48.2 ACRES

Priority Date: APRIL 18, 1985

Rate: 0.6 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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
26 S	14 E	WM	1	NW NE	2	40 FEET SOUTH AND 1330 FEET WEST FROM THE NE CORNER OF SECTION 1

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
26 S	14 E	WM	1	NE NE	1	48.2

14. Transfer Application T-12682 proposes to move the authorized point of appropriation approximately 4.5 miles, northwest, to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	14 E	WM	16	NW SW	2660 FEET SOUTH AND 1320 FEET EAST FROM THE NW CORNER OF SECTION 16

15. Temporary Transfer Application T-11334 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	14 E	WM	16	SW SW	17.9
25 S	14 E	WM	16	SE SW	30.3
Total					48.2

Transfer Review Criteria (OAR 690-380-4010)

16. 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.
17. 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-12682.
18. The proposed change would not result in enlargement of the rights.
19. The proposed change would not result in injury to other water rights.
20. All other application requirements are met.

Determination and Proposed Action


The changes in points of appropriation and the changes in places of use proposed in Transfer Application T-12682 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-12682 is approved, the final order will include the following:

1. *The changes in points of appropriation and the changes in places of use proposed in Transfer Application T-12682 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 82685 and 82158 and any related decree.*
3. *Water right Certificates 82685 and 82158 are cancelled.*
4. *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.*
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 rights.*
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 at Salem, Oregon this DEC 20 2019


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla Davis. If you have any questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@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>



Oregon

Kate Brown, Governor

Water Resources Department

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Fax (503) 986-0904

December 20, 2019

Applicant

RUSSELL B. MATTIS

PO BOX 87

FORT ROCK, OR 97735

SUBJECT: Water Right Transfer Application T-12682

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12682. 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 Lake County Examiner 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 503-986-0806 or arla.l.davis@oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis

Transfer Specialist

Transfer and Conservation Section

cc: T-12682 (file)
Briah M. Mayer, District 12 Watermaster (*via e-mail*)
Dennis R. Glender, Agent for the applicant (*via e-mail*)

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