

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12704, Lake County)	PROPOSING APPROVAL OF CHANGES
)	IN POINTS OF APPROPRIATION AND
)	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.

Applicants

SCOTT TOBIASSON
JOSE TOBIASSON
PO BOX 93
FORT ROCK, OR 97735

Agent

DENNIS R. GLENDER
dba GLENDER'S HYDRO TECH SERVICES
8664 SW SAND RIDGE ROAD
CROOKED RIVER RANCH, OR 97760

Findings of Fact

1. On June 26, 2017, Scott Tobiasson and Jose Tobiasson filed an application to change the points of appropriation and to change the places of use under Certificates 28570, 90483, 48610, 90485, 80437 and 63583. The Department assigned the application number T-12704.
2. Notice of the application for transfer was published on August 4, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. This transfer, along with T-12708 (Simmons) proposes to modify Certificate 90485 and should be processed together simultaneously.
4. On November 13, 2018, and December 10, 2018, the Department received revised application pages and maps clarifying the places of use and points of appropriation descriptions.

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. On December 13, 2018, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-12704. The draft Preliminary Determination cover letter set forth a deadline of January 13, 2019, for the applicant to respond. On January 18, 2019, the agent for the applicant agreed to the terms and conditions of the draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

Certificate: 28570 in the name of ED and VERNA TURNER (perfected under Permit U-665)

Use: IRRIGATION of 86.4 ACRES

Priority Date: AUGUST 23, 1954

Rate: 1.08 CUBIC FEET PER SECOND FROM EAST WELL

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: ALBERTSEN WELL No. 1, within the SILVER CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	G'Lot	Measured Distances
26 S	15 E	WM	5	NE NW	Lot 3	ALBERTSEN WELL NO. 1 - 12½ CHAINS SOUTH AND 30 CHAINS EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	G'Lot	Acres
26 S	15 E	WM	5	NW NE	2	2.1
26 S	15 E	WM	5	NE NW	3	35.8
26 S	15 E	WM	5	NW NW	4	48.5
Total						86.4

7. Transfer Application T-12704 proposes to change the point of appropriation northwest approximately 4.5 miles from the existing point of appropriation. The proposed well (LAKE 126) is located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	14 E	WM	21	NE NE	POA #6 - 1320 FEET SOUTH AND 1320 FEET WEST FROM THE NE CORNER OF SECTION 21

8. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	14 E	WM	21	NE NE	21.6
25 S	14 E	WM	21	NW NE	21.6
25 S	14 E	WM	21	SW NE	21.6
25 S	14 E	WM	21	SE NE	21.6
Total					86.4

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

Certificate: 90483 in the name of KEN AND MARIA CADE (perfected under Permit G-7174)

Use: IRRIGATION of 21.3 ACRES

Priority Date: FEBRUARY 14, 1977

Rate: 0.27 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 cfs, 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: WELL 2 in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	15 E	WM	27	NW NW	WELL 2 (NEW) - 1309 FEET SOUTH AND 1562 FEET WEST FROM THE N¼ CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	15 E	WM	27	NE NW	18.5
25 S	15 E	WM	27	SE NW	2.8
Total					21.3

10. Transfer Application T-12704 proposes to change the point of appropriation west approximately 6.5 miles from the existing point of appropriation. The proposed well is located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	14 E	WM	21	NE NE	POA #6 - 1320 FEET SOUTH AND 1320 FEET WEST FROM THE NE CORNER OF SECTION 21

11. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	14 E	WM	21	NE NE	5.3
25 S	14 E	WM	21	NW NE	5.3
25 S	14 E	WM	21	SW NE	5.4
25 S	14 E	WM	21	SE NE	5.3
Total					21.3

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

Certificate: 48610 in the name of NILO J., MARY JANE, and RICHARD N. WIDENOJA (perfected under Permit G-7130)

Use: IRRIGATION of 10.5 ACRES

Priority Date: JUNE 4, 1976

Rate: 0.13 CFS

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: ALBERTSON WELL a tributary of FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
26 S	15 E	WM	5	NE NW	Lot 3	ALBERTSON WELL - 12½ CHAINS SOUTH AND 30 CHAINS EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Gov't Lot	Acres
26 S	15 E	WM	5	NE NE	1	10.5
Total						10.5

13. Transfer Application T-12704 proposes to change the point of appropriation northwest approximately 4.5 miles from the existing point of appropriation. The proposed well is located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	14 E	WM	21	NE NE	POA #6 - 1320 FEET SOUTH AND 1320 FEET WEST FROM THE NE CORNER OF SECTION 21

14. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	14 E	WM	21	NE NE	2.7
25 S	14 E	WM	21	NW NE	2.6
25 S	14 E	WM	21	SW NE	2.6
25 S	14 E	WM	21	SE NE	2.6
Total					10.5

15. The portion of the fourth right to be transferred is as follows:

Certificate: 90485 in the name of KEN AND MARIA CADE (perfected under Permit G-10701)

Use: IRRIGATION of 3.7 ACRES

Priority Date: NOVEMBER 3, 1983

Rate: 0.046 CFS

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: WELL 2 (NEW), in the FORT ROCK VALLEY BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	15 E	WM	27	NW NW	WELL 2 (NEW) - 1309 FEET SOUTH AND 1562 FEET WEST FROM THE N¼ CORNER OF SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	15 E	WM	27	NE NW	3.7
Total					3.7

16. Transfer Application T-12704 proposes to change the point of appropriation southwest approximately 3.6 miles from the existing point of appropriation. The proposed well is located:

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
26 S	15 E	WM	5	NE NW	Lot 3	ALBERTSEN WELL No. 1 - 12½ CHAINS SOUTH AND 30 CHAINS EAST FROM THE NW CORNER OF SECTION 5

17. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
26 S	15 E	WM	5	NE NW	1.4

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
26 S	15 E	WM	5	NW NW	2.3
Total					3.7

18. The fifth right to be transferred is as follows:

Certificate: 80437 in the name of H.G. TRASS (perfected under Permit G-9137)
Use: IRRIGATION of 10.0 ACRES
Priority Date: DECEMBER 23, 1980
Rate: 0.12 CFS (IF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION DESCRIBED AS BEING WITHIN THE SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 16, T25S, R14E, W.M.; 1000 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER, SECTION 16), or its equivalent in case of rotation, measured at the well.
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 ONE-EIGHTIETH of one cubic foot per second per acre, 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 Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
27 S	16 E	WM	16	NE NE	152 FEET NORTH AND 75 FEET WEST FROM THE SE CORNER OF THE NE $\frac{1}{4}$ NE $\frac{1}{4}$ OF SECTION 16

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
27 S	16 E	WM	16	NE NE	10.0

19. Transfer Application T-12704 proposes to change the point of appropriation northwest approximately 11.2 miles from the existing point of appropriation. The proposed well is located:

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
26 S	15 E	WM	5	NE NW	Lot 3	ALBERTSEN WELL No. 1 - 12 $\frac{1}{2}$ CHAINS SOUTH AND 30 CHAINS EAST FROM THE NW CORNER OF SECTION 5

20. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
26 S	15 E	WM	5	NE NW	3	3.6
26 S	15 E	WM	5	NW NW	4	6.4
Total						10.0

21. The portion of the sixth right to be transferred is as follows:

Certificate: 63583 in the name of ALFRED L. AND ALTA B. ROBERTS (perfected under Permit G-8572)

Use: IRRIGATION of 33.6 ACRES

Priority Date: APRIL 5, 1979

Rate: 0.42 CUBIC FEET PER SECOND, BEING 0.04 CFS FROM WELL 1 AND 0.38 CFS FROM WELL 2

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, 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: WELLS 1 and 2 in the FORT ROCK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
25 S	15 E	WM	33	NE NE	WELL 1 - 2590 FEET NORTH AND 110 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 33
25 S	15 E	WM	33	SW NE	WELL 2 - 1120 FEET NORTH AND 1350 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 33

Authorized Place of Use:

IRRIGATION - WELL 1					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	15 E	WM	33	NE NE	3.7
Total					3.7

IRRIGATION - WELL 2					
Twp	Rng	Mer	Sec	Q - Q	Acres
25 S	15 E	WM	33	NE NE	9.2
25 S	15 E	WM	33	NW NE	2.8
25 S	15 E	WM	33	SW NE	2.5
25 S	15 E	WM	33	SE NE	15.4
Total					29.9

22. Transfer Application T-12704 proposes to change the points of appropriation southwest to approximately 2 $\frac{3}{4}$ miles from the existing points of appropriation. The proposed well is located:

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
26 S	15 E	WM	5	NE NW	Lot 3	ALBERTSEN WELL No. 1 - 12 $\frac{1}{2}$ CHAINS SOUTH AND 30 CHAINS EAST FROM THE NW CORNER OF SECTION 5

23. Transfer Application T-12704 also proposes to change the place of use for the above described right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
26 S	15 E	WM	5	NE NW	3	7.6

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
26 S	15 E	WM	5	NW NW	4	26.0
Total						33.6

Transfer Review Criteria (OAR 690-380-4010)

24. Water has been used within the last five years prior to the submittal of Transfer Application T-12704 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.
25. Several wells, pumps, pipeline infrastructure, center pivots and sprinkler systems 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-12704.
26. The Department has determined that the proposed wells Albertsen Well #1 (LAKE 377), and POA #6 (LAKE 126) both develop the same source of water as the authorized existing points of appropriation. Under OAR 690-380-2110, any request for a change in (or additional) point of appropriation is restricted to the same aquifer.
27. The proposed changes would not result in enlargement of the rights.
28. The proposed changes would not result in injury to other water rights.
29. All other application requirements are met.

Determination and Proposed Action

The changes in points of appropriation and places of use proposed in Transfer Application T-12704 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-12704 is approved, the final order will include the following:

1. *The changes in points of appropriation and places of use proposed in Transfer Application T-12704 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 28570, 90483, 48610, 90485, 80437 and 63583 and any related decree.*
3. *Water right Certificates 28570, 90483, 48610, 90485, 80437 and 63583 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer. This transfer, along with T-12708 (Simmons) proposes to modify Certificate 90485 and should be processed together simultaneously:*
4. *The quantity of water diverted at the new points of appropriation shall not exceed the quantities 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 places 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.*

FEB 06 2020

Dated at Salem, Oregon this _____.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@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
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

February 6, 2020

SCOTT TOBIASSON
JOSE TOBIASSON
PO BOX 93
FORT ROCK, OR 97735

SUBJECT: Water Right Transfer Application T-12704

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12704. 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12704
Brian M. Mayer, District 12 Watermaster (*via e-mail*)
Dennis R. Glender, Agent for the applicant (*via e-mail*)

encs