

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13501, Klamath County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION

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

MICHAEL MOORE
15800 MATNEY RD.
KLAMATH FALLS, OR 97601

Findings of Fact

1. On July 24, 2020, Michael Moore filed an application to change the points of appropriation under Certificates 31787 and 37578. The Department assigned the application number T-13501.
2. Notice of the application for transfer was published on August 11, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Transfer Application T- 13501 proposes to transfer water rights within the boundaries of Klamath Irrigation District (District). The transfer proposes to transfer lands that are layered with portions of Klamath Project Consolidated Claim 321-17/293/323-3¹ (a.k.a. KA-1000). The claim is not involved in this transfer. On June 15, 2020, the District certified that they consented to the applicant's proposed water right transfer application and maps.

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.

¹ See Corrected Partial Order of Determination for OAH Case 003, dated February 28, 2014, Bates-stamped pages KBA ACFFOD 07017 – 07579, on file with the Klamath County Circuit Court.

4. On November 7, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13501 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 7, 2020, for the applicant to respond.
5. On November 23, 2020, the applicant contacted the Department, requesting an extension for the draft Preliminary Determination response.
6. On November 24, 2020, the Department extended the draft Preliminary Determination response date to January 5, 2021.
7. On December 23, 2020, 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. The portion of the first right to be transferred is as follows:

Certificate: 31787 in the name of LEO E. MATNEY (perfected under Permit G-557)

Use: IRRIGATION of 94.6 ACRES

Priority Date: MAY 9, 1957

Rate: 0.78 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, 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: LEO MATNEY WELL No. 1 a tributary of LOST RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 E	WM	24	NW SE	23.5 CHAINS WEST AND 59 CHAINS SOUTH OF THE NE CORNER OF SECTION 24

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	9 E	WM	24	NE NE	11.9
40 S	9 E	WM	24	NW NE	9.9
40 S	9 E	WM	24	SW NE	4.2
40 S	9 E	WM	24	SE NE	1.6
40 S	10 E	WM	18	SW SW	7.2
40 S	10 E	WM	19	NW NW	36.0
40 S	10 E	WM	19	SW NW	22.0
40 S	10 E	WM	19	NW SW	1.8
TOTAL					94.6

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

Certificate: 37578 in the name of LEO E. MATNEY (perfected under Permit G-2844)
Use: SUPPLEMENTAL IRRIGATION of 94.6 ACRES
Priority Date: MARCH 17, 1965
Rate: 0.407 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, 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: MATNEY WELL No. 1 a tributary of LOST RIVER (OLD TULE LAKE)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 E	WM	24	NW SE	23.5 CHAINS WEST AND 59 CHAINS SOUTH FROM THE NE CORNER OF SECTION 24

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	9 E	WM	24	NE NE	11.9
40 S	9 E	WM	24	NW NE	9.9
40 S	9 E	WM	24	SW NE	4.2
40 S	9 E	WM	24	SE NE	1.6
40 S	10 E	WM	18	SW SW	7.2
40 S	10 E	WM	19	NW NW	36.0
40 S	10 E	WM	19	SW NW	22.0
40 S	10 E	WM	19	NW SW	1.8
TOTAL					94.6

10. Transfer Application T-13501 proposes to move the authorized point of appropriation for both rights approximately 0.41 mile (mi.) from the existing points of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	9 E	WM	24	SE NE	PROPOSED POA – 1820 FEET SOUTH AND 1150 WEST FROM THE NE CORNER OF SECTION 24

Transfer Review Criteria (OAR 690-380-4010)

11. 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.
12. 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-13501.
13. The proposed change would not result in enlargement of the rights.

14. The proposed change would not result in injury to other water rights.
15. All other application requirements are met.

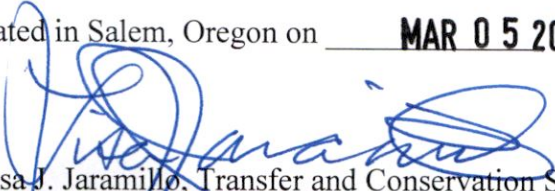
Determination and Proposed Action

The change in points of appropriation proposed in Transfer Application T-13501 appears 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.

1. *If Transfer Application T-13501 is approved, the final order will include the following:*
2. *The change in points of appropriation proposed in Transfer Application T-13501 are approved.*
3. *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 31787 and 37578 and any related decree.*
4. *Water right Certificates 31787 and 37578 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, (Proposed POA), shall not exceed the quantity of water lawfully available at the original points of appropriation, (Well 1).*
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 point of appropriation.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2022. 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 change 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 in Salem, Oregon on **MAR 05 2021**


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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

MARCH 5, 2021

VIA E-MAIL

MICHAEL MOORE
15800 MATNEY RD.
KLAMATH FALLS, OR 97601

SUBJECT: Water Right Transfer Application T-13501

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13501. 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 Klamath Herald and News 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me at tamera.l.smith@oregon.gov or 503-986-0864, if I may be of assistance.

Kindest regards,

Transfer Caseworker
Transfer and Conservation Section

cc: Transfer application file T-13501
Danette M. Watson, District 17 Watermaster *(via e-mail)*
Adkins Engineering And Surveying, Agent for the applicant *(via e-mail)*

encs