

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-11715, Josephine County) IN PLACE OF USE, CHARACTER OF
) USE FROM SUPPLEMENTAL TO
) PRIMARY, THE VOLUNTARY
) CANCELLATION AND THE PARTIAL
) CANCELLATION OF WATER RIGHTS

Authority

Oregon Revised Statute (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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

EDWARD L. AND TERESA N. GERBER
654 KENDALL RD
CAVE JUNCTION, OR 97523

Findings of Fact

1. On January 9, 2014, EDWARD L. and TERESA N. GERBER filed an application to change the place of use and character of use from supplemental to primary under Certificate 60710, and to cancel Certificate 60015 and to partially cancel Certificate 7127. The Department assigned the application number T-11715.
2. Notice of the application for transfer was published on January 14, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 24, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11715 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on December 1, 2015, 2015, and in the Cave Junction newspaper on December 2 and 9, 2015 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
4. On July 9, 2015, the Department requested evidence of use and a revised map depicting the lands to be cancelled.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

5. On July 15, 2015, the Department received evidence of use from the applicant and a revised application map.
6. On August 25, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11715 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2015, for the applicants to respond. The applicants 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.
7. The portion of the right to be transferred is as follows:

Certificate: 60710 in the name of DEAN MAYFIELD (perfected under Permit G-8577)
Use: PRIMARY IRRIGATION of 16.0 AND SUPPLEMENTAL IRRIGATION of 16.8 ACRES

Priority Date: MARCH 15, 1979

Rate: 0.41 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 2.5 acre-feet per acre, or its equivalent for each acre irrigated during the irrigation season of each year. The right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein, and shall be further limited to appropriation of water only to the extent that it does not impair or substantially interfere with existing surface water rights of others.

Source: A SUMP WELL within the ALTHOUSE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
40 S	7 W	WM	5	NW NE	41	100 FEET SOUTH AND 2000 FEET WEST FROM THE NE CORNER OF SECTION 5

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
39 S	7 W	WM	32	SE SW		38	4.0
40 S	7 W	WM	5	NW NE		40	1.6
40 S	7 W	WM	5	NW NE		41	1.6
40 S	7 W	WM	5	NE NW		40	1.3
40 S	7 W	WM	5	NE NW	1		7.5
Total							16.0

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
39 S	7 W	WM	32	SW SE		38	7.5
39 S	7 W	WM	32	SW SE		39	8.5
40 S	7 W	WM	5	NE NW	I		0.8
Total							16.8

8. Transfer Application T-11715 also proposes to change the place of use and also proposes to change the character of use from supplemental to primary as described in the table below:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
39 S	7 W	WM	32	SW SE		39	4.2
40 S	7 W	WM	5	NW NE		41	4.9
40 S	7 W	WM	5	NW NE		40	9.3
40 S	7 W	WM	5	SW NE		40	4.4
40 S	7 W	WM	5	NE NW		40	1.6
40 S	7 W	WM	5	NE NW	1		0.6
40 S	7 W	WM	5	SE NW		40	3.6
40 S	7 W	WM	5	SE NW	2		4.2
Total							32.8

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-11715 according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11715.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Partial Cancellation of a Water Right

14. On January 9, 2014, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Edward L. and Teresa N. Gerber. The right to be partially cancelled is as follows:

Certificate: 7127 in the name of Geo. W. Dunn (confirmed by Sucker Creek Decree)
Use: IRRIGATION OF 16.0 ACRES, LIVESTOCK, AND DOMESTIC
Priority Date: 1857
Rate: 0.32 CUBIC FEET PER SECOND
Period of Use: April 1 to October 31
Source: SUCKER CREEK tributary to the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	21	SE SE	HOLLAND DITCH AND MULVANEY GULCH

Authorized Place of Use to be cancelled:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	32	SW SE	16.00

15. On January 9, 2014, an affidavit certifying that a water right has been abandoned and requesting cancellation of the right was received from Edward L and Teresa N. Gerber. The right to be cancelled is as follows:

Certificate: 60015 in the name of Dean Mayfield (Confirmed by Sucker Creek Decree)
Use: IRRIGATION of 2.0 ACRES
Priority Date: 1875
Rate: 0.04 CUBIC FOOT PER SECOND
Period of Use: April 1 to October 31
Source: SUCKER CREEK tributary to the EAST FORK ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	7 W	WM	22	SW SE	1280 FEET NORTH AND 2680 FEET EAST FROM THE SW CORNER OF SECTION 22

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	7 W	WM	5	NE NW	2.00

Conclusions of Law


The change in place of use and change in character of use proposed in Transfer Application T-11715 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. .

Now, therefore, it is ORDERED:

1. The change in place of use and change in character of use proposed in Transfer Application T-11715 are approved. The portions of the rights that have been abandoned are cancelled.
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 Certificate 60710 and any related decree.
3. Water right Certificate 60015 is cancelled.
4. Water right Certificates 7127 and 60710 are cancelled. New certificates will be issued describing those portions of the right not affected by this transfer and cancellations.
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.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. The former place of use of the transferred right shall no longer receive water under the right.
 7. 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.
 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 26 day of January 2016.



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

Mailing date: FEB 01 2016