



# Oregon

John A. Kitzhaber, MD, Governor  
December 14, 2012

VIA E-MAIL to: [analysisllc@aol.com](mailto:analysisllc@aol.com)

**Water Resources Department**  
North Mall Office Building  
725 Summer St. NE, Suite A  
Salem, OR 97301  
Phone 503-986-0900  
FAX 503-986-0904  
[www.wrd.state.or.us](http://www.wrd.state.or.us)

**Applicant**

MILL CREEK LAND LLC  
ATTN: MARK G COPELAND  
7900 NE MILL CREEK RD  
PRINEVILLE, OR 97754

SUBJECT: Water Right Transfer Application T-11465

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11465. 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, 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 Department's notice.

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) 986-0890 or [Dorothy.I.Pedersen@wrds.state.or.us](mailto:Dorothy.I.Pedersen@wrds.state.or.us) if I may be of assistance.

Sincerely,

Dorothy I. Pedersen  
Transfer Program Advisor

cc: T-11465  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Robert Baxter, CWRE # 015

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

In the Matter of Transfer Application            )    PRELIMINARY DETERMINATION  
T-11465, Crook County                            )    PROPOSING APPROVAL OF A  
  )    CHANGE IN PLACE OF USE,

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

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**Findings of Fact**

**Background**

1. On August 23, 2012, MILL CREEK LAND LLC filed an application to change the place of use under Certificates 83657 and 83658. The Department assigned the application number T-11465.
2. On December 11, 2012, the applicant amended the application to include the domestic and stock water uses authorized under the rights in the transfer.
3. The portion of the first right to be transferred is as follows:  
**Certificate:** 83657 in the name of MILL CREEK LAND, LLC (confirmed by Crooked River Decree)  
**Use:** DOMESTIC AND STOCK USE, AND IRRIGATION of 14.8 ACRES  
**Priority Date:** 1868  
**Rate:** 0.19 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually beneficially, the total quantity being limited to 4 acre feet per acre during each year, if available at the authorized point of diversion: NO NAME DITCH, or its equivalent in case of rotation, measured at the point of diversion from the source.

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.

**Source:** MILL CREEK, tributary to OCHOCO CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	22	SE SE	1122 FEET NORTH AND 346 FEET WEST FROM THE NW CORNER OF SECTION 26

**Authorized Place of Use:**

DOMESTIC, STOCK & IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	NW NE	5.0
14 S	17 E	WM	26	SW NE	5.6
14 S	17 E	WM	26	NE NW	1.8
14 S	17 E	WM	26	SE NW	2.4

4. Transfer Application T-11465 proposes to change the place of use of the right to:

DOMESTIC, STOCK & IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	SW SW	13.5
14 S	17 E	WM	35	NW NW	1.3

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

**Certificate:** 83658 in the name of MILL CREEK LAND, LLC (confirmed by Crooked River Decree)

**Use:** IRRIGATION of 14.8 ACRES AND STOCK

**Priority Date:** 1880

**Rate:** 0.19 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually beneficially used, the total quantity being limited to four acre feet per acre during each year, if available at the original point of diversion: SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 36, T 14 S, R 17 E, W.M.; Ochoco Ditch – 350 feet South and 350 feet East from the NW corner SW $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 36, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Source:** OCHOCO CREEK, tributary to the CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	17 E	WM	35	SE NW	2018 FEET SOUTH AND 2605 FEET EAST FROM THE NW CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	SW SW	13.5
14 S	17 E	WM	35	NW NW	1.3

6. Transfer Application T-11465 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	17 E	WM	26	NW NE	5.0
14 S	17 E	WM	26	SW NE	5.6
14 S	17 E	WM	26	NE NW	1.8
14 S	17 E	WM	26	SE NW	2.4

7. Notice of the application for transfer was published on August 28, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On October 30, 2012, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11465 to the applicant. On November 29, 2012, the applicant requested that the completion date be extended to October 1, 2015, and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. The Department considers the extension of the completion date to October 1, 2015 to be reasonable, as reflected in this document.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. Pumps, pipelines, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The change in place of use appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11465 is approved, the final order will include the following:*

1. *The change in place of use proposed in application T-11465 is 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 83657 and 83658 and any related decree.*

3. *Water right certificates 83657 and 83658 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.*
4. *The former place of use of the transferred rights shall no longer receive water under the rights.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.*
6. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 19 day of December, 2012.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or [Carrie.R.Matthews@wrdd.state.or.us](mailto:Carrie.R.Matthews@wrdd.state.or.us).

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.