



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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November 24, 2015

VIA E-MAIL

EDWARD L GERBER  
654 KENDALL RD  
CAVE JUNCTION, OR 97523

SUBJECT: Water Right Transfer Application T-11715

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11715. 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 Illinois Valley Times 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 503-986-0892 or [Joan.M.Smith@wrdd.state.or.us](mailto:Joan.M.Smith@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11715  
Kathy A. Smith, District 14 Watermaster (*via e-mail*)  
Clay Jordan, CWRE # (*via e-mail*)

encs



6. 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 17.8 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	1		0.8
Total							16.8

7. 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

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
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)**

8. 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.
9. 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.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Partial Cancellation of a Water Right**

13. 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	

14. 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

**Determination and Proposed Action**

The change in place of use and change in character of use proposed in Transfer Application T-11715 appears to be 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. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned rights will be cancelled.

*If Transfer Application T-11715 is approved, the final order will include the following:*

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 24 day of November 2015.

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

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.

*Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*