



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
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October 12, 2017

Fujas Family Trust
Richard E. Fujas – Trustee
Elizabeth S. Fujas – Trustee
5128 South Pacific Highway
Phoenix, OR 97535

SUBJECT: Water Right Transfer Application T-12715

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12715. 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 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 Jessica.L.Joye@oregon.gov or by phone at 503-986-0814, if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Jessica Joye". The signature is fluid and cursive, with the first name "Jessica" being more prominent than the last name "Joye".

Jessica Joye
Reimbursement Authority Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application T-12715
Danette Watson, District 17 Watermaster (*via e-mail*)
Norm Daft, CWRE
Alexander Cox, 1892 Colestin RD, Ashland, OR 97520, commenter
Andrew Pratt and Cynthia Warzyn, PO Box 3066, Ashland, OR 97520, commenter
Tod Davies, 1892 Colestin RD, Ashland, OR 97520, commenter
Wes & Cynthia Norton, commenter (*via email*)
Peggy Moore, PO Box 1197, Ashland, OR 97520, commenter

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12715, Jackson County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

FUJAS FAMILY TRUST
RICHARD E. FUJAS - TRUSTEE
ELIZABETH S. FUJAS - TRUSTEE
5128 SOUTH PACIFIC HIGHWAY
PHOENIX, OR 97535

Findings of Fact

1. On July 12, 2017, FUJAS FAMILY TRUST, RICHARD AND ELIZABETH FUJAS - TRUSTEES filed an application to change the place of use under Certificate 56488. The Department assigned the application number T-12715.
2. Notice of the application for transfer was published on July 18, 2017, pursuant to OAR 690-380-4000. The following are the six comments that were timely filed in response to the notice:
 - a) On July 31, 2017, Alexander Cox submitted the following comment:

“The Fugas’ application is insufficient and does not make sense. They write “Neighbor has agreed to let us transfer some water right to our property so we can have some irrigation.” The Fugas already have a considerable amount of irrigation water. Why do they need more? What are they growing, why do they want to grow it in even greater quantities, and do their activities conform to Oregon Law?

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.
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The Fujas' application should be rejected as, no matter what their activities are, they already impact the water use of much smaller family farms and ranches downstream of their big operation. Any change will only cause those families further harm."

b) On July 31, 2017, Tod Davies submitted the following comment:

"Existing water rights are obviously an important mainstay of our neighborhood. The community is best served by protecting the rights as they stand, particularly in relation to rights existing for small family ranches and farms. To change the rights upstream from two family operations would have a negative effect on the community. For this reason, I support keeping the water rights as they presently stand, making no changes. Thank you."

c) On August 8, 2017, Andrew Pratt submitted the following comment:

"I oppose any transfer of Water Rights from Brad Boucher (Heaven and Earth LLC) to Richard and or Elizabeth Fugas.

In 1996 the Fugas subdivided their property and sold off the two parcels with water rights to the Boucher's and the Pratt's. They represented themselves as Sundance Hills, a planned development. They chose to keep and develop a parcel that did not have water rights.

In 2000 the Fugas started construction of their house and the three new ponds, the largest of which is not shown on the water map in this application. Due to a poorly producing well the next two years water was purchased and delivered by truck to keep the ponds full.

In approximately 2002 an arrangement was made between the Fugas and Brad Boucher to purchase water. When I caught the Fugas taking water I asked Elizabeth what was going on and she said, "We purchased water rights from Brad." I immediately contacted the Watermaster in Medford and was referred to Scott White in Klamath Falls.

Scott White contacted Richard Fugas by phone and was told that they indeed had water rights. Scott looked them up and saw that they were listed with the state as having water rights. Scott did no more research into the matter and did not contact us again. One year later I called again and had to explain that they were still taking water and they did not have water rights at this address. Scott looked them up again and called back and apologized saying he took Richard at his word and did not look close enough. Scott immediately drove out and red tagged the pump.

This entire application is the result of the Fugas getting caught illegally taking water from our Mill Creek irrigation ditch and having an illegal contract with Brad Boucher. This illegal contract went on for approximately 18 years. This alone should be ample reason to deny the application.

These are the ways this transfer would harm us:

- a) There is not enough water to provide for the needs of the three parcels that have the existing rights. If Brad has extra water it should be split equally between the Norton's and the Pratt's who actually have a history of agricultural practices and businesses.
- b) For the entirety of his ownership Brad has steadfastly refused to contribute to the maintenance costs of the ditch either monetarily or in sweat equity. Quoting Brad, "I consider the ditch to be riparian in nature and we should not trim out any willows that grow in it."

Now Richard Frujas when confronted with taking water stated that he does not have to contribute because everyone owes him due to the years he owned the land and had to maintain the ditch himself. The point being Brad has never contributed and we have 18 years of the Fujases illegally taking water and we don't see this changing at all. We are one of the two family's [sic] that provide water to three allotments. We can't afford to provide for Brads share and adding one more is a hardship.

- c) This transaction hurts us by legitimizing the illegal contract Brad has with the Fujases. No penalties for this? 18 years stolen water providing life for Fujases million dollar landscaping and the people he stole from get what? No compensation instead the State teaches the thief how to make this legitimate.
- d) The transfer application does not state whether the Fujases have rights to the preexisting 6" pipe line, owned by the Boucher's and the Pratt's, originating at Res. #1 providing water for both parties.
- e) Water Master Scott White and Tyler Martin have been involved with easement disputes, illegal structures (swimming pool not shown on the water map) and trespassing issues between the Boucher's, Ron Huseby and the Pratt's and these have not been resolved.
- f) The Fujases have a history of dumping garbage (fill) into the ditch to the extent that my livestock were poisoned and died. This was practiced both before and after the land sales. We would ask that the section of the ditch used as a dump be inspected by a representative of the Environmental Protection Agency and they would oversee the cleanup.
- g) The Mill Creek irrigation ditch was hand dug in around 1856 and is approximately 3 miles long. There were no written easements thru any of the parcels from the diversion at Mill Creek to approaching Res. #1. If another parcel is granted water rights through a transfer the new water right holder (Fujas) should seek easements with the landowners involved, and easements granted to the Fujases be legitimate and not assumed.

- h) The last twenty years two families (Norton's and Pratt's) have shouldered 99.9% of the expenses associated with maintaining a [sic] irrigation ditch. This application harms us by not including a mandatory ditch association or at least a contract between all affected parties.
- i) Our property has been devalued due to the fact that if we choose to sell we have to by law disclose the fact that we have neighbors that steal water and block easements, refuse to chip in their share of maintenance and are impossible to work with.
- f) Should a transfer be granted the new application should have a junior priority date. Having the same priority date harms my right.

I find the following inaccuracies with the water right map included in Transfer T-12715.

- a) The recently added fish screen has never been used and is in a state of disintegration. The fish screen was installed by Richard Fugas who at the time implied he was a water rights holder, maintaining that the Fish and Wildlife Service required him to install it. He did not ask permission or notify the Pratt's or Norton's. It was removed immediately due to it being unworkable and it has never been in use. (Enclosed is a copy of a note written and signed by Richard Fugas as proof of this)
- b) The illegal swimming pool that was built by Brad Boucher that straddles Ron Huseby's, Fugas's [sic] and Boucher's is not shown on the map and both Scott and Tyler will confirm this. This issue alone should stop this application.
- c) The large reservoir built up the hill from the Fugas's house is not on the map. It is located above the house, somewhat below their water tank and is not a permitted reservoir.

All inaccuracies on this map harm my rights and interest.

When two parties enter into an illegal contract and follow through with said contract, it becomes a criminal enterprise. Criminals should not be rewarded for their behavior, they should be held accountable and make restitution.

I again ask the State to deny this transfer application.

Sincerely, Andrew Pratt"

1. Attached letter dated October 22, 2015 reads as follows:

"Good day neighbor,

My name is Richard Fugas. I live at 2222 Colestin Road, just around the corner from you.

The Oregon Department of Fish and Wildlife has requested that a fish screen be placed on the diversion on your property. I am here by requesting permission to enter your property by your road to install the fish screen.

You can call me at:

XXX-XXX-XXXX

Anytime. We would like to install the screen ASAP, so if you could respond at your earliest convenience that would be wonderful.

Sincerely, Richard Fugas”

d) On August 8, 2017, Cynthia Warzyn submitted the following comment:

“My comments regarding this application:

My husband, Andrew Pratt, and I hold an existing water right on Certificate 56488. We take our water from a diversion on Mill Creek along with Wes and Cindy Norton, and Brad Boucher. These parties share the ditch and all rights to the water. Mr. Fugas and the Fugas Family trust have no right to water although that has not stopped them from taking it.

The Pratts and Nortons both have agricultural businesses and have performed ALL of the annual ditch maintenance for 20 plus years. Boucher takes his water allotment which he has stated is insufficient. (?) Scheduling and usage requires cooperation between all parties as there is no ditch association or irrigation district to monitor activity. Adding another authorized user will add additional complications. Mr. Fugas has already harmed my claim with his unauthorized use of water and interference.

Mr. Fugas was caught pumping water from my pond in 2015 by former Watermaster Scott White who red-tagged the installation. Mr. Fugas removed the pump but left the piping and power outlets to facilitate a quick connection of a portable pump.

Mr. Fugas has in the past and continues to obstruct and encroach [sic] our easements for the pond, ditches and 6” main pipeline. In 2000 he began construction of his residence and attempted to place his septic system on our pipeline easement. We had to contact Jackson County Building authorities to prevent him doing so. The irony of this situation is that Mr. Fugas is the only one who originally installed the pipeline. Surely he would have remembered doing so. Mr. Fugas has now installed a fence which blocks this easement. In a joint meeting with Klamath Watermaster Tyler Martin on September 27, 2017 I asked Mr. Fugas to install a gate. Mr. Fugas refused to do in defiance of Oregon Water Law.

Additionally Mr. Fugas has encroached on the pond easement (Reservoir 1) by planting trees on it.

In October of 2015 Mr. Fugas entered the property known as Woodland Ranch where our Mill Creek diversion is and proceeded to install a fish screen at our diversion. He did not have permission from the owner of Woodland Ranch, the Pratts, or the Nortons. He left a note on the property owner's gate in which he maintains that the Fish and Wildlife service instructed him to do. I have the note and will include a copy of it with my comment. The irony of this episode is that the fish screen he had installed was so ridiculously inadequate and unworkable that we removed it immediately. It is not in place now and has never been used. The transfer application and map are inaccurate as there is no screen as shown on his water map.

There is a recorded document regarding ditch, pond and pipeline maintenance between Pratt and Boucher. Would this be rewritten to include Fugas? Who would pay for that? And who would compel him to perform? He has refused to cooperate, taken water illegally, interfered in our operations and blocked easements. Would you want to share water with him?

In recent years there has been insufficient water for everyone's needs. If Mr. Boucher now feels that he has too much water I ask that it be reapportioned to Nortons and Pratts who both raise cattle and hay, not an additional party who has no respect for my rights or the rule of law.

Cynthia Warzyn (Pratt)"

2. Attached letter dated October 22, 2015 reads as follows:

"Good day neighbor,

My name is Richard Fugas. I live at 2222 Colestin Road, just around the corner from you. The Oregon Department of Fish and Wildlife has requested that a fish screen be placed on the diversion on your property. I am here by requesting permission to enter your property by your road to install the fish screen.

You can call me at:

XXX-XXX-XXXX

Anytime. We would like to install the screen ASAP, so if you could respond at your earliest convenience that would be wonderful.

Sincerely, Richard Fugas"

e) On August 13, 2017, Wes and Cynthia Norton submitted the following comment:

"We share water rights with the Bouchers and Pratts, we are suppose to share ditch maintenance with these parties, however only the Pratts share in the maintenance of the ditch, opening in the spring, closing off in the fall and monitoring of winter water run off, to avoid blow outs. Building a road for access and cleaning out debris and working with the landowners to maintain good relations. Splitting the water would only cause more hardship and problems with the water rights, which have yet to be

adjudicated, until the water has actually been adjudicated the applicants have no idea of what water they will have to split. We feel at this time the transfer of water rights would be premature and ill advised. The issues need to be addressed by all three parties as to the ditch maintenance, shared times and enforcement of stealing water, and being good neighbors. When adjudication has been completed, we can visit this application, with full understanding of the exact water amounts that will be allocated for all parties involved. Thank you, Wes & Cynthia Norton”

f) On August 15, 2017, Peggy A. Moore submitted the following comment:

“We own two parcels (411E000000907 – 156.07 acres and 41E000000902 – 47.68 acres) of land in Jackson County Oregon. The total acres owned by Betsy A. Bradshaw and Peggy A. Moore total 203.75 acres which is designated and used under the EFU land conditions. We purchased 411E000000907 in 1983 and moved onto the property in 1984.

Subsequently we purchased the adjoining parcel (on which the water ditch under discussion flows) also designated and used as EFU.

We are opposed to providing water rights to individuals who are not engaged in agricultural activities. We realize that the proposed transfer listed above is for splitting out water usage from the Boucher property to the Fugas family but that would effect us by giving additional access to another entity who would then have access to all the lands the ditch passes through, including ours.

We have experienced Richard Fugas (and perhaps others in the employ of the Fugas family or other members of the family) illegally on our property. When Mr. Fugas illegally put a fish screen on the ditch on or near the Woodland Ranch that individual would have had to trespass on our property to do so. We have evidence that members of the Fugas family have trespassed on the top area of our property, including shooting guns and leaving cartridges on the land. It is posted property yet this does not appear to curtail illegal trespass on the part of the Fugas family.

One cannot predict what allowing them to take water from the ditch would actually mean in terms of coming onto our property under auspices of needing to do something to the ditch. But if past experience is an indicator, it does not bode well.

We are very concerned about this proposal and are registering our concerns via this letter. Again, these folks have not been engaged in agricultural endeavors in the past and this, coupled with past behavior on their part supports our concerns about allowing this transfer.

Thank you for your consideration in this matter.

Sincerely, Peggy A. Moore”

3. Not all the issues raised by the commenters address the criteria for review of a water right transfer as per OAR 690-380-4010 and approval of a transfer application under OAR 690-380-5000. The comments described in Finding of Fact #2(a) through (f) raise public interest issues. Under Oregon Law, water right transfers are not subject to a public interest review. Rather, the statutory basis for approving a water right transfer application is relatively narrow and confined to the Department finding or determining:
 - a) The water right proposed for transfer is a water use subject to transfer;
 - b) The portion of the water right proposed for transfer is not cancelled due to forfeiture for non-use pursuant to ORS 540.610;
 - c) The proposed transfer would not result in enlargement of the water right proposed for transfer; and
 - d) The proposed transfer would not result in injury to other water rights.
4. On September 14, 2017, the Department sent a copy of the draft preliminary determination proposing to approve Transfer Application T-12715 to the applicants and their agent.
5. On September 15, 2017, Tyler Martin, District #17 Watermaster, submitted a revised Watermaster Review, to include a measurement device requirement at the new point of diversion only.
6. On September 21, 2017, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12715 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 23, 2017, 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 first right to be transferred is as follows:

Certificate:	56488 in the name of HAL W. AND VIRGINIA M. VINCENT, ANSEL E. AND JUNE L. YOUNG, MONTELLY INVESTMENTS, MIKE AND DEBBIE MINDER & L.B. PROPERTIES (perfected under Permit S-44755)
Use:	IRRIGATION of 2.6 ACRES
Priority Date:	JULY 25, 1979
Rate:	0.07 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-FORTIETH 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:	MILL CREEK, a tributary of KLAMATH RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
41 S	1 E	WM	11	NE NW	MILL CREEK (DIVERSION NO. 6) - 1000 FEET SOUTH AND 3980 FEET WEST FROM THE NE CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	1 E	WM	12	SW SW	0.6
41 S	1 E	WM	12	SE SW	2.0
TOTAL					2.6

8. Transfer Application T-12715 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
41 S	1 E	WM	12	NW SW	2.6

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

The Department has considered all comments received, and determines:

9. Water has been used within the last five years 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 diversion structure and ditch 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-12715.
11. The proposed change as conditioned would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-12715 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-12715 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12715 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 Certificate 56488 and any related decree.*
3. *Water right Certificate 56488 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*

4. *Water use measurement conditions:*

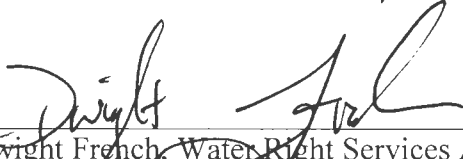
- a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the new point of diversion.*
- b. *The water user shall maintain the meter or measuring device in good working order.*
- c. *The water user shall allow the Watermaster access to the meter or measuring devices; provided however, where the meter or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*

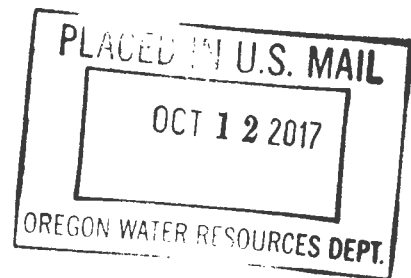
5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2019**. 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.*

7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 9 day of October, 2017.


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



This Preliminary Determination was prepared by Jessica Joye. If you have questions about the information in this document, you may reach me at 503-986-0814 or Jessica.L.Joye@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>