

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12615, Deschutes County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION AND PARTIAL
	)	CANCELLATION OF A RIGHT

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

ROBERT W. WOOD  
JUDITH C. WOOD  
67210 HWY 20  
BEND, OR 97703

**Findings of Fact**

1. On March 21, 2017, Storm Maxey filed an application to change the point of appropriation under Certificate 65972. The Department assigned the application number T-12615.
2. Notice of the application for transfer was published on March 28, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 22, 2017, the agent for the applicant submitted a voluntary cancellation affidavit for the cancellation of a portion of Certificate 65972 and is further described below in Finding No. 14.
4. On January 5, 2018, the new landowner filed an assignment for the transfer application. The assignment was approved on January 10, 2018, by the 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.
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5. On January 12, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12615 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of February 11, 2018, for the applicants to respond. On January 25, 2018, the agent for the applicants requested the Department continue with the transfer, proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

**Certificate:** 65972 in the name of MORRIS B. MCGINNIS, JR. (perfected under Permit G-10463)  
**Use:** IRRIGATION OF 4.3 ACRES  
**Priority Date:** JUNE 21, 1984  
**Rate:** 0.035 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, 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:** A WELL within the WHYCHUS CREEK BASIN (*formerly known as Squaw Creek*)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	30	SE SW	726 FEET NORTH AND 625 FEET WEST FROM THE S¼ CORNER OF SECTION 30

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	30	SE SW	4.3

7. Transfer Application T-12615 proposes to change the point of appropriation for the above described 4.3 acres east approximately 220 feet to a new well (DESC 54920) located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	30	SE SW	794 FEET NORTH AND 399 FEET WEST FROM THE S¼ CORNER OF SECTION 30

**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-12615 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. However, the development of the lot (TL1000) after the subdivision has resulted in small parcels no longer receiving water for irrigation. The applicant has submitted a voluntary cancellation affidavit for that portion and is described below in Finding No. 14.

9. Pursuant to OAR 690-380-2110(2), the Department has made a finding, based on the proposed construction information provided by the applicant, that the proposed change in point of appropriation will develop the same aquifer (source) as that of the existing, original authorized well (DESC 3345).
10. A well, 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-12615.
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 December 22, 2017, the agent for the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of water right Certificate 65972. The applicant has abandoned any and all interest in this portion of the water right for primary irrigation and is described as follows:

**Certificate:** 65972 in the name of the name of MORRIS B. MCGINNIS JR. (perfected under Permit G-10463)

**Use:** IRRIGATION OF 0.7 ACRE

**Priority Date:** JUNE 21, 1984

**Rate:** 0.006 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:** A WELL within the WHYCHUS CREEK BASIN (*formerly known as Squaw Creek*)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	11 E	WM	30	SE SW	726 FEET NORTH AND 625 FEET WEST FROM THE S¼ CORNER OF SECTION 30

**Authorized Place of Use To be Cancelled:**

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acre
15 S	11 E	WM	30	SE SW	1000	0.7

## Determination and Proposed Action

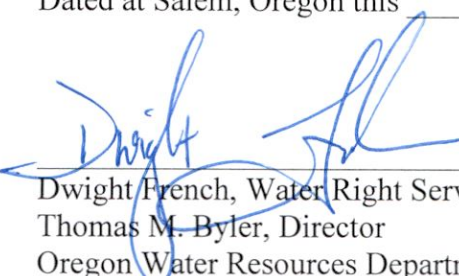
The change in point of appropriation proposed in Transfer Application T-12615 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned portion of water right Certificate 65972 will be cancelled.

*If Transfer Application T-12615 is approved, the final order will include the following:*

- 1. The change in point of appropriation proposed in Transfer Application T-12615 is approved. The portion of the right that has been abandoned is 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 65972 and any related decree.*
- 3. Water right Certificate 65972 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.*
- 4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 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 JUL 13 2018,

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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or [Ken.D.Dowden@oregon.gov](mailto:Ken.D.Dowden@oregon.gov)

**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>

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.