

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13308, Josephine County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER 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

JEFF GITTO
DRAPER VALLEY FARMS
1751 DRAPER VALLEY RD
SELMA, OR 97538

Receiving Landowner

JEFF GITTO
1751 DRAPER VALLEY RD
SELMA, OR 97538

Findings of Fact

1. On December 11, 2019, JEFF GITTO, DRAPER VALLEY FARMS filed an application to change the place of use and to change the character of use under Certificate 63657. The Department assigned the application number T-13308.
2. JEFF GITTO, 1751 DRAPER VALLEY RD, SELMA, OR 97538, is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on December 24, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On September 18, 2020, the Department contacted the applicant's agent by written correspondence to notify the agent of deficiencies in the application. The application map identified a change in place of use for 4.2 acres, however Table 2 did not. The map also did not identify a change in character of use from irrigation to nursery. The Department requested that the deficiencies be resolved by October 19, 2020.
5. On September 30, 2020, the agent submitted a revised Table 2 and map, resolving the deficiencies.

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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6. On October 15, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13308 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 16, 2020, for the applicant to respond. The applicant 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 right to be transferred is as follows:

Certificate: 63657 in the name of RALPH L. AND IRENE SELTZER (perfected under Permit S-47299)

Use: IRRIGATION of 18.6 ACRES

Priority Date: SEPTEMBER 22, 1981

Rate: 0.37 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-FIFTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: DRAPER CREEK, a tributary of DEER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	8 W	WM	36	SE SE	1000 FEET NORTH AND 1540 FEET EAST FROM THE S1/4 CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	8 W	WM	36	SW SE	15.8
37 S	8 W	WM	36	SE SE	2.8
Total					18.6

8. Transfer Application T-13308 proposes to change the character of use to nursery use.

9. Transfer Application T-13308 also proposes to change the place of use of the right to:

NURSERY USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	8 W	WM	36	SW SE	11.6
37 S	8 W	WM	36	SE SE	7.0
Total					18.6

10. Certificate 63657 does not specify an irrigation season; however, consistent with the Illinois River Decree, the irrigation season is April 1 through November 1.

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 right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. 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-13308.
13. The proposed changes, as conditioned, would not result in enlargement of the right.
14. The proposed changes, as conditioned, would not result in injury to other water rights.
15. All other application requirements are met.

Determination and Proposed Action

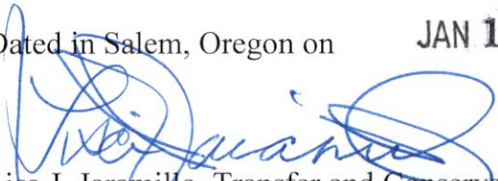
The change in place of use and change in character of use proposed in Transfer Application T-13308 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-13308 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-13308 are 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 63657 and any related decree.*
3. *Water right Certificate 63657 is cancelled.*
4. *The rate of diversion for the change in character of use from irrigation to the proposed nursery operation use shall be limited to 0.37 cubic foot per second and shall be further limited to a total volume diverted of 65.1 acre feet (18.6 acres x 3.5 acre feet per acre) during the original season of use, being April 1 to November 1.*
5. *The change in character of use from irrigation to the proposed nursery use shall be further limited such that:*
 - a) *The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.37 cubic foot per second per acre and 65.1 acre feet per acre during the irrigation season of each year.*
 - b) *For the irrigation of containerized nursery plants, the amount of water diverted is limited to 0.37 cubic foot per second (or its equivalent) and 65.1 acre feet per acre during the irrigation season of each year.*

- c) *For the irrigation of in-ground nursery plants, the amount of water diverted is limited to 0.37 cubic foot per second (or its equivalent) and 65.1 acre feet per acre during the irrigation season of each year.*
 - d) *For the irrigation of any other crop, the amount of water diverted is limited to 0.37 cubic foot per second (or its equivalent) and 65.1 acre feet per acre during the irrigation season of each year. The use of water for irrigation of any other crop shall be limited to 18.6 acres.*
6. *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 diversion.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated in Salem, Oregon on **JAN 19 2021**


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 19, 2021

JEFF GITTO
DRAPER VALLEY FARMS
1751 DRAPER VALLEY RD
SELMA, OR 97538

SUBJECT: Water Right Transfer Application T-13308

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13308. 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 Grants Pass Daily Courier 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13308
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)
Andrea Rabe, Agent for the applicant (*via e-mail*)

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