

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-7035, Josephine County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE AND
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

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. 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

MARTHA MILLER
7821 HOLLAND LOOP
CAVE JUNCTION, OREGON 97523

Agent

TED GERBER
654 KENDALL ROAD
CAVE JUNCTION, OREGON 97523

Findings of Fact

1. On March 30, 1993, Russell Berard filed a transfer application to change the place of use and character of use under Certificates 7151 and 7138. The Department assigned the application number T-7035.
2. On August 30, 1993, Russell Berard amended transfer application T-7035 to request only a change in place of use.
3. Certificate 7151 has been superseded by Certificate 36146. Certificate 36146 was subsequently superseded by Certificate 57361.
4. Certificate 7138 has been superseded by Certificate 36149. Certificate 36149 was subsequently superseded by Certificate 57363.
5. On May 11, 2006, an assignment from Russell Berard to Martha Miller was recorded in the records of the 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.
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6. The portion of the first right to be transferred is as follows:

Certificate: 57361 in the name of SEYFERTH DISTRICT IMPROVEMENT CO. INC.
(confirmed by the Sucker Creek Decree)

Use: IRRIGATION of 7.0 ACRES

Priority Date: 1868

Rate: 0.14 CUBIC FOOT PER SECOND

Period of Use: April 1 through October 31 each year

Source: SUCKER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	22	NW SE	1820 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 22.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	33	NE SE	7.0

7. Transfer Application T-7035 proposes to change the place of use of the right described by Certificate 57361 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	33	SW NE	7.0

8. The portion of the second right to be modified is as follows:

Certificate: 57363 in the name of SEYFERTH DISTRICT IMPROVEMENT CO. INC.
(confirmed by the Sucker Creek Decree)

Use: IRRIGATION of 6.0 ACRES

Priority Date: 1897

Rate: 0.12 CUBIC FOOT PER SECOND

Period of Use: April 1 through October 31 each year

Source: SUCKER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	22	NW SE	1820 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 22.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	34	SW NW	6.0

9. Transfer Application T-7035 proposes to change the place of use of the right described by Certificate 57363 to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	34	SW NW	6.0

10. An affidavit for partial cancellation of a water right was received on September 1, 2006, from Ted Gerber, agent for Martha Miller, as follows:

Certificate: 57361 in the name of SEYFERTH DISTRICT IMPROVEMENT CO. INC.

Use: IRRIGATION of 2.4 ACRES

Priority Date: 1868

Rate: 0.05 CUBIC FOOT PER SECOND

Period of Use: April 1 through October 31 each year

Source: SUCKER CREEK, tributary to the ILLINOIS RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	22	NW SE	1820 FEET NORTH AND 1330 FEET WEST FROM THE SE CORNER OF SECTION 22.

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	7 W	WM	33	SE NE	2.0
39 S	7 W	WM	33	NE SE	0.4

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right." These partial cancellations of a water right will be incorporated into the final order.

11. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
12. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The proposed change in place of use proposed in Transfer Application T-7035 appears to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

The portion of Certificate 57361 described in Finding 10 as abandoned will be cancelled.

If approved, the change and subsequent use of water shall be subject to the following conditions:

1. 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 57361 and 57363 and any related decree.
2. Certificates 57361 and 57363 will be cancelled. New certificates will be issued describing those portions of the rights not involved in this transfer and partial cancellation of the right described by Certificate 57361.
3. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.
4. The former place of use of the transferred water shall no longer receive water as part of these rights.
5. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 23rd day of October 2006.



Phillip C. Ward, Director *PCW*

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271.

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrdd.state.or.us.