

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-11227, Morrow County                        )     CHANGE IN PLACE OF USE, AND  
  )     PARTIAL DIMUNITION OF  
  )     CERTIFICATE 34280

**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.

**Applicant**

TERRA POMA LAND, LLC  
Attn: GLENN CHOWNING  
PO BOX 862  
HERMISTON, OR 97838

**Agent**

MOLLY REID  
GSI WATER SOLUTIONS, INC.  
1020 N CENTER PARKWAY, SUITE F  
KENNEWICK, WA 99336

**Findings of Fact**

**Background**

1. On April 11, 2011, TERRA POMA LAND, LLC filed an application to change the place of use under Certificate 52082. The Department assigned the application number T-11227.
2. On May 24, 2011, the applicants amended the application to clarify the place of use to be transferred.
3. The portion of the first right to be transferred is as follows:

**Certificate:**     52082 in the name of PAUL T. & ESTHER J. JASA; ESTATE OF OSCAR PETERSON; FRED W., JUDY, & BARBARA ANDREWS; and PAUL C. and ANN R. CIMMIYOTTI (perfected under Permit S-36940)  
**Use:**             IRRIGATION of 46.9 ACRES  
**Priority Date:** JUNE 29, 1973  
**Rate:**            1.09 CUBIC FEET PER SECOND

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** COLUMBIA RIVER, tributary to the PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
4 N	25 E	WM	2	NE NW	7	120 FEET SOUTH AND 2980 FEET WEST FROM THE NE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	26 E	WM	7	NW SE	9.0
4 N	26 E	WM	7	SW SE	2.1
4 N	26 E	WM	7	SE SE	1.5
4 N	26 E	WM	8	SW SW	10.5
4 N	26 E	WM	8	SE SW	2.9
4 N	26 E	WM	17	NE NW	1.5
4 N	26 E	WM	17	SW NW	1.0
4 N	26 E	WM	17	SE NW	3.4
4 N	26 E	WM	18	NE NE	7.8
4 N	26 E	WM	18	NW NE	4.0
4 N	26 E	WM	18	SE NE	3.2
Total					46.9

4. Application T-11227 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	27 E	WM	8	NW NW	22.4
3 N	27 E	WM	8	SW NW	24.5
Total					46.9

***Partial Diminution of a Water Right***

5. On April 11, 2011, an affidavit certifying that a portion of Certificate 34280 has been diminished from a right for primary irrigation to a right for supplemental irrigation was received from Glenn Chowning and Ken Vandewall. On January 22, 2013, the affidavit was withdrawn and a new affidavit was submitted for diminishment of the 46.9 acres involved in this transfer. The right to be diminished is as follows:

**Certificate:** 34280 in the name of LEOTA NELL MARTIN (perfected under Permit G-1965)

**Use:** IRRIGATION of 46.9 ACRES

**Priority Date:** OCTOBER 2, 1961

**Rate:** 0.43 CUBIC FEET 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:** WELL NO. 2, tributary to the UMATILLA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	27 E	WM	8	NE NE	850 FEET SOUTH AND 660 FEET WEST FROM THE NE CORNER OF SECTION 8

**Authorized Place of Use to be Diminished:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	27 E	WM	8	NW NW	22.4
3 N	27 E	WM	8	SW NW	24.5
Total					46.9

6. Notice of the application for transfer was published on April 19, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On May 26, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11227 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 26, 2011, 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.
8. On May 31, 2011, the Department issued a Preliminary Determination proposing to approve Transfer T-11227 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 7, 2011, and June 14, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.
9. The Preliminary Determination described the quantity to be transferred under Certificate 52082 as 1.17 cfs. However, a scrivener's error occurred in the calculation of the quantity to be transferred. The actual quantity to be transferred is 1.09 cfs.

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

10. Evidence was submitted with the application indicating that water has been used within the last five years according to the terms and conditions of the right. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of

time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.

11. 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-11227.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

The change in place of use proposed in Transfer Application T-11227 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The change in place of use proposed in application T-11227 is approved. The portion of Certificate 34280 proposed to be diminished is diminished.
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 52082 and any related decree.
3. Water right certificate 52082 is cancelled. New certificates will be issued describing portions of the right not affected by this transfer. To facilitate processing of the application for Allocation of Conserved Water 68, the portion of Certificate 52082 attributed to "Jasa" will be issued separate from the other remaining portion of Certificate 52082. Therefore, together the two remaining right certificates will supersede Certificate 52082.
4. Water right certificate 34280 is cancelled. A new certificate will be issued to confirm the portion of the right diminished to supplemental irrigation by this order.
5. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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.

8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 24 day of January, 2013.

  
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Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

Mailing Date: \_\_\_\_\_