

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

In the Matter of Instream Transfer) FINAL ORDER APPROVING A CHANGE IN
Application T-14037, Jackson County) PLACE OF USE AND CHARACTER OF USE

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant

City of Ashland
Attn: Scott Fleury
20 East Main Street
Ashland, Oregon 97520
scott.fleury@ashland.or.us

Agent

GSI Water Solutions, Inc.
Attn: Adam Sussman
1600 SW Western Boulevard, Suite 240
Corvallis, Oregon 97333
asussman@gsiws.com

Findings of Fact

1. On June 24, 2022, the City of Ashland filed an application to change the place of use and character of use under Certificate 95315 to instream use. The Department assigned the application number T-14037.
2. Notice of the application for transfer was published on July 12, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to the City of Ashland local government. Additionally, the Department provided notification of the proposed action to the local government and Talent Irrigation District upon receipt of Transfer Application T-14037.

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.

4. On September 13, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14037 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 13, 2022, 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.
5. On November 9, 2022, the Department issued a Preliminary Determination proposing to approve Instream Transfer Application T-14037 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 15, 2022, and in the Medford Mail Tribune newspaper on November 20, 2022, and November 27, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 95315 in the name of J. A. Parker (confirmed by Rogue River Final Decree in Volume 4, at Page 1)
Use: Irrigation of 5.0 ACRES
Priority Date: 1858
Rate: 0.10 Cubic Foot Per Second
Source: Ashland Creek a tributary of Bear Creek
Authorized Point of Diversion: Not described on certificate
Authorized Place of Use:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	5	SE NE	5.0

7. Certificate 95315 does not describe the location of the point of diversion. The applicant and the Department's Watermaster, for purposes of this instream transfer, describe the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

8. Certificate 95315 does not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.
9. A total of 42.4 acre-feet of water may be beneficially used annually under the existing right.
10. Instream Transfer Application T-14037 proposes to change the character of use to instream use for conservation, maintenance, and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat, and other ecological values; recreation; and pollution abatement.

11. Instream Transfer Application T-14037 proposes to change the place of use of the right to a point on Helman Ditch, located in T39S, R1E, WM, Sec. 9, NWNW.
12. The applicant proposes the quantities water to be transferred instream be as protected follows:

Period	Rate (cfs)	Volume (acre-feet)
April 1 to October 31	0.10	42.4

13. The applicant requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

14. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
15. 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 Application T-14037.
16. The quantities to be transferred and protected instream is as follows:

Instream Point: At the POD described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
95315	1858	0.10	42.4	April 1 – October 31

17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.
19. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

20. The protection of flows at the authorized point of diversion is appropriate, considering:
 - a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;
 - c) There are known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the point of the instream water right.
21. Any instream water right established as a result of this instream transfer will be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). Any instream water right established as a result of this instream transfer will replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.
22. There is no information in the record that would demonstrate the quantities proposed to be transferred instream will exceed the estimated average natural flows. The total monthly quantities of water to be protected under proposed instream right at the point will provide for a beneficial purpose.

Conclusions of Law

The changes in character of use and place of use to instream use proposed in application T-14037 are consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use to instream use proposed in application T-14037 are approved.
2. Water right certificate 95315 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate describing that portion of the right not affected by this transfer shall be issued.
3. The instream water right shall provide for the protection of streamflows for a point located at Helman Ditch, located in T39S, R1E, WM, Sec. 9, NWNW.

4. The quantities of water to be protected under the instream water right are:

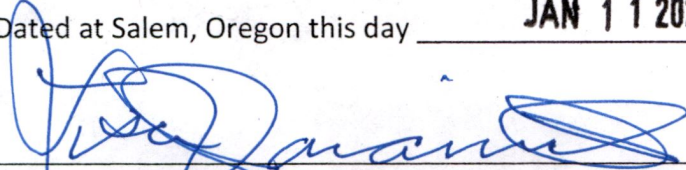
Instream Point: At the POD described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
95315	1858	0.10	42.4	April 1 – October 31

5. Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.
6. The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.
7. 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 95315 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

Dated at Salem, Oregon this day JAN 11 2023.


 Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
 Douglas E. Woodcock, Acting Director
 Oregon Water Resources Department

Mailing date: JAN 12 2023

