

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-11134, Crook County) CHANGES IN PLACE OF USE

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

CITY OF PRINEVILLE
ATTN: JERRY BRUMMER
387 NE 3RD STREET
PRINEVILLE, OR 97754

Agent

GSI WATER SOLUTIONS, INC.
ATTN: ADAM SUSSMAN
1600 WESTERN BLVD., SUITE 240
CORVALLIS, OR 97333

Findings of Fact

Background

1. On September 20, 2010, the CITY OF PRINEVILLE filed an application to change the place of use under Certificates 75489, 76012, 76013, 83850, and 83857. The Department assigned the application number T-11134.
2. On March 10, 2011, the applicant submitted an amendment to the application for Certificates 76012 and 83857, clarifying the types of use to be transferred.
3. On March 13, 2012, the applicant amended the transfer application for Certificates 76012 and 76013 reducing the number of acres proposed for transfer.

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

Certificate: 75489 in the name of PEOPLES IRRIGATION CO. (perfected under Permit S-11619)

Use: IRRIGATION OF 25.0 ACRES

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.

Priority Date: MARCH 28, 1935

Rate: 0.31 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, is 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	35	NW NE	500/100	25.0

5. Transfer Application T-11134 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	35	NW NE	100	15.7
15 S	16 E	WM	6	SE NW	304	9.3

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

Certificate: 76012 in the name of PEOPLES IRRIGATION CO. (confirmed by Crooked River Decree)

Use: IRRIGATION OF 29.3 ACRES AND STOCK

Priority Dates: 1893 AND 1895

Rate: 0.37 CUBIC FOOT PER SECOND measured at the point of diversion from the source.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent, and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acres
14 S	15 E	WM	26	SE SE	500	1895	6.7
14 S	15 E	WM	36	SW NE	3503	1893	2.0
14 S	15 E	WM	36	SE NW	1200	1893	7.0
14 S	15 E	WM	36	NE SW	4100	1893	1.9
14 S	15 E	WM	36	NE SW	4200	1893	1.0
14 S	15 E	WM	36	NE SW	4300	1893	1.4
14 S	15 E	WM	36	NE SW	4500	1893	1.0
14 S	15 E	WM	36	NW SE	3503	1893	6.1
14 S	15 E	WM	36	SW SE	3501	1893	2.2
TOTAL							29.3

7. Transfer Application T-11134 proposes to change the place of use of the right to:

IRRIGATION AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acres
14 S	15 E	WM	36	SE NW	1200	1893	3.9
15 S	16 E	WM	6	NW SE	304	1895	6.7
15 S	16 E	WM	6	NE SW	304	1893	15.3
15 S	16 E	WM	6	NW SE	304	1893	3.4
TOTAL							29.3

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

Certificate: 76013 in the name of U.S. BUREAU OF RECLAMATION AND PEOPLES IRRIGATION CO. (perfected under Permit S-25991)

Use: IRRIGATION OF 8.3 ACRES AND SUPPLEMENTAL IRRIGATION OF 54.3 ACRES

Priority Date: APRIL 8, 1914

Rate: 1.57 CUBIC FEET PER SECOND FROM DIRECT FLOW AND STORAGE FROM RESERVOIR, MEASURED AT THE POINT OF DIVERSION FROM SOURCE

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Sources: CROOKED RIVER AND PRINEVILLE RESERVOIR (constructed under Permit R-2223), tributaries to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	PEOPLES DITCH - 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8
17 S	16 E	WM	11	SW NW	BOWMAN DAM - 1650 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	35	NW NE	100	8.3

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	26	SE SE	505	6.7
14 S	15 E	WM	35	NW NE	100	25.0
14 S	15 E	WM	36	SW NE	3503	2.0
14 S	15 E	WM	36	SE NW	1200	7.0
14 S	15 E	WM	36	NE SW	4100	1.9
14 S	15 E	WM	36	NE SW	4200	1.0
14 S	15 E	WM	36	NE SW	4300	1.4
14 S	15 E	WM	36	NE SW	4500	1.0
14 S	15 E	WM	36	NW SE	3503	6.1
14 S	15 E	WM	36	SW SE	3501	2.2
TOTAL						54.3

9. Transfer Application T-11134 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	35	NW NE	100	1.7
15 S	16 E	WM	6	SE NW	304	6.6
TOTAL						8.3

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	35	NW NE	100	15.7
14 S	15 E	WM	36	SE NW	1200	3.9
15 S	16 E	WM	6	SE NW	304	9.3
15 S	16 E	WM	6	NE SW	304	15.3
15 S	16 E	WM	6	NW SE	304	6.7
15 S	16 E	WM	6	NW SE	304	3.4
TOTAL						54.3

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

Certificate: 83850 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-25991)
Use: IRRIGATION OF 21.8 ACRES AND SUPPLEMENTAL IRRIGATION OF 20.0 ACRES
Priority Date: APRIL 8, 1914
Rate: 1.05 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, is limited to ONE-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from Prineville Reservoir. Use of the water requires the existence of a current contract between landowners and the United States Bureau of Reclamation.
Sources: CROOKED RIVER AND PRINEVILLE RESERVOIR (constructed under Permit R-2223), tributaries to the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	26	SE SE	DIRECT DIVERSION #36 - 100 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 26
15 S	16 E	WM	8	NW SW	PEOPLES DITCH #13 - 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Diversion	Supplemental Info.
14 S	15 E	WM	35	NE NE	100	21.8	36	Williams, Claude

SUPPLEMENTAL IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Diversion	Supplemental Info.
14 S	15 E	WM	26	SW SE	505	20.0	13	Williams, Claude

11. Transfer Application T-11134 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Diversion
14 S	15 E	WM	26	NE SW	505	20.0	36
15 S	16 E	WM	06	SE NW	304	1.8	36
TOTAL						21.8	

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Diversion
14 S	15 E	WM	26	SW SE	505	16.1	13
15 S	16 E	WM	06	SW NE	304	3.9	13
TOTAL						20.0	

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

Certificate: 83857 in the name of PEOPLES IRRIGATION CO. (confirmed by Crooked River Decree)
Use: IRRIGATION OF 20.0 ACRES, LIVESTOCK AND DOMESTIC
Priority Date: 1895
Rate: 0.25 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, is limited to a diversion of 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Supplemental Info.
14 S	15 E	WM	26	SW SE	505	20.0	Cox, F.T.

13. Transfer Application T-11134 proposes to change the place of use of the right to:

IRRIGATION, LIVESTOCK AND DOMESTIC						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
14 S	15 E	WM	26	SW SE	505	16.1
15 S	16 E	WM	06	SW NE	304	3.9
TOTAL						20.0

14. Notice of the application for transfer was published on September 28, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

15. On March 10, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11134 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 12, 2011, for the applicant to respond. On April 20, 2011, the applicant requested the Transfer Application be placed on administrative hold until October 20, 2011. The request was granted. On November 2, 2011, the applicant requested the application be placed on administrative hold for an

additional 120 days. The request was granted and the application was placed on administrative hold until February 20, 2012.

16. On March 14, 2012, the Department issued a 2nd draft Preliminary Determination and sent a copy to the applicant. On March 26, 2012, 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. The applicant also requested additional time to complete the changes until October 1, 2016. The Department revised the completion date to October 1, 2017.
17. On March 30, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11134 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 April 3, 2012, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

18. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
19. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11134.
20. The proposed changes would not result in enlargement of the rights.
21. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The changes in place of use proposed in Transfer Application T-11134 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use proposed in Transfer Application T-11134 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 Certificates 75489, 76012, 76013, 83850, 83857, and any related decree.
3. Water right certificates 75489, 76012, 76013, and 83857 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.

4. Water right certificate 83850 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping.
5. 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.
6. The water user shall maintain the existing headgates and shall make such improvements as may be required by the Department.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2017**. 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. When satisfactory proof of the completed changes is received, new certificates confirming the portions of the rights transferred under Certificates 75489, 76012, 76013, and 83857 will be issued.
10. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred under Certificates 75489, 76012, 76013, and 83857 will be issued.

Dated at Salem, Oregon this 4 day of May, 2012.



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

Mailing Date MAY 10 2012