

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

In the Matter of Transfer Application                    )     ORDER WITHDRAWING  
T-12454, Yamhill County                                 )     PRELIMINARY DETERMINATION

**Authority**

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

City of Dayton  
Attn: Scott Pingel, City Manager  
PO Box 339  
Dayton OR 97114-0339

**Agent**

GSI Water Solutions, Inc.  
c/o Ted Ressler  
55 SW Yamhill Street, Suite 300  
Portland OR 97204

**Findings of Fact**

1. On August 1, 2016, City of Dayton filed an application for additional points of appropriation, changes in place of use, and changes in character of use under Certificates 72404, 89938, and 89939. The Department assigned the application number T-12454.
2. Notice of the application for transfer was published on August 16, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 25, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12454 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2017, for the applicant to respond.
4. On September 19, 2017, the Department sent out a copy of a REVISED draft of the Preliminary Determination proposing to approve Transfer Application T-12454 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of October 19, 2017, for the applicant to respond. On September 28, 2017, the agent for the applicant requested an extended season of use under Certificate 72404, from November 1 to April 30, to year round.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

5. On November 17, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12454 and sent a copy to the applicant and applicant's agent. The Preliminary Determination extended the season of use under Certificate 72404 to year round. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on November 28, 2017, and in the News Register newspaper on November 28 and December 5, 2017. No protests were filed in response to the notices.
6. ORS 540.510(1) states the holder of any water use subject to transfer may, upon compliance with the provisions of ORS 540.520 and 540.530, change the use and place of use, the point of diversion or the use made of the water in all cases without losing priority of the right.
7. ORS 540.510(1) and OAR 690-380-2000 do not list the season or period of use as one of the elements of a water use allowed to be changed.

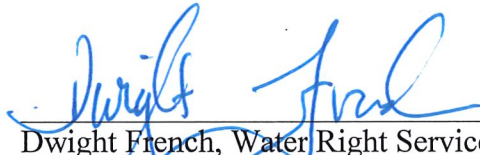
### Conclusions of Law

The Department does not have the authority to change the period or season of use of a water use subject to transfer.

### Now therefore, it is ORDERED:

The Preliminary Determination issued on November 17, 2017, is withdrawn and is of no further force or effect.

Dated at Salem, Oregon this 19 day of January, 2018.



\_\_\_\_\_  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: JAN 19 2018