

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

In the Matter of Notice of POD                    )  
Change Due to Government Action                )  
T-11301, Deschutes County                        )

FINAL ORDER APPROVING A CHANGE  
IN POINT OF DIVERSION

**Authority**

ORS 540.510(6) establishes a notification and approval process for changes in point of diversion when government action results in or creates a reasonable expectation of a change in the surface level of a surface water source.

**Applicant**

City of Sisters  
PO Box 39  
Sisters, OR 97759

**Agent**

Adam Sussman  
GSI Water Solutions, Inc.  
1600 SW Western Blvd. Suite 240  
Corvallis, OR 9701

**Findings of Fact**

**Background**

1. On September 23, 2011, GSI Water Solutions, on behalf of City of Sisters, filed a notification of intent to make a change in point of diversion under Certificate 67706, which allows the diversion of water from Pole Creek with a point of diversion on Pole Creek Ditch. The Department assigned the notification number T-11301.

2. The right included in the notification is as follows:

**Certificate:** 67702 in the name of City of Sisters (confirmed by Squaw Creek Decree)

**Use:** Municipal Use

**Priority Date:** 1885

**Quantity:** 0.2 Cubic Foot per Second (CFS)

**Source:** Pole Creek, tributary of Whychus Creek (formerly Squaw Creek)

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	19	NE NE	1540 FEET SOUTH 36 DEGREES WEST FROM NE CORNER OF SECTION 19

**Authorized Place of Use:**

This is a final 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.

Twp	Rng	Mer	Sec	Q-Q
15 S	10 E	WM	4	NW NE
15 S	10 E	WM	4	NE SW
15 S	10 E	WM	4	NW SW
15 S	10 E	WM	4	SW SW
15 S	10 E	WM	4	SE SW
15 S	10 E	WM	4	SW SE
15 S	10 E	WM	5	NE SW
15 S	10 E	WM	5	SE SW
15 S	10 E	WM	5	NW SE
15 S	10 E	WM	5	SW SE
15 S	10 E	WM	5	SE SE
15 S	10 E	WM	8	NE NE
15 S	10 E	WM	8	SE NE
15 S	10 E	WM	9	NE NE
15 S	10 E	WM	9	NW NE
15 S	10 E	WM	9	SW NE
15 S	10 E	WM	9	SE NE
15 S	10 E	WM	9	NE NW
15 S	10 E	WM	9	NW NW
15 S	10 E	WM	9	SW NW
15 S	10 E	WM	9	SE NW

3. The notification proposes to move the authorized point of diversion approximately 2 miles south (upstream on the ditch) to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	9 E	WM	35	NW SE	3825 FEET SOUTH AND 2170 FEET WEST FROM THE NE CORNER OF SECTION 35

4. Notice of the notification of the intention to change the point of diversion was published on October 4, 2011, pursuant to ORS 540.510(6).

***Review Criteria (ORS 540.510(6))***

5. Pole Creek, in its entirety, has historically been diverted out of its natural channel (since the late 1800's) and down a ditch, known as Pole Creek Ditch. The current point of diversion under Certificate 67706 is located on Pole Creek Ditch, 2 miles downstream from the beginning of the ditch.
6. Pole Creek Ditch is not directly connected to Whychus Creek but water in the ditch can make its way back to Whychus Creek through overland flow and remnant historic channels. In the past, excess flows (up to 15 CFS) beyond the amounts allowed under existing water rights along Pole Creek Ditch, flowing down the ditch has resulted in several past complaints from the U.S. Forest Service. A portion of the ditch flows through Forest Service property and excess flows cause erosion damage.
7. To regulate flows down Pole Creek Ditch, the Department's Watermaster verbally requested that the landowner install a headgate at the head of the Ditch. In July, 2009, the landowner complied with the Watermaster's request and installed a headgate.

8. Excess flows, not needed to satisfy existing water rights, now move past the headgate and enable the re-establishment of the natural channel of Pole Creek.
9. The action of the Water Resource Department, resulting in the installation of a headgate, has created a reasonable expectation of a change in the surface level on Pole Creek Ditch that impairs or threatens to impair access to a point of diversion authorized for Certificate 67706.
10. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

The proposed change in point of diversion due to government action in notification T-11301 is consistent with the requirements of ORS 540.510(6).


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

1. The change proposed in T-11301 is approved and effective immediately.
2. Notwithstanding the location of the point of diversion described in Certificate 67706, water may be diverted at:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	9 E	WM	35	NW SE	3825 FEET SOUTH AND 2170 FEET WEST FROM THE NE CORNER OF SECTION 35

3. 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 67706 and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.

Dated at Salem, Oregon this 7 day of November, 2011.



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

Mailing date: NOV 09 2011