

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING ADDITIONAL
T-13107, Morrow County)	POINTS OF DIVERSION AND CHANGES IN
)	PLACE OF USE AND CHARACTER OF USE

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

PORT OF MORROW
PO BOX 200 / NO. 2 MARINE DRIVE
BOARDMAN, OR 97818

Agent

BRUCE BRODY-HEINE
GSI WATER SOLUTIONS, INC.
147 SW SHEVLIN HIXON DR, SUITE 201
BEND, OR 97702

Findings of Fact

1. On January 15, 2019, the PORT OF MORROW filed an application to change the place of use, character of use and add additional points of diversion under Certificate 91597. The Department assigned the application number T-13107.
2. Notice of the application for transfer was published on January 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

3. On March 13, 2020, the agent for the applicant submitted a revised application to clarify the points of diversion. The revision also requested the proposed WEID point of diversion be removed from the application.
4. On March 18, 2020, the Department sent a draft Preliminary Determination and cover letter to the applicant. The draft Preliminary Determination gave a deadline of April 17, 2020 in which to respond.
5. On April 15, 2020, the Department determined the draft Preliminary Determination did not contain concurrent changes to a layered supplemental right for both the place of use and character of use changes.
6. On May 14, 2020, the agent for the applicant submitted a revised application to include the layered supplemental water right Permit G-17516. The agent for the applicant also requested that the proposed date for complete application of water be extended to allow additional time to guarantee adequate time to complete the project. The Department shall include the layered supplemental water right approve and extend the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2036. This REVISED draft of the preliminary determination, therefore, is issued to document the 766.9 acres place of use layered with primary water right Certificate 91597, and correctly reflects the changes proposed in Transfer Application T-13107, now described in Finding #5 below.
7. On July 15, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The date for complete application of water to the use, being October 1, 2018, has expired for Permit G-17516. The Department cannot complete the application without an active completion date. The Department requested that the deficiency be resolved by September 2, 2020.
8. On July 20, 2020, the Department received an Application for Extension of Time from the Port of Morrow, resolving the deficiency.
9. On September 29, 2020, the Department issued a Proposed Final Order, proposing to grant an extension of time to complete construction and application of water to full beneficial use to October 1, 2025.
10. On November 13, 2020, the Department received a protest and request for contested case hearing, in regard to the extension of time for Permit G-17516.
11. On November 5, 2021, the Department received a request to withdraw Permit G-17516 from transfer application T-13107.

12. On February 14, 2022, the Department issued a Preliminary Determination proposing to approve Transfer T-13107 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 February 15, 2022, and in the Heppner Gazette newspaper on March 30 and April 6, 2022, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

Certificate: 91597 in the name of PORT OF MORROW, WESTLAND ENTERPRISES, LLC, C/O ROBERT LEVY (perfected under Permit S-35694)

Use: IRRIGATION of 1147.5 ACRES FROM COLUMBIA RIVER

Priority Date: NOVEMBER 5, 1971

Rate: 22.16 CUBIC FEET PER SECOND (cfs), BEING 22.16 CFS FOR IRRIGATION OF 1147.5 ACRES

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

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
5 N	25 E	WM	35	SW SE	3	COLUMBIA RIVER DIVERSION (ORIGINAL DIVERSION) - 80 FEET NORTH AND 2480 FEET WEST FROM THE SE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
4 N	25 E	WM	1	NE NE	1	30.3
4 N	25 E	WM	1	NW NE	2	33.8
4 N	25 E	WM	1	SW NE		34.3
4 N	25 E	WM	1	SE NE		20.0
4 N	25 E	WM	1	NE NW	3	0.8
4 N	25 E	WM	1	NW NW	4	5.9
4 N	25 E	WM	1	SW NW		25.1
4 N	25 E	WM	1	SE NW		37.3
4 N	25 E	WM	1	NE SW		35.8
4 N	25 E	WM	1	NW SW		18.3
4 N	25 E	WM	1	NE SE		35.4
4 N	25 E	WM	1	NW SE		34.7
4 N	25 E	WM	1	SW SE		11.7
4 N	25 E	WM	1	SE SE		33.8

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
4 N	25 E	WM	2	NE NE	1	35.5
4 N	25 E	WM	2	NW NE	5	3.3
4 N	25 E	WM	2	SE NE		29.3
4 N	25 E	WM	12	NE NE		38.1
4 N	25 E	WM	12	NW NE		17.5
4 N	25 E	WM	12	SW NE		9.2
4 N	25 E	WM	12	SE NE		15.2
4 N	25 E	WM	12	SE NW		0.1
4 N	26 E	WM	6	SW NE		0.5
4 N	26 E	WM	6	SE NE		6.6
4 N	26 E	WM	6	NE NW	3	31.1
4 N	26 E	WM	6	NW NW	4	34.5
4 N	26 E	WM	6	SW NW	5	12.0
4 N	26 E	WM	6	SE NW		8.5
4 N	26 E	WM	6	NE SW		32.4
4 N	26 E	WM	6	NW SW	6	30.9
4 N	26 E	WM	6	SW SW	7	39.7
4 N	26 E	WM	6	SE SW		40.1
4 N	26 E	WM	6	NE SE		34.3
4 N	26 E	WM	6	NW SE		31.0
4 N	26 E	WM	6	SW SE		33.7
4 N	26 E	WM	6	SE SE		18.0
4 N	26 E	WM	7	NE NE		36.3
4 N	26 E	WM	7	NW NE		32.9
4 N	26 E	WM	7	SW NE		29.6
4 N	26 E	WM	7	SE NE		24.6
4 N	26 E	WM	7	NE NW		30.6
4 N	26 E	WM	7	NW NW	1	29.3
4 N	26 E	WM	7	SW NW	2	30.5
4 N	26 E	WM	7	SE NW		40.9
4 N	26 E	WM	7	NE SW		11.2
4 N	26 E	WM	7	NW SW	3	0.4
4 N	26 E	WM	7	NW SE		0.9
4 N	26 E	WM	8	NW NW		19.9
4 N	26 E	WM	8	SW NW		1.7
					Total	1147.5

14. Transfer Application T-13107 proposes additional points of diversion for the above described right Certificate 91597 located:

Twp	Rng	Mer	Sec	Q - Q	GLot	Dist. from Columbia Riv. POD	Measured Distances
4 N	25 E	WM	2	NE NW	7	Downstream 480 feet	CID POD - 150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2

Twp	Rng	Mer	Sec	Q - Q	GLot	Dist. from Columbia Riv. POD	Measured Distances
4 N	25 E	WM	2	SE NW	7	Downstream 5500 feet	TERMINAL 5 POD #2 - 1442 FEET SOUTH AND 3923 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	3	SW SE	2	Downstream 5500 feet	TERMINAL 3 POD #3 - 1002 FEET NORTH AND 2168 FEET WEST FROM THE SE CORNER OF SECTION 3
4 N	25 E	WM	4	SE SE	2	Downstream 2.0 miles	TERMINAL 1 POD #4 - 410 FEET NORTH AND 435 FEET WEST FROM THE SE CORNER OF SECTION 4

15. Transfer Application T-13107 proposes to change the places of use of Certificate 91597 to:

MUNICIPAL USE
WITHIN THE PORT OF MORROW SERVICE AREA BOUNDARIES

16. Transfer Application T-13107 also proposes to change the character of use of the above described rights to municipal purposes.
17. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
18. The total volume of water that may be diverted under Certificate 91597 for Municipal uses, as conditioned, is 5,163.75 Acre-Feet (AF) March 1 through October 31. ($1147.5 \times 4.5 = 5,163.75$ AF).

Transfer Review Criteria (OAR 690-380-4010)

19. Water has been used within the last five years prior to the submittal of Transfer Application T-13107 according to the terms and conditions of Certificate 91597. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
20. Pump stations, pipeline, delivery system and sprinkler systems for irrigation and delivery system associated with municipal uses 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-13107.
21. The proposed changes, as conditioned, would not result in enlargement of the right.
22. The proposed changes, as conditioned, would not result in injury to other water rights.
23. All other application requirements are met.

Conclusions of Law

The changes in place of use and character of use, and additional points of diversion proposed in Transfer Application T-13107 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

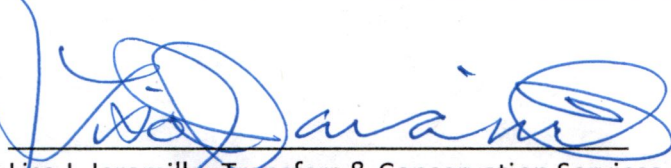
1. The changes in place of use and character of use, and additional points of diversion proposed in Transfer Application T-13107 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificate 91597, and any related decree.
3. Water right Certificate 91597 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The use of water for the proposed municipal use under the right described by Certificate 91597 shall be limited to a rate of diversion of 22.16 cfs and further limited to a total volume diverted of 5,163.75 acre feet during the season of use being March 1 through October 31 of each year.
5. The quantity of water, authorized under water right Certificate 91597, diverted at the new additional points of diversion (CID POD, Terminal 5 POD #2, Terminal 3 POD #3, and Terminal 1 POD #4), together with that diverted at the original points of diversion (Columbia River Diversion (Original Diversion)), shall not exceed the quantity of water lawfully available at the original points of diversion (Columbia River Diversion (Original Diversion)).
6. 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 (new and existing).
 - 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.
7. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2036**. 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. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

JUN 01 2022

Dated at Salem, Oregon this _____.



Lisa J. Jaramillo, Transfers & Conservation Services Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

JUN 02 2022

Mailing date: _____