

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11103, Crook County)	PROPOSING APPROVAL OF A
)	CHANGE IN PLACE OF USE AND
)	PARTIAL CANCELLATION OF A
)	SUPPLEMENTAL RIGHT

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.

ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

Applicant

CITY OF PRINEVILLE
ATTN: JERRY BRUMMER
387 NE THIRD ST
PRINEVILLE, OR 97754

Agent

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

Findings of Fact

Background

1. On July 6, 2010, JERRY BRUMMER; CITY OF PRINEVILLE filed an application to change the place of use under Certificate 83850. The Department assigned the application number T-11103.
2. On July 9, 2010, the applicant submitted a revised page 5 of the transfer application, describing direct diversion #36 and an additional map that shows this POD.
3. The portion of the right to be transferred is as follows:
 - Certificate:** 83850 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-25991)
 - Use:** SUPPLEMENTAL IRRIGATION of 37 ACRES
 - Priority Date:** APRIL 8, 1914
 - Rate:** 0.93 CUBIC FOOT PER SECOND

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

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. Tue of the water requires the existence of a current contract between the landowners and the United States Bureau of Reclamation.

Source: CROOKED RIVER, tributary 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:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NE SW	20.0
14 S	15 E	WM	35	NE NE	17.0

4. Application T-11103 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NW NW	8.7
14 S	15 E	WM	26	SW NW	4.7
14 S	15 E	WM	26	SE NW	3.6
14 S	15 E	WM	26	SE SW	20.0

5. Portions of the supplemental right being transferred are located on lands where they currently serve as supplemental to primary irrigation under Certificate 75486 (priority date September 11, 1943) and Certificate 75488 (priority date March 28, 1935). Additionally, 19.6 of the lands in the NE SW of Section 26 have a second supplemental right under Certificate 33012 (priority date August 25, 1950). This layered portion of the second supplemental right (Certificate 33012) is not proposed for transfer.
6. Portions of the lands to which the right is to be moved have primary irrigation under Certificate 76013 (priority date April 8, 1814). Other portions have Certificate 83850 (also priority date April 8, 1914) with supplemental irrigation under Certificate 33012 (priority date August 25, 1950).
7. Certificate 76013 is in the name of Peoples Irrigation Company. The applicant submitted a signed consent to the transfer from Jack Riley of Peoples Irrigation Company.

8. Notice of the application for transfer was published on July 13, 2010, pursuant to OAR 690-380-4000 and copies of the notice were sent to the Bureau of Reclamation and Peoples Irrigation Company. No comments were filed in response to the notice.
9. On June 27, 2011, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-11103 to the applicant. The Preliminary Determination cover letter set forth a deadline of July 27, 2011, 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.

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

10. Water has not been used on these lands within the last five years according to the terms and conditions of the right because the primary rights have been leased instream under IL-541 (2004-2008) and IL-1065 (2010-2014). There is no information in the record that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch, pond, pipe, pumps and sprinklers sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-11103.
12. The proposed change would not result in enlargement of the right, since the primary rights on the "to" lands are met as often as the primary rights from which the supplemental right is being moved.
13. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

14. Supplemental right, Certificate 33012 is appurtenant to 19.6 acres of the same lands in the NE SW of Section 26 from which the supplemental right under Certificate 83850 is proposed to be transferred. The two irrigation rights are layered, and therefore the second supplemental right must be transferred together with Certificate 83850 or be cancelled as per OAR-380-2252.
15. Transfer of the supplemental right under Certificate 33012 with the supplemental under Certificate 83850 onto the lands in the NW NW and SW NW of Section 26 would not be allowed because those lands already have supplemental irrigation under Certificate 33012.
16. The applicant has not included the 19.6 acres of Certificate 33012 in T-11103, and understands that pursuant to OAR 690-380-2250, the Department likely will cancel the 19.6 acres of supplemental irrigation under Certificate 33012 upon issuance of the Final Order approving T-11103.
17. Consistent with OAR 690-380-2250, the Department provided notice to the applicant as part of the draft Preliminary Determination of the Department's intent to cancel the portion of the

supplemental water right described below unless within 30 days of the date of notification, the applicant modified the application to include the supplemental right or withdrew the application. The applicant did not modify or withdraw the application.

18. That portion of the supplemental water right to be cancelled is as follows:

Certificate: 33012 in the name of Claude P. Williams
Use: Supplemental Irrigation of 19.6 acres
Priority Date: August 25, 1950
Source: Crooked River, tributary to the Deschutes River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
14 S	15 E	WM	26	SE SE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NE SW	19.6

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11103 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and the portion of the layered supplemental right under Certificate 33012 not included in this transfer should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the portion of the layered supplemental right under Certificate 33012 not included in this transfer (identified in Finding of Fact #18) will be cancelled.

If Transfer Application T-11103 is approved, the final order will include the following:

1. *The change in place of use proposed in application T-11103 is approved. The portion of the layered supplemental right under Certificate 33012 not included in this transfer described in Finding of Fact #18 is cancelled.*
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 83850 and any related decree.*
3. *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.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2016**. 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 change and full beneficial use of the water.*

6. *When satisfactory proof of the completed change is received, and when the Department determines that is necessary for record keeping, a new certificate will be issued confirming the right transferred.*

Dated at Salem, Oregon this 28 day of July, 2011.



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

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.