



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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June 6, 2016

CITY OF SISTERS  
PO BOX 39  
SISTERS, OR 97759

SKI POND RANCH LLC  
c/o DAVID HERMAN  
1775 W. STATE ST. #360  
BOISE, ID 83702

SUBJECT: Water Right Transfer Application T-12188

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12188. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or [Patrick.K.Starnes@ wrd.state.or.us](mailto:Patrick.K.Starnes@ wrd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12188  
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)  
Adam Sussman, GSI Water Solutions, agent (*via e-mail*)

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12188, Deschutes County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

**Authority**

Oregon Revised Statute (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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

CITY OF SISTERS  
PO BOX 39  
SISTERS, OR 97759

**Receiving Landowner**

SKI POND RANCH, LLC  
C/O DAVID HERMAN  
1775 W. STATE ST.  
BOISE, ID 83702

**Findings of Fact**

1. On October 26, 2015, CITY OF SISTERS filed an application to change the place of use under Certificate 87345. The Department assigned the application number T-12188.
2. Ski Pond Ranch, LLC (David Herman) is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on November 3, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On January 21, 2016, the Department sent a copy of the Draft Preliminary Determination proposing to approve Transfer Application T-12188 to the applicant. The Draft Preliminary Determination cover letter set forth a deadline of February 22, 2016, 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.

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.

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

**Certificate:** 87345 in the names of SHARON AMESTOY (AMESTOY RANCH LLC), CITY OF SISTERS, STEVEN AND CINDY GREER, LAXY Z RANCH (c/o JAY POULOS), MURRAY GRAY LLC (c/o MURRAY HERMAN), AND SKI POND RANCH LLC (c/o DAVID HERMAN) (perfected under Permit G-4841)

**Use:** IRRIGATION OF 3.1 ACRES

**Priority Date:** AUGUST 25, 1970

**Rate:** 0.039 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the WHYCHUS CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	14	NW NW	Well 2 - 290 FEET SOUTH AND 140 FEET EAST FROM THE NW CORNER OF SECTION 14

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	15	NE NE	3.1

6. A scrivener's error was found on Certificate 87345. Certificate 87345 describes the location of the City of Sisters irrigation as:

IRRIGATION - CITY OF SISTERS							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	15	NE NE	200	5.0
Well 2	15 S	10 E	WM	15	SE NE	200	11.1

Special Order Volume 85 page 721 voluntarily canceled a portion of the irrigated acres. The City of Sisters canceled 1.9 acres in the NE NE and 11.1 acres in the SE NE of Section 15. Certificate 87345 should be described as:

IRRIGATION - CITY OF SISTERS							
Source	Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
Well 2	15 S	10 E	WM	15	NE NE	200	3.1

7. Transfer Application T-12188 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	14	SW NE	3.1

***Transfer Review Criteria (OAR 690-380-4010)***

8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A pump, pipeline, and sprinkler system 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-12188.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

**Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-12188 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

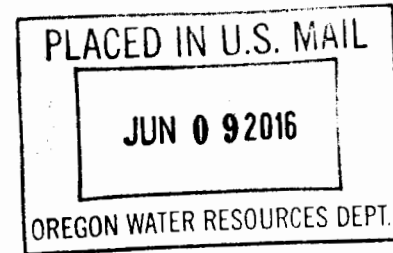
*If Transfer Application T-12188 is approved, the final order will include the following:*

1. *The change in place of use proposed in Transfer Application T-12188 is 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 87345 and any related decree.*
3. *Water right Certificate 87345 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *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 appropriation (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.*
5. *The former place of use of the transferred right shall no longer receive water under the right.*

6. *Full beneficial use of the water shall be made, consistent with the terms of this order, 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 change and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of June, 2016.

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



This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or [marcy.j.osborn@wrд.state.or.us](mailto:marcy.j.osborn@wrд.state.or.us).

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.