



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

June 22, 2016

### **Applicant**

U.S. BUREAU OF RECLAMATION  
ATTN: CAROLYN R. CHAD  
1917 MARSH RD  
YAKIMA, WA 98901  
(cchad@usbr.gov)

### **Agent**

GSI WATER SOLUTIONS  
ADAM SUSSMAN  
GSI WATER SOLUTIONS  
CORVALLIS, OR 97330  
(asussman@gsiws.com)

**SUBJECT:** Water Right Transfer Application T-12239

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12239. 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 and in the Bend Bulletin newspaper, 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 or 30 days after the last date of newspaper publication, whichever is later.

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-12239

Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)

Adam Sussman, Agent for the applicant (*via e-mail*)

Kimberly Priestley, Senior Policy Analyst, Waterwatch, *commentor*

Robert A. Brunoe, Manager, Warm Springs Natural Resources Department,

The Confederated Tribes of the Warm Springs Reservation of Oregon, *commentor*

Chandra Ferrari, OR Water Policy Advisor, Trout Unlimited, *commentor*  
Michael P. Tehan, Assist. Reg. Manager, Interior Columbia Basin Office, NOAA  
Fisheries, *commentor*  
Bridget Moran, Acting Bend Field Supervisor, US Fish and Wildlife Service,  
*commentor*  
Danette Faucera, Water Policy Coordinator, Oregon Department of Fish and  
Wildlife, *commentor*

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12239, Crook County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN 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**

U.S. BUREAU OF RECLAMATION  
ATTN: CAROLYN R. CHAD  
1917 MARSH RD  
YAKIMA, WA 98901

**Findings of Fact**

1. On, January 14, 2016, U.S. BUREAU OF RECLAMATION filed an application to change the character of use under Certificate 57612. The Department assigned the application number T-12239.
2. Notice of the application for transfer was published on January 19, 2016, pursuant to OAR 690-380-4000. The following summarizes the comments that were filed in response to the notice:
  - a. On February 17, 2016, WaterWatch of Oregon commented that the changes the Bureau of Reclamation is seeking to Certificate 57612 are inconsistent with the Crooked River Collaborative Water Security and Jobs Act of 2014 (the 2014 Act); the transfer application proposes conditions that go far beyond what is contemplated by state transfer statutes; and the transfer application would put the Water Resources Department in the position of acting contrary to past agency practices in issuing transfer for storage rights.
  - b. On February 17, 2016, The Confederated Tribes of the Warm Springs Reservation of Oregon commented that the proposed transfer application may not be consistent with the 2014 Act.

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.
--

- c. On February 18, 2016, Trout Unlimited, the United States Department of Commerce, National Oceanic and Atmospheric Administration, and the United States Department of the Interior, Fish and Wildlife Service commented that the proposed transfer application is not consistent with the 2014 Act.
    - d. On February 18, 2016, the Oregon Department of Fish and Wildlife (ODFW) submitted comments that the proposed transfer application is not consistent with the 2014 Act. On April 11, 2016, ODFW submitted additional comments intended to clarify ODFW's initial comments.
3. The comments summarized in Findings of Fact No. 2(a)-(d) raise the issue that the transfer application is not consistent with the 2014 Act. Section 4 of the 2014 Act amends the Act of August 5, 1956 (the 1956 Act), by adding certain provisions to the 1956 Act, including a new Section 7(a)(4), which provides: "STATE WATER LAW. – All releases and downstream uses authorized under paragraph (1) [of Section 7(a) of the 1956 Act, as added by the 2014 Act] shall be in accordance with Oregon State water law." The Department will review the proposed change in character of use in accordance with ORS 540.530(1)(a).
4. The comments summarized in Finding of Fact No. 2(a) above raise the issue that "the application proposes conditions that go far beyond what is contemplated by state transfer statutes." The application form itself prompts the applicant to describe what the applicant proposes to accomplish with the transfer application. The comments provided by an applicant in the application form are not viewed by the Department as conditions to be imposed upon the transfer.
5. The comments summarized in Finding of Fact No. 2(a) above raise the issue that "the transfer application would put the Water Resources Department in the position of acting contrary to past agency practice in issuing transfers for storage rights." The Department will review the proposed change in character of use in accordance with ORS 540.530(1)(a).
6. On May 5, 2016, the applicant amended the application to narrow the proposed change in character of use to 5100.0 acre feet (AF) of storage for downstream fish life and wildlife use and 78887.0 AF of storage for irrigation and downstream fish life and wildlife use.
7. On February 22, 2016, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-1223912239 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 23, 2016, for the applicant to respond. On April 19, 2016, Adam Sussman, agent for the applicant requested additional time for the applicant to respond to the draft Preliminary Determination. The Department granted the additional time for the applicant to respond with a new deadline of May 6, 2016. On May 5, 2016, the applicant amended the transfer application and provided suggested revisions to the draft Preliminary Determination. The Department agreed with the revisions and incorporated them into the draft Preliminary Determination. On May 6, 2016, the applicant requested that the Department proceed with issuance of a Preliminary Determination.

8. On June 8, 2016, the applicant requested five years to complete the transfer per OAR 690-380-5140(3).

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

**Certificate:** 57612 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit R-2223)  
**Use:** STORAGE FOR IRRIGATION  
**Priority Date:** APRIL 8, 1914  
**Quantity:** 83987.0 ACRE-FEET  
**Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
16 S	16 E	WM	36	SE SE
16 S	17 E	WM	13	NE SE
16 S	17 E	WM	13	SW SE
16 S	17 E	WM	13	SE SE
16 S	17 E	WM	23	SW NE
16 S	17 E	WM	23	SE NE
16 S	17 E	WM	23	NE SE
16 S	17 E	WM	23	NW SE
16 S	17 E	WM	23	SW SE
16 S	17 E	WM	23	SE SE
16 S	17 E	WM	24	NE NE
16 S	17 E	WM	24	NW NE
16 S	17 E	WM	24	SW NE
16 S	17 E	WM	24	SE NW
16 S	17 E	WM	24	NE SW
16 S	17 E	WM	24	NW SW
16 S	17 E	WM	26	NE NE
16 S	17 E	WM	26	NW NE
16 S	17 E	WM	26	SW NE
16 S	17 E	WM	26	NE NW
16 S	17 E	WM	26	NW NW
16 S	17 E	WM	26	SW NW
16 S	17 E	WM	26	SE NW
16 S	17 E	WM	26	NE SW
16 S	17 E	WM	26	NW SW
16 S	17 E	WM	27	SE NE
16 S	17 E	WM	27	NW SW
16 S	17 E	WM	27	SW SW
16 S	17 E	WM	27	SE SW
16 S	17 E	WM	27	NE SE
16 S	17 E	WM	27	NW SE
16 S	17 E	WM	27	SW SE
16 S	17 E	WM	27	SE SE
16 S	17 E	WM	28	SW SE
16 S	17 E	WM	28	SE SE
16 S	17 E	WM	31	SW NE
16 S	17 E	WM	31	NE SW
16 S	17 E	WM	31	SW SW

Twp	Rng	Mer	Sec	Q-Q
16 S	17 E	WM	31	SE SW
16 S	17 E	WM	31	NW SE
16 S	17 E	WM	31	SW SE
16 S	17 E	WM	31	SE SE
16 S	17 E	WM	32	SW SE
16 S	17 E	WM	32	SE SE
16 S	17 E	WM	33	NE NE
16 S	17 E	WM	33	NW NE
16 S	17 E	WM	33	SW NE
16 S	17 E	WM	33	SE NE
16 S	17 E	WM	33	SW SW
16 S	17 E	WM	33	SE SW
16 S	17 E	WM	33	NE SE
16 S	17 E	WM	33	NW SE
16 S	17 E	WM	33	SW SE
16 S	17 E	WM	33	SE SE
16 S	17 E	WM	34	NE NE
16 S	17 E	WM	34	NW NE
16 S	17 E	WM	34	NE NW
16 S	17 E	WM	34	NW NW
16 S	17 E	WM	34	SW NW
16 S	17 E	WM	34	NW SW
16 S	18 E	WM	18	NW SW
16 S	18 E	WM	18	SW SW
17 S	16 E	WM	1	SE NE
17 S	16 E	WM	1	NE SE
17 S	16 E	WM	11	SW NE
17 S	16 E	WM	11	SE NE
17 S	16 E	WM	11	SW NW
17 S	16 E	WM	11	SE NW
17 S	16 E	WM	11	NE SW
17 S	16 E	WM	11	SE SW
17 S	16 E	WM	11	NE SE
17 S	16 E	WM	11	NW SE
17 S	16 E	WM	11	SW SE
17 S	16 E	WM	11	SE SE
17 S	16 E	WM	12	SW NW
17 S	16 E	WM	12	NE SW
17 S	16 E	WM	12	NW SW
17 S	16 E	WM	12	SW SW
17 S	16 E	WM	12	SE SW
17 S	16 E	WM	12	NE SE
17 S	16 E	WM	12	SW SE
17 S	16 E	WM	12	SE SE
17 S	16 E	WM	13	NE NE
17 S	16 E	WM	13	NW NE
17 S	16 E	WM	13	SW NE
17 S	16 E	WM	13	SE NE
17 S	16 E	WM	13	NE NW
17 S	16 E	WM	13	NE SE
17 S	16 E	WM	13	NW SE
17 S	16 E	WM	13	SW SE

Twp	Rng	Mer	Sec	Q-Q
17 S	16 E	WM	13	SE SE
17 S	16 E	WM	24	NE NE
17 S	16 E	WM	24	NW NE
17 S	16 E	WM	24	SE NE
17 S	17 E	WM	3	NW NW
17 S	17 E	WM	3	SW NW
17 S	17 E	WM	3	NW SW
17 S	17 E	WM	3	SW SW
17 S	17 E	WM	4	NE NE
17 S	17 E	WM	4	NW NE
17 S	17 E	WM	4	SW NE
17 S	17 E	WM	4	SE NE
17 S	17 E	WM	4	NE NW
17 S	17 E	WM	4	NW NW
17 S	17 E	WM	4	SW NW
17 S	17 E	WM	4	SE NW
17 S	17 E	WM	4	NE SW
17 S	17 E	WM	4	NW SW
17 S	17 E	WM	4	SW SW
17 S	17 E	WM	4	SE SW
17 S	17 E	WM	4	NE SE
17 S	17 E	WM	4	NW SE
17 S	17 E	WM	4	SW SE
17 S	17 E	WM	4	SE SE
17 S	17 E	WM	5	NE NE
17 S	17 E	WM	5	NW NE
17 S	17 E	WM	5	SW NE
17 S	17 E	WM	5	SE NE
17 S	17 E	WM	5	NE NW
17 S	17 E	WM	5	NW NW
17 S	17 E	WM	5	SW NW
17 S	17 E	WM	5	SE NW
17 S	17 E	WM	5	NE SW
17 S	17 E	WM	5	NW SW
17 S	17 E	WM	5	SW SW
17 S	17 E	WM	5	NE SE
17 S	17 E	WM	5	NW SE
17 S	17 E	WM	6	NE NE
17 S	17 E	WM	6	NW NE
17 S	17 E	WM	6	SW NE
17 S	17 E	WM	6	SE NE
17 S	17 E	WM	6	NE NW
17 S	17 E	WM	6	NW NW
17 S	17 E	WM	6	SW NW
17 S	17 E	WM	6	SE NW
17 S	17 E	WM	6	NE SW
17 S	17 E	WM	6	NW SW
17 S	17 E	WM	6	SE SW
17 S	17 E	WM	6	NE SE
17 S	17 E	WM	6	NW SE
17 S	17 E	WM	6	SW SE
17 S	17 E	WM	6	SE SE

Twp	Rng	Mer	Sec	Q-Q
17 S	17 E	WM	7	NE NE
17 S	17 E	WM	7	NW NE
17 S	17 E	WM	7	SW NE
17 S	17 E	WM	7	SE NE
17 S	17 E	WM	7	NE NW
17 S	17 E	WM	7	SE NW
17 S	17 E	WM	7	NE SW
17 S	17 E	WM	7	NW SW
17 S	17 E	WM	7	SW SW
17 S	17 E	WM	7	SE SW
17 S	17 E	WM	7	NE SE
17 S	17 E	WM	7	NW SE
17 S	17 E	WM	8	NW NW
17 S	17 E	WM	8	SW NW
17 S	17 E	WM	9	NE NW
17 S	17 E	WM	9	SE NW
17 S	17 E	WM	18	NW NW
17 S	17 E	WM	19	SW NE
17 S	17 E	WM	19	NW SW
17 S	17 E	WM	19	SW SW

10. Transfer Application T-12239 proposes to change the character of use of 5100.0 acre feet (AF) to storage for downstream fish life and wildlife use and 78887.0 (AF) to storage for irrigation and downstream fish life and wildlife use.

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

11. 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.
12. A dam structure sufficient to store the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-12239.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The change in character of use proposed in Transfer Application T-12239 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

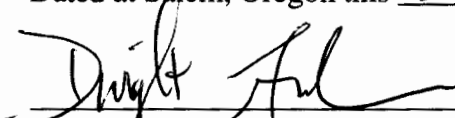
*If Transfer Application T-12239 is approved, the final order will include the following:*

1. *The change in character of use proposed in Transfer Application T-12239 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 57612 and any related decree.*
3. *Water right Certificate 57612 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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.*
5. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of June, 2016.

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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or [patrick.k.starnes@wrds.state.or.us](mailto:patrick.k.starnes@wrds.state.or.us).

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

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>