



# Oregon

Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
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January 29, 2018

**Applicant**

City of Dayton  
Attn: Scott Pingel, City Manager  
PO Box 339  
Dayton OR 97114-0339

**Agent**

GSI Water Solutions, Inc.  
c/o Ted Ressler  
55 SW Yamhill Street, Suite 300  
Portland OR 97204

**SUBJECT:** Water Right Transfer Application T-12454

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12454. 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.

The Department withdrew the previous Preliminary Determination on January 19, 2018. With the issuance of this Preliminary Determination, a new public notice is being published in the Department's weekly publication and in the McMinnville News Register newspaper. The notice initiates a new 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 last date of newspaper publication.

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 503-986-0881 or [teri.k.hranac@oregon.gov](mailto:teri.k.hranac@oregon.gov), if I may be of assistance.

Sincerely,

Teri Hranac  
Transfer and Conservation Section

Enclosure

cc: T-12454  
Joel Plahn, Watermaster 16 District *(via e-mail)*  
Ted Ressler, GSI Water Solutions Inc., Agent/CWRE for the applicant *(via e-mail)*

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12454, Yamhill County	)	PROPOSING APPROVAL OF
	)	ADDITIONAL POINTS OF
	)	APPROPRIATION, CHANGES IN
	)	PLACE OF USE AND CHARACTER OF
	)	USE

**Authority**

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

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**Findings of Fact**

1. On August 1, 2016, City of Dayton filed an application for additional points of appropriation, changes in place of use, and changes in character of use under Certificates 72404, 89938, and 89939. The Department assigned the application number T-12454.
2. Notice of the application for transfer was published on August 16, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 25, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12454 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2017 for the applicant to respond.
4. On September 13, 2017, the agent for the applicant requested additional time for completion of the transfer to be extended to October 1, 2038 to guarantee adequate time to complete the project. The Department approved and extended the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to

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.

October 1, 2038. The agent also requested clarification on the total volume of water that the city could expect to use for the proposed new use.

5. The Department has determined that the additional information needed to clarify the extent to which water could be used at the new place of use for the new character of use warranted another draft Preliminary Determination be sent out to the applicant for further review.
6. On September 19, 2017, the Department sent out a copy of a REVISED draft of the Preliminary Determination proposing to approve Transfer Application T-12454 to the applicant. The Revised Draft Preliminary Determination included items described in Finding of Fact #5 and is further described below in Finding of Fact #28.
7. The revised draft Preliminary Determination cover letter set forth a deadline of October 19, 2017, for the applicant to respond. On September 28, 2017, the agent for the applicant requested an extended season of use under Certificate 72404, from November 1 to April 30, to year 'round.
8. On October 20, 2017, the Department sent out a 2<sup>nd</sup> Revised Draft Preliminary Determination, extending the season of use under Certificate 72404 to year 'round.
9. On November 17, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12454 and sent a copy to the applicant and applicant's agent. The Preliminary Determination extended the season of use under Certificate 72404 to year 'round. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on November 28, 2017, and in the News Register newspaper on November 28 and December 5, 2017. No protests were filed in response to the notices.
10. On January 19, 2018, the Department issued an Order Withdrawing the Preliminary Determination, and sent copies to the applicant and applicant's agent.
11. On January 19, 2018, the Department issued a 3<sup>rd</sup> Revised Draft Preliminary Determination proposing to approve Transfer Application T-12454 and sent copies to the applicant and applicant's agent.

12. The first right to be transferred is as follows:

**Certificate:** 89938 in the name of CITY OF DAYTON (perfected under Permit G-15821)  
**Use:** NURSERY USE ON 5.0 ACRES  
**Priority Date:** NOVEMBER 5, 2003  
**Rate:** 0.125 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for NURSERY USE is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to ONE-EIGHTIETH on one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be

made any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

**Period of Use:** YEAR ROUND.

**Source:** TWO WELLS within the PALMER CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 3 - 220 FEET NORTH AND 880 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	NW SE	48	WELL 4 - 545 FEET SOUTH AND 1840 FEET WEST FROM THE E¼ CORNER OF SECTION 19

**Authorized Place of Use:**

NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	19	NW NE	48	2.25
4 S	3 W	WM	19	SW NE	48	1.13
4 S	3 W	WM	19	NE NW	48	0.63
4 S	3 W	WM	19	SE NW	48	0.99
Total						5.00

13. Transfer Application T-12454 proposes to change the place of use of the right to:

WITHIN THE CITY OF DAYTON SERVICE AREA

14. Transfer Application T-12454 also proposes to change the character of use to municipal purposes within the city's service area boundary located:

MUNICIPAL  
WITHIN THE CITY OF DAYTON SERVICE AREA

15. Transfer Application T-12454 also proposes seven additional points of appropriation under the above described right located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 1 - 830 FEET NORTH AND 1100 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 2 - 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 5 - 685 FEET NORTH AND 1140 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 6 - 1085 FEET NORTH AND 1010 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	NW SE	48	WELL 7 - 300 FEET SOUTH AND 2190 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SW NE	48	WELL 8 - 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	NW NE	48	WELL 9 - 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19

16. The second right to be transferred is as follows:

**Certificate:** 89939 in the name of CITY OF DAYTON (perfected under Permit G-17039)  
**Use:** NURSERY USE ON 39.74 ACRES  
**Priority Date:** APRIL 18, 2000  
**Rate:** 0.90 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to ONE-EIGHTIETH on one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.  
**Period of Use:** YEAR ROUND  
**Source:** TWO WELLS within the WEST FORK PALMER CREEK BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	NW SE	48	WELL 4 - 545 FEET SOUTH AND 1840 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 3 - 220 FEET NORTH AND 880 FEET WEST FROM THE E¼ CORNER OF SECTION 19

**Authorized Place of Use:**

NURSERY USE						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	19	NW NE	48	3.76
4 S	3 W	WM	19	SW NE	48	25.91
4 S	3 W	WM	19	SE NW	48	0.31
4 S	3 W	WM	19	NW SE	48	9.76
Total						39.74

17. Transfer Application T-12454 proposes to change the place of use of the right to:

WITHIN THE CITY OF DAYTON SERVICE AREA

18. Transfer Application T-12454 also proposes to change the character of use to municipal purposes within the city's service area boundary located:

MUNICIPAL  
 WITHIN THE CITY OF DAYTON SERVICE AREA

19. Transfer Application T-12454 also proposes seven additional points of appropriation under the above described right located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 1 - 830 FEET NORTH AND 1100 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 2 - 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 5 - 685 FEET NORTH AND 1140 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 6 - 1085 FEET NORTH AND 1010 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	NW SE	48	WELL 7 - 300 FEET SOUTH AND 2190 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SW NE	48	WELL 8 - 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	NW NE	48	WELL 9 - 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19

20. The third right to be transferred is as follows:

**Certificate:** 72404 in the name of LOUISE SCALVINI (perfected under Permit G-11556)

**Use:** NURSERY OPERATION ON 49.4\* ACRES

**Priority Date:** APRIL 23, 1990

**Rate:** 0.33 CUBIC FOOT PER SECOND

**Period of Use:** USE IS LIMITED TO THE PERIOD FROM NOVEMBER 1 THROUGH APRIL 30 OF EACH YEAR

**Limit/Duty:** The amount of water used for NURSERY OPERATIONS is limited to a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

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

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	19	NW SE	3190 FEET SOUTH AND 1930 FEET WEST FROM THE NE CORNER OF SECTION 19

**Authorized Place of Use:**

NURSERY OPERATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	3 W	WM	19	NW NE	48	3.83*
4 S	3 W	WM	19	SW NE	48	25.95
4 S	3 W	WM	19	SE NW	48	0.20
4 S	3 W	WM	19	NW SE	48	9.42
Total						39.40

\* Note: Scrivener’s error in the NW NE, Sec. 19. Certificate 72404 erroneously listed 13.83 acres.

21. Processing of the transfer application has revealed there is an apparent scrivener’s error in the amount of acres authorized under Certificate 72404, indicated by the asterisk in the above table. The listing of 13.83 acres in the NW¼ NE¼, DLC 48, Section 19, Township 4 South, Range 3 West, was in error. Based upon the accompanying transfer application map, the Department’s Final Proof map (1996), and context from nearby places of use under nearly identical Certificates 89938 and 89939, the correct number of acres within NW¼ NE¼, Section 19, under Certificate 72404 is 3.83 acres. The agent and CWRE for the applicant also agree with this assertion and thus, the Department is led to conclude that this 3.83 acre portion is the water right subject to transfer and does not affect the overall amount of water associated with the nursery operations under the right.
22. Certificate 72404 describes the well location based on a Claim of Beneficial Use survey and report submitted in 1996. However, information is available from the current map prepared by the applicant’s Certified Water Rights Examiner (CWRE) based on a recent field visit and subsequent survey indicating that the point of appropriation (aka: identical Well No. 4 associated with Certificates 89938 and 89939) is more accurately located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	19	NW SE	545 FEET SOUTH AND 1840 FEET WEST FROM THE E¼ CORNER OF SECTION 19

23. Transfer Application T-12454 proposes to change the place of use of the right to:

WITHIN THE CITY OF DAYTON SERVICE AREA

24. Transfer Application T-12454 also proposes to change the character of use to Municipal purposes within the city’s service area boundary located:

MUNICIPAL  
WITHIN THE CITY OF DAYTON SERVICE AREA

25. Transfer Application T-12454 proposes eight additional points of appropriation under the above described right located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 1 - 830 FEET NORTH AND 1100 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 2 - 1770 FEET SOUTH AND 900 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 3 - 220 FEET NORTH AND 880 FEET WEST FROM THE E¼ CORNER OF SECTION 19

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	3 W	WM	19	SE NE	48	WELL 5 - 685 FEET NORTH AND 1140 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SE NE	48	WELL 6 - 1085 FEET NORTH AND 1010 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	NW SE	48	WELL 7 - 300 FEET SOUTH AND 2190 FEET WEST FROM THE E¼ CORNER OF SECTION 19
4 S	3 W	WM	19	SW NE	48	WELL 8 - 1970 FEET SOUTH AND 2260 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	3 W	WM	19	NW NE	48	WELL 9 - 1150 FEET SOUTH AND 2150 FEET WEST FROM THE NE CORNER OF SECTION 19

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

26. Water has been used within the last five years prior to the submittal of Transfer Application T-12454 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
27. Wells, pumps, pipeline, and sprinkler systems associated with nursery 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-12454.
28. The Department has determined that the proposed additional points of appropriation: Well Nos. 1 and 2, and proposed construction on Wells Nos. 5, 6, 7, 8 and 9 will all develop the same source of water as the authorized existing Well Nos. 3 and 4.
29. The Department has also reviewed the request for year 'round use under Certificate 72404. ORS 540.510(1), upon compliance with the provisions of ORS 540.520 and 540.530, authorizes the change in use, place of use, and the point of diversion for any water user subject to transfer. ORS 540.510(1) and OAR 690-380-2000 do not list the season or period of use as one of the elements of a water use that is allowed to be changed.
30. The proposed changes, as conditioned, would not result in enlargement of the rights. The use of water for municipal purposes within the City of Dayton's service area boundary described in Findings Nos. 8, 12, and 18 above are allowed year round. The rate and total annual duty amounts of water are described as follows:

Certificate	Rate (total of all POAs)		POAS	Period	Duty	
	cfs	gpm			af	Basis
89938	0.125	56.11	Wells 1-9	Year round	25.0	5 af/ac for 5.0 acres
89939	0.900	403.97	Wells 1-9	Year round	198.7	5 af/ac for 37.74 acres
72404	0.330	73.45	Wells 1-9	11/1 through 4/30	197.0	5 af/ac for 39.4 acres
Totals	1.355	533.53			420.7	

31. The proposed changes would not result in injury to other water rights.
32. All other application requirements are met.



## **Determination and Proposed Action**

The additional points of appropriation, changes in place of use and character of use proposed in Transfer Application T-12454 appear 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-12454 is approved, the final order will include the following:*

- 1. The additional points of appropriation, changes in place of use and character of use proposed in Transfer Application T-12454 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 Certificates 72404, 89938, and 89939 and any related decree.*
- 3. Water right Certificates 72404, 89938 and 89939 are cancelled.*
- 4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 5. The use of water for the proposed municipal use under the right described by Certificate 89938 shall be limited to a rate of diversion of 0.125 cfs and further limited to a total volume diverted of 25.0 acre feet during the entire year.*
- 6. The use of water for the proposed municipal use under the right described by Certificate 89939 shall be limited to a rate of diversion of 0.90 cfs and further limited to a total volume diverted of 198.7 acre feet during the entire year.*
- 7. The use of water for the proposed municipal use under the right described by Certificate 72404 shall be limited to a rate of diversion of 0.33 cfs and further limited to a total volume diverted of 197.0 acre feet during the period of November 1 through April 30 of each year.*
- 8. The quantity of water diverted at the new additional points of appropriation, together with that diverted at the original points of appropriation, shall not exceed the quantity of water lawfully available at the original points of appropriation, totaling 1.36 cfs to be used in any combination between the City of Dayton's existing Well Nos. 3 and 4 and the new proposed additional wells.*
- 9. The wells shall be maintained in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air-line and pressure gauge to determine the water level elevation in the well at all times.*
- 10. The former places of use of the transferred rights shall no longer receive water under the right.*
- 11. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2038**. 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.*

12. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon on JAN 29 2018.

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

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or [teri.k.hranac@oregon.gov](mailto:teri.k.hranac@oregon.gov).

*Protests should be addressed to the attention of Water Rights Services 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>