



Oregon
Kate Brown, Governor

Water Resources Department
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September 20th, 2019

VIA E-MAIL

SEAL ROCK WATER DISTRICT
ATTN: ADAM DENLINGER
1037 NW GREBE STREET
SEAL ROCK, OR 97376

SUBJECT: Water Right Transfer Application T-12765

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12765. 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 Newport News Times 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 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 503-986-0884 or Sarah.A.Henderson@oregon.gov if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12765
Nikki M. Hendricks, District 1 Watermaster (via e-mail)
Adam Sussman, GSI Water Solutions Inc., Agent for the applicant (via e-mail)
Brian Posewitz, Attorney of WaterWatch of Oregon, interested party

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

In the Matter of Time Limited Instream	)	PRELIMINARY DETERMINATION
Transfer Application	)	PROPOSING APPROVAL OF A
T-12765, Lincoln County	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR Chapter 690, Division 077 provides additional criteria for evaluating transfers to instream water rights.

Applicant

SEAL ROCK WATER DISTRICT
ATTN: ADAM DENLINGER
1037 NW GREBE STREET
SEAL ROCK, OR 97376

Findings of Fact

1. On October 27, 2017, Seal Rock Water District filed a time-limited instream transfer application to change the character of use and place of use under Certificates 21390, and 32199 to instream use for a period of 99 years. The Department assigned the application number T-12765.
2. Notice of the application for transfer was published on November 7, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 22, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12765 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 21, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
4. Consistent with land use requirements, prior to submitting the time-limited instream transfer application, the applicant provided notification of the intent to file the instream transfer application to City of Newport and Lincoln County.

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

Certificate: 21390 in the name of A. D. DORITY JR.; THEO. M. AND MARGARET O. DORITY (perfected under Permit S-18315)
Use: MUNICIPAL USE
Priority Date: MAY 17, 1948
Rate: 1.0 CUBIC FOOT PER SECOND
Source: HENDERSON CREEK, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	11 W	WM	30	SE NE	NONE GIVEN

Authorized Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
11 S	11 W	WM	30	SE NE
11 S	11 W	WM	30	NE SE
11 S	11 W	WM	30	SE SE

6. A total of 723.97 acre-feet of water may be beneficially used annually under Certificate 21390.
7. Certificate 21390 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Certified Water Right Examiner and the Applicant, for purposes of this time-limited instream transfer, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
11 S	11 W	WM	30	SE NE	2250 FEET SOUTH AND 280 FEET WEST FROM THE NE CORNER OF SECTION 30

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

Certificate: 32199 in the name of SEAL ROCK WATER DISTRICT (perfected under Permit S-26489)
Use: MUNICIPAL USE
Priority Date: OCTOBER 1, 1959
Rate: 0.40 CUBIC FOOT PER SECOND
Source: HILL CREEK, tributary to the PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	12 W	WM	24	SE SE	NONE GIVEN

Authorized Place of Use:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
12 S	11 W	WM	18	NE NW
12 S	11 W	WM	18	NW NW
12 S	11 W	WM	18	SW NW
12 S	11 W	WM	18	SE NW
12 S	11 W	WM	18	NE SW
12 S	11 W	WM	18	NW SW
12 S	11 W	WM	18	SW SW
12 S	11 W	WM	18	SE SW
12 S	11 W	WM	19	NW NW
12 S	11 W	WM	19	SW NW
12 S	11 W	WM	19	NW SW
12 S	11 W	WM	19	SW SW
12 S	11 W	WM	30	NW NW
12 S	11 W	WM	30	SW NW
12 S	11 W	WM	30	SW SW
12 S	11 W	WM	30	SE SW
12 S	11 W	WM	31	NW NW
12 S	11 W	WM	31	NE NW
12 S	12 W	WM	24	NE NE
12 S	12 W	WM	24	NW NE
12 S	12 W	WM	24	SE NE
12 S	12 W	WM	24	NE NW
12 S	12 W	WM	24	SW NW
12 S	12 W	WM	24	SE NW
12 S	12 W	WM	24	NW SW
12 S	12 W	WM	24	SE SW
12 S	12 W	WM	24	NE SE
12 S	12 W	WM	24	NW SE
12 S	12 W	WM	24	SW SE
12 S	12 W	WM	24	SE SE
12 S	12 W	WM	25	NE NE
12 S	12 W	WM	25	NW NE
12 S	12 W	WM	25	SW NE
12 S	12 W	WM	25	SE NE
12 S	12 W	WM	25	NW NW
12 S	12 W	WM	25	SW NW
12 S	12 W	WM	25	SE NW
12 S	12 W	WM	25	NE SE
12 S	12 W	WM	25	NW SE

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
12 S	12 W	WM	25	SW SE
12 S	12 W	WM	25	SE SE
12 S	12 W	WM	36	NE NE
12 S	12 W	WM	36	NW NE
12 S	12 W	WM	36	SW NE
12 S	12 W	WM	36	SE NE
12 S	12 W	WM	36	NW NW
12 S	12 W	WM	36	SW NW
12 S	12 W	WM	36	SE NW
12 S	12 W	WM	36	NE SW
12 S	12 W	WM	36	NW SW
12 S	12 W	WM	36	SE SW
12 S	12 W	WM	36	NE SE
12 S	12 W	WM	36	SW SE
12 S	12 W	WM	36	SE SE
12 S	11 W	WM	6	SW NW
12 S	11 W	WM	6	NW SW
12 S	11 W	WM	6	SW SW
12 S	11 W	WM	7	NW NW
12 S	11 W	WM	7	SW NW
12 S	11 W	WM	7	SW SW
12 S	11 W	WM	18	NW NW
12 S	11 W	WM	18	SW NW
12 S	11 W	WM	18	NW SW
12 S	11 W	WM	18	SW SW
12 S	11 W	WM	18	SE SW
12 S	12 W	WM	1	NE NE
12 S	12 W	WM	1	NW NE
12 S	12 W	WM	1	SW NE
12 S	12 W	WM	1	SE NE
12 S	12 W	WM	1	NW NW
12 S	12 W	WM	1	SW NW
12 S	12 W	WM	1	SE NW
12 S	12 W	WM	1	NE SW
12 S	12 W	WM	1	SW SW
12 S	12 W	WM	1	SE SW
12 S	12 W	WM	1	NE SE
12 S	12 W	WM	1	NW SE
12 S	12 W	WM	1	SW SE
12 S	12 W	WM	1	SE SE

9. The source for Certificate 32199 is Hill Creek; Hill Creek is also known as Deer Creek, tributary to the Pacific Ocean.
10. Certificate 32199 does not provide measured distances for the location of the point of diversion. Based upon additional information provided by the Certified Water Right Examiner and the Applicant, for purposes of this time-limited instream transfer, the point of diversion is described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
12 S	12 W	WM	24	SE SE	630.02 FEET NORTH AND 311.41 FEET WEST FROM THE SE CORNER OF SECTION 24

11. A total of 289.59 acre-feet of water may be beneficially used annually under the Certificate 32199.
12. Certificates 21390 and 32199 do not specify the period of allowed use. However, use of water for municipal uses are assumed to be year round unless otherwise specified in the certificate.
13. Transfer Application T-12765 proposes to change the character of use to instream use for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation; and pollution abatement for a period of 99 years.
14. The applicant has entered into a Settlement Agreement with WaterWatch of Oregon to transfer Certificates 21390 and 32199 instream for a period of 99 years. The applicant will only request early termination of this time-limited instream transfer if the water under these Certificates are needed for use by the applicant for municipal purposes. The applicant will not terminate this time-limited instream transfer unless water is not reasonably available under the permit derived from the water right Application S-88124 for all uses authorized by the terms and conditions of the permit. If it is necessary for the applicant to terminate the time-limited instream transfer early, the applicant will apply for another time-limited instream transfer for these same water right certificates immediately following the use of water for municipal purposes.
15. The applicant requests that the water use revert to its authorized use and place of use after 99 years from the date of the order.
16. Transfer Application T-12765 proposes to change the place of use of the right to create an instream reach from the point of diversions described above to the mouth of the source creeks (Henderson Creek and Hill Creek (also known as Deer Creek), tributaries to the Pacific Ocean.

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.

17. The applicant proposes the quantities water to be transferred instream be as protected follows:

Certificate	Priority Date	Instream Period	Instream Rate (CFS)	Instream Volume (AF)
21390	05/17/1948	Year Round	1.00	723.97
32199	10/1/1959	Year Round	0.40	289.59

Instream Transfer Review Criteria (OAR 690-77-0075 and 690-380-4010)

18. Certificates 21390 and 32199 are for municipal use. Therefore, they are not subject to forfeiture under ORS 540.610.
19. A diversion structure and ditch 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-12765.
20. The quantities to be transferred and protected instream are as follows:

Certificate 21390

Instream Reach: From the POD (as described in Finding of Fact No. 7) to the mouth of Henderson Creek

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
5/17/1948	1.00	723.97	January 1 through December 31

Certificate 32199

Instream Reach: From the POD (as described in Finding of Fact No. 10) to the mouth of Hill Creek (also known as Deer Creek)

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
10/1/1959	0.40	289.59	January 1 through December 31

21. The proposed change would not result in enlargement of the right.
22. The proposed change would not result in injury to other water rights.
23. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
24. The protection of flows within the proposed reaches are appropriate, considering:
- a) The instream water right begins at the recorded point of diversion;
 - b) The location of confluences with other streams downstream of the point of diversion;

- c) There are no known areas of natural loss of streamflow to the river bed downstream from the point of diversion; and
 - d) Any return flows resulting from the exercise of the existing water right would re-enter the river downstream of the reach of the instream water right.
25. During the period January through December, any instream water right established by this transfer application may replace a portion of instream water rights established pursuant to ORS 537.341 or ORS 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or ORS 537.470, unless otherwise specified in an order approving a new instream water right under these statutes.
26. The total monthly quantities of water to be protected under the existing and proposed instream rights in the reach will provide for a beneficial purpose and exceed the estimated average natural flow, but are significant for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values; recreation; and pollution abatement of the instream right.

Determination and Proposed Action

The changes in character of use and place of use to instream use proposed in application T-12765 appear to be consistent with the requirements of ORS 540.505 to 540.580, ORS 537.348, OAR 690-380-5000, and OAR 690-077-0075. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12765 is approved, the final order will include the following:

1. *The changes in character of use and place of use to instream use proposed in application T-12765 are approved.*
2. *The instream water right shall provide for the protection of streamflows from the point of diversions described above to the mouth of the source creeks (Henderson Creek and Hill Creek (also known as Deer Creek), tributaries to the Pacific Ocean.*
3. *The quantities to be transferred and protected instream are as follows:*

Certificate 21390

Instream Reach: *From the POD (as described in Finding of Fact No. 7) to the mouth of Henderson Creek*

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
5/17/1948	1.00	723.97	January 1 through December 31

Certificate 32199

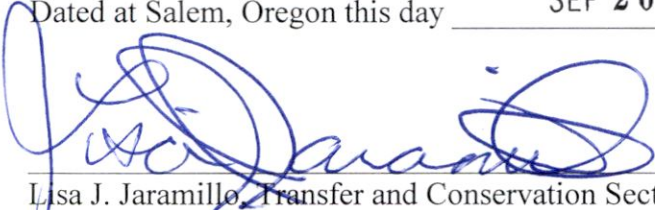
Instream Reach: *From the POD (as described in Finding of Fact No. 10) to the mouth of Hill Creek (also known as Deer Creek)*

Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
10/1/1959	0.40	289.59	January 1 through December 31

4. *Within the specified stream reach, the amount of water to which this right is entitled shall not exceed the quantity of water legally available at the original point of diversion.*
5. *The instream right established by this transfer shall replace a portion of instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to instream water rights established pursuant to ORS 537.348 or 537.470 unless otherwise specified by an order approving a new instream water right under these statutes.*
6. *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 21390 and 32199 and any related decree.*
7. *The exercise of the right evidenced by Certificates 21390 and 32199 for municipal use at the former place of use shall be SUSPENDED, without loss of priority, for the term of the transfer authorized herein.*
8. *The applicant will only request early termination of this time-limited instream transfer if the water under Certificates 21390 and 32199 are needed for use by the Seal Rock Water District for municipal purposes. The applicant will not terminate this time-limited instream transfer unless water is not reasonably available under the permit derived from the water right Application S-88124 for all uses authorized by the terms and conditions of the permit. If it is necessary for the applicant to terminate the time-limited instream transfer early, the applicant will apply for another time-limited instream transfer for these same water right certificates immediately following the use of water for municipal purposes.*
9. *Upon expiration of this time-limited instream transfer, the use of water shall revert to its original use and place of use as described by Certificates 21390 and 32199.*

10. *The term of this Final Order shall begin on the date this final order is issued and run through December 31, 2118.*

Dated at Salem, Oregon this day SEP 20 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Tom M. Byler, Director, Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0884 or Sarah.A.Henderson@oregon.gov.

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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.