

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

In the Matter of Time Limited Instream	)	PRELIMINARY DETERMINATION
Transfer Application T-13264, Grant	)	PROPOSING APPROVAL OF A
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**

GSG RANCH, LLC  
9496 ALTA MESA RD  
WILTON, CA 95693

**Findings of Fact**

1. On October 4, 2019, GSG Ranch, LLC filed a time-limited instream transfer application to change the character of use and place of use under Certificate 25072 to instream use for a period of 9 years (2020-2028). The Department assigned the application number T-13264.
2. Notice of the application for transfer was published on October 15, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. 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 Grant County Planning Department, the City of Prairie City Planning Department, the City of John Day Planning Department, the City of Dayville Planning Department and the Mt. Vernon Planning Department. Additionally, the Department provided notice of the proposed action to Grant County, City of Prairie City, City of John Day, City of Dayville and Mt Vernon Planning Departments upon receipt of Transfer Application T-13264.
4. On December 19, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13264 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 17, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

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

**Certificate:** 25072 in the name of J. L. Deardorff (perfected under the John Day River Decree, of record at Salem, in the Order Record of the State Engineer, in Volume 15, at Page 461)  
**Use:** Irrigation of 74.6 acres  
**Season of Use:** April 1 to September 30  
**Priority Date:** 1868  
**Quantity:** **Rate:** 1.87 Cubic Foot per Second (CFS)  
**Limit:** One-fortieth CFS per acre irrigated from April 1 to September 30; further limited to 1.0 AF per acre per calendar month to July 1 and 3/4 AF per acre thereafter; total 5.0 AF per acre for season, measured at point of diversion  
**Source:** John Day River, tributary to the Columbia River  
**Authorized Point of Diversion (POD):** Not described on certificate  
**Authorized Place of Use:**

IRRIGATION						
Ditch	Twp	Rng	Mer	Sec	Q-Q	Acres
Island	13 S	34 E	WM	22	SE NW	30.7
Cooley	13 S	34 E	WM	22	SW SE	5.4
Cooley	13 S	34 E	WM	22	SE SE	4.8
Cooley	13 S	34 E	WM	26	NW NW	13.7
Cooley	13 S	34 E	WM	27	NE NE	20.0
<b>Total Acres</b>						<b>74.6</b>

6. Certificate 25072 does not provide a description of the location of the points of diversion (PODs). Based upon additional information provided by the Department's Watermaster and the Applicant, for purposes of this Time-Limited Instream Transfer, the points of diversion are described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	22	SW SE	ISLAND DITCH: 2450 FEET WEST AND 1130 FEET NORTH OF THE SE CORNER OF SECTION 22
13 S	34 E	WM	26	NE SW	COOLEY DITCH: 1364 FEET SOUTH AND 202 FEET EAST FROM THE NW CORNER OF SECTION 26

7. A total of 373.0 acre-feet of water may be beneficially used annually under the existing right.
8. Transfer Application T-13264 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 for a period of 9 years.
9. The applicant requests that the water use revert to its authorized use and place of use after 9 years from the date of the order. Since water under a right may not be protected instream

and diverted to out-of-stream use within the same irrigation season, the instream use may be allowed for a term of 9 (irrigation) seasons, ending September 30, 2028.

10. Transfer Application T-13264 proposes to change the place of use of the right to create an instream reach from the Cooley Ditch POD to the USGS stream gage located at Picture Gorge.
11. The applicant proposes the quantities of water to be transferred instream be protected as follows:

Instream Period	Instream Rate (cfs)	Instream Volume (acre-feet)
April 1 to September 30	1.03	373.0

12. The applicant has requested that any instream water right established as a result of this instream transfer be additive to existing instream water rights for the same reach established pursuant to ORS 537.348 (instream transfer process) and ORS 537.470 (allocation of conserved water process). The applicant has also requested that any instream water rights established as a result of this instream transfer replace a portion of any existing instream rights established pursuant to ORS 537.346 (minimum streamflow conversion) and ORS 537.341 (state agency instream application process), with a more senior priority date.

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

13. The right was leased instream under IL-1368 during the period of 2015 through 2019 irrigation seasons and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. 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-13264.
15. A portion of the water diverted at each of the PODs returns to the John Day River immediately below the PODs and is available to downstream water right holders. To prevent injury to downstream water right holders and enlargement, the quantity of water that may be protected instream below each POD requires modification to account for return flows. Instream quantities below each POD have been reduced to the consumptive portion of the right.
16. The authorized PODs are located above a known losing reach on the John Day River between the City of John Day (beginning at approximately River Mile 247) and Picture Gorge. The severity of channel losses varies between different sections of the river and are affected by the rights is use, temperature, moisture, flows from tributaries, as well as other factors. In addition, there are no streamflows in portions of this stretch of the river below the City of John Day. Protection of flows below the City of John Day would likely result in injury to other water right holders. Therefore, the proposed instream reach requires

modification to protect water only from the PODs to the City of John Day, at approximately River Mile 247 (approximate location of Loose Long Ditch).

There is also a suspected losing reach between Prairie City (at approximately River Mile 263) and the City of John Day, within the proposed instream reach. Protection of flows within this potential losing reach may be subject to additional information on stream channel losses and gains calculated based on available data and the use of water by senior appropriators.

17. In addition, streamflows are also lost within the proposed reach due to evaporation. Reductions of 1% per mile in the quantities that may be protected instream are necessary to prevent injury to downstream water users and enlargement of the right.
18. Based on Finding of Fact No's. 15, 16 and 17, the quantities to be transferred and protected instream have been modified and are as follows:  
John Day River, tributary to the Columbia River

**Cooley Ditch Acres Only (43.9 acres)**

**Instream Point No. 1:** At the Cooley Ditch POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25072	1868	0.60	219.5	April 1 – September 30

**Instream Reach:** Immediately below Cooley Ditch POD to Loose Long Ditch near the City of John Day (~RM 247)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25072	1868	0.28	101.08	April 1 – September 30

**Instream Point No. 2:** At Loose Long Ditch near the City of John Day (~RM 247)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25072	1868	0.23	81.76	April 1 – September 30

**Island Ditch Acres Only (30.7 acres)**

**Instream Point No. 1:** At the Island Ditch POD (as described in Finding of Fact No. 6)

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25072	1868	0.42	153.5	April 1 – September 30

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Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Instream Period
25072	1868	0.19	70.69	April 1 – September 30

**Instream Point No. 2: At Loose Long Ditch near the City of John Day (~RM 247)**

<b>Certificate</b>	<b>Priority Date</b>	<b>Instream Rate (cfs)</b>	<b>Instream Volume (AF)</b>	<b>Instream Period</b>
25072	1868	0.15	55.48	April 1 – September 30

19. Other conditions to prevent injury and enlargement are:

Within the specified stream reach, stream channel losses and gains calculated based on available data and use by senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach from the POD to approximately River Mile 247 on the John Day River and whether the described instream flows below the POD may be adjusted. If adjusted, instream flows from immediately below the POD to approximately River Mile 247 on the John Day River may not exceed the quantities specified at the POD.

20. The proposed change, as modified, would not result in enlargement of the right.
21. The proposed change, as modified, would not result in injury to other water rights.
22. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.
23. The protection of flows within the proposed reach is 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 known areas of natural loss of streamflow to the river bed downstream from the points of diversion. In addition, streamflows are lost to evaporation. Evaporative losses of 1% per mile have been accounted for; and
  - d) Return flows resulting from the exercise of the existing water right would re-enter the river within the reach of the instream water right below each POD. The quantity of water to be protected instream has been reduced to account for return flows.
24. Within the proposed reach on the John Day River, there are two existing instream water rights, Certificate 59787 and Certificate 59788, both established under ORS 537.346 (minimum streamflow conversion) for the purposes supporting aquatic life and minimizing pollution and carries a priority date of November 3, 1983.
25. During the period April 1 through September 30, 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 do not exceed the estimated average natural flow.

**Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-13264 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-13264 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-13264 are approved.*
2. *The exercise of the right evidenced by Certificate 25072 for irrigation at the former place of use (as described in Finding of Fact No. 5) shall be SUSPENDED, without loss of priority, for the term of the transfer authorized herein.*
3. *The instream water right shall provide for the protection of streamflows for conservation, maintenance and enhancement of aquatic and fish life, wildlife, fish and wildlife habitat and other ecological values.*
4. *The quantities to be transferred and protected instream are as follows:  
John Day River, tributary to the Columbia River*

**Cooley Ditch Acres Only (43.9 acres)**

***Instream Point No. 1: At the Cooley Ditch POD (as described in Finding of Fact No. 6)***

<i>Certificate</i>	<i>Priority Date</i>	<i>Instream Rate (cfs)</i>	<i>Instream Volume (AF)</i>	<i>Instream Period</i>
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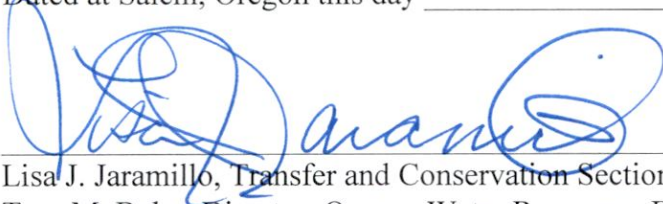
<b><i>Certificate</i></b>	<b><i>Priority Date</i></b>	<b><i>Instream Rate (cfs)</i></b>	<b><i>Instream Volume (AF)</i></b>	<b><i>Instream Period</i></b>
25072	1868	0.15	55.48	April 1 – September 30

5. *Water rights upstream of the original point of diversion shall not be subject to regulation for flows in excess of the quantities to which this instream water right is entitled at the original point of diversion.*
6. *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. Stream channel losses and gains calculated based on available data and the use of senior appropriators will determine the amount of water to which this right is entitled downstream from the original point of diversion within the specified stream reach.*
7. *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.*
8. *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 25072 and any related decree.*
9. *The term of this Final Order shall begin on April 1, 2020, and continue through September 30, 2028.*
10. *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 Certificate 25072. The use shall revert to the authorized use and place of use on October 1, 2028.*

11. *This order may be terminated prior to the end date of October 1, 2028 and revert to the authorized uses and places of use upon submission of a termination request from The Freshwater Trust and the Landowner.*

JAN 21 2020

Dated at Salem, Oregon this day \_\_\_\_\_.



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.





Oregon  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

January 21, 2020

VIA E-MAIL

GSG RANCH LLC  
9496 ALTA MESA RD  
WILTON, CA 95693

SUBJECT: Water Right Transfer Application T-13264

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13264. 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 Blue Mountain Eagle 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](mailto:Sarah.A.Henderson@oregon.gov) if I may be of assistance.

Sincerely,

Sarah Henderson  
Flow Restoration Program Coordinator  
Transfer and Conservation Section

cc: Transfer Application file T-13264  
Eric Julsrud, District 4 Watermaster (*via e-mail*)  
Rob Kirschner, The Freshwater Trust, Agent for the applicant (*via e-mail*)  
Meg Belais, The Freshwater Trust, Agent for the applicant (*via e-mail*)

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