

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

In the Matter of Transfer Application)
T-13507, Crook County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL FOR AN
) ADDITIONAL POINT OF DIVERSION
) AND A CHANGE IN PLACE 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

CITY OF PRINEVILLE
ATTN: STEVE FORRESTER AND ERIC KLANN
387 NE 3RD ST.
PRINEVILLE, OR 97754

Findings of Fact

1. On August 12, 2020, CITY OF PRINEVILLE, ATTN: STEVE FORRESTER AND ERIC KLANN filed an application for an additional point of diversion and to change the place of use under Certificate 83850. The Department assigned the application number T-13507.
2. Notice of the application for transfer was published on August 25, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 30, 2020, the Peoples Irrigation District (District) certified that they consented to the applicant’s proposed water right transfer application and maps. Transfer Application T-13507 proposes to transfer a water right within the boundaries of the District and involving Certificate 83850 in the name of the U.S. Bureau of Reclamation.
4. On August 25, 2020, the U.S. Bureau of Reclamation was notified of the transfer application; no comments were received from the Bureau within 90 days of the notification.
5. After proof of completion, any water right certificate issued to confirm the changes to Certificate 83850 under Transfer T-13507 is to remain in the name of the U.S. Bureau of Reclamation.

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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6. On January 20, 2021, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The applicant identified they would terminate 2.32 acres that are currently involved with Instream Lease application IL-1814, upon approval of T-13507. Once the irrigation season starts, the 2.32 acres would be locked in for the entirety of the instream use period, and would not be subject to transfer until December 2, 2021. The Department requested that the deficiencies be resolved prior to February 1, 2021.
7. On January 22, 2021, the Department received a request from Bruce Brody-Heine, GSI Water Solutions, Inc., to terminate 2.32 acres of Certificate 83850 prior to the 2021 instream use period.
8. On February 11, 2021, the Department approved a Final Order (Special Order Volume 118, Page 561), approving a partial termination of Instream Lease application IL-1814, for 2.32 acres under Certificate 83850, prior to the 2021 instream use period, and resolving the deficiency under T-13507.
9. On April 1, 2021, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13507 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 3, 2021, for the applicant to respond.
10. On April 13, 2021, 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. The applicant also requested for three years to complete beneficial of the water to the use.

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

Certificate: 83850 in the name of U.S. BUREAU OF RECLAMATION (perfected under Permit S-25991)

Use: IRRIGATION of 11.78 ACRES and SUPPLEMENTAL IRRIGATION of 4.53 ACRES

Priority Date: APRIL 8, 1914

Rate: 0.41 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 ONE-FORTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from Prineville Reservoir. Use of the water requires the existence of a current contract between the landowners and the United States Bureau of Reclamation.

Source: CROOKED RIVER AND PRINEVILLE RESERVOIR (constructed under Permit R-2223), tributaries to the DESCHUTES

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	8	NW SW	PEOPLES DITCH #13 and DIRECT DIVERSION #13 - 1920 FEET NORTH AND 340 FEET EAST FROM THE SW CORNER OF SECTION 8

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	NE SW	2.32
14 S	15 E	WM	26	SE SW	4.53
14 S	15 E	WM	26	SW SE	4.93
Total					11.78

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	SE SW	4.53

12. Transfer Application T-13507 proposes an additional point of diversion approximately 4.6 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	15 E	WM	26	SE SE	DIRECT DIVERSION #36 - 100 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF SECTION 26

13. Transfer Application T-13507 also proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	26	SW SE	1.75
14 S	15 E	WM	35	NE NE	2.50
14 S	15 E	WM	35	NW NE	7.40
14 S	15 E	WM	35	NE NW	0.13
Total					11.78

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	15 E	WM	35	NE NE	1.23
14 S	15 E	WM	35	NW NE	3.30
Total					4.53

14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

15. 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.
16. 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-13507.
17. The proposed changes would not result in enlargement of the right.
18. The proposed changes would not result in injury to other water rights.
19. All other application requirements are met.

Determination and Proposed Action

The additional point of diversion and change in place of use proposed in Transfer Application T-13507 appear 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.

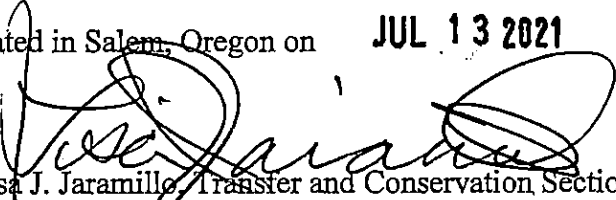
If Transfer Application T-13507 is approved, the final order will include the following:

1. *The additional point of diversion and change in place of use proposed in Transfer Application T-13507 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 Certificate 83850 and any related decree.*
3. *Water right Certificate 83850 is modified. A superseding confirming-remaining water right certificate in the name of the U.S. Bureau of Reclamation will be issued when the Department determines it is necessary for record keeping.*
4. *The quantity of water diverted at the new additional point of diversion (Direct Diversion #36), together with that diverted at the original point of diversion (Peoples Ditch #13 and Direct Diversion #13), shall not exceed the quantity of water lawfully available at the original point of diversion (Peoples Ditch #13 and Direct Diversion #13).*

5. *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 new point of diversion.*
 - 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.*
6. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
7. *The former place of use of the transferred right shall no longer receive water under the right.*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2025. 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.*

9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued in the name of the U. S. Bureau of Reclamation.*

Dated in Salem, Oregon on JUL 13 2021


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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

July 13, 2021

CITY OF PRINEVILLE
ATTN: STEVE FORRESTER AND ERIC KLANN
387 NE 3RD ST.
PRINEVILLE, OR 97754

SUBJECT: Water Right Transfer Application T-13507

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13507. 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 Central Oregonian 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.

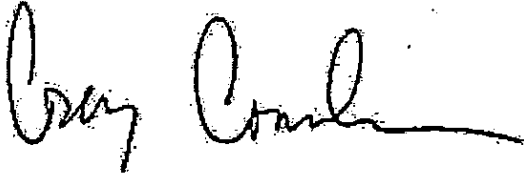
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

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Please do not hesitate to contact me at if I may be of assistance.

Sincerely,

A handwritten signature in black ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13507
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
Bruce Brody-Heine, Agent for the applicant (*via e-mail*)

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