



# Oregon

Kate Brown, Governor

## Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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February 14, 2022

VIA CERTIFIED MAIL AND E-MAIL

### **Applicant**

PORT OF MORROW  
PO BOX 200 / NO. 2 MARINE DRIVE  
BOARDMAN, OR 97818

SUBJECT: Water Right Transfer Application T-13107

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13107. 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 Heppner Gazette 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.

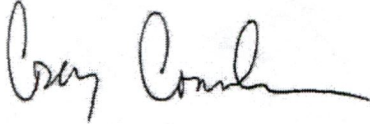
If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

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.

**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.

Please do not hesitate to contact me, at [corey.a.courchane@water.oregon.gov](mailto:corey.a.courchane@water.oregon.gov) or (503) 979-3917, 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: T-13107  
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)  
Bruce Brody-Heine, Agent for the applicant (*via e-mail*)

encs

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13107, Morrow County	)	PROPOSING APPROVAL FOR ADDITIONAL
	)	POINTS OF DIVERSION AND CHANGES IN
	)	PLACE OF USE AND 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**

PORT OF MORROW  
PO BOX 200 / NO. 2 MARINE DRIVE  
BOARDMAN, OR 97818

**Agent**

BRUCE BRODY-HEINE  
GSI WATER SOLUTIONS, INC.  
147 SW SHEVLIN HIXON DR, SUITE 201  
BEND, OR 97702

**Findings of Fact**

1. On January 15, 2019, the PORT OF MORROW filed an application to change the place of use, character of use and add additional points of diversion under Certificate 91597. The Department assigned the application number T-13107.
2. Notice of the application for transfer was published on January 29, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 13, 2020, the agent for the applicant submitted a revised application to clarify the points of diversion. The revision also requested the proposed WEID point of diversion be removed from the application.

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.

4. On March 18, 2020, the Department sent a draft Preliminary Determination and cover letter to the applicant. The draft Preliminary Determination gave a deadline of April 17, 2020 in which to respond.
5. On April 15, 2020, the Department determined the draft Preliminary Determination did not contain concurrent changes to a layered supplemental right for both the place of use and character of use changes.
6. On May 14, 2020, the agent for the applicant submitted a revised application to include the layered supplemental water right Permit G-17516. The agent for the applicant also requested that the proposed date for complete application of water be extended to allow additional time to guarantee adequate time to complete the project. The Department shall include the layered supplemental water right approve and extend the date by which the applicant must make full beneficial use of water under the terms and conditions of this transfer to October 1, 2036. This REVISED draft of the preliminary determination, therefore, is issued to document the 766.9 acres place of use layered with primary water right Certificate 91597, and correctly reflects the changes proposed in Transfer Application T-13107, now described in Finding #5 below.
7. On July 15, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The date for complete application of water to the use, being October 1, 2018, has expired for Permit G-17516. The Department cannot complete the application without an active completion date. The Department requested that the deficiency be resolved by September 2, 2020.
8. On July 20, 2020, the Department received an Application for Extension of Time from the Port of Morrow, resolving the deficiency.
9. On September 29, 2020, the Department issued a Proposed Final Order, proposing to grant an extension of time to complete construction and application of water to full beneficial use to October 1, 2025.
10. On November 13, 2020, the Department received a protest and request for contested case hearing, in regard to the extension of time for Permit G-17516.
11. On November 5, 2021, the Department received a request to withdraw Permit G-17516 from transfer application T-13107.

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

**Certificate:** 91597 in the name of PORT OF MORROW, WESTLAND ENTERPRISES, LLC, C/O ROBERT LEVY (perfected under Permit S-35694)  
**Use:** IRRIGATION of 1147.5 ACRES FROM COLUMBIA RIVER  
**Priority Date:** NOVEMBER 5, 1971  
**Rate:** 22.16 CUBIC FEET PER SECOND (cfs), BEING 22.16 CFS FOR IRRIGATION OF 1147.5 ACRES  
**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 a diversion of 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 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31  
**Source:** COLUMBIA RIVER, a tributary of the PACIFIC OCEAN

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	GLot	Measured Distances
5 N	25 E	WM	35	SW SE	3	COLUMBIA RIVER DIVERSION ( <i>ORIGINAL DIVERSION</i> ) - 80 FEET NORTH AND 2480 FEET WEST FROM THE SE CORNER OF SECTION 35

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
4 N	25 E	WM	1	NE NE	1	30.3
4 N	25 E	WM	1	NW NE	2	33.8
4 N	25 E	WM	1	SW NE		34.3
4 N	25 E	WM	1	SE NE		20.0
4 N	25 E	WM	1	NE NW	3	0.8
4 N	25 E	WM	1	NW NW	4	5.9
4 N	25 E	WM	1	SW NW		25.1
4 N	25 E	WM	1	SE NW		37.3
4 N	25 E	WM	1	NE SW		35.8
4 N	25 E	WM	1	NW SW		18.3
4 N	25 E	WM	1	NE SE		35.4
4 N	25 E	WM	1	NW SE		34.7
4 N	25 E	WM	1	SW SE		11.7
4 N	25 E	WM	1	SE SE		33.8
4 N	25 E	WM	2	NE NE	1	35.5
4 N	25 E	WM	2	NW NE	5	3.3
4 N	25 E	WM	2	SE NE		29.3
4 N	25 E	WM	12	NE NE		38.1
4 N	25 E	WM	12	NW NE		17.5
4 N	25 E	WM	12	SW NE		9.2
4 N	25 E	WM	12	SE NE		15.2
4 N	25 E	WM	12	SE NW		0.1

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
4 N	26 E	WM	6	SW NE		0.5
4 N	26 E	WM	6	SE NE		6.6
4 N	26 E	WM	6	NE NW	3	31.1
4 N	26 E	WM	6	NW NW	4	34.5
4 N	26 E	WM	6	SW NW	5	12.0
4 N	26 E	WM	6	SE NW		8.5
4 N	26 E	WM	6	NE SW		32.4
4 N	26 E	WM	6	NW SW	6	30.9
4 N	26 E	WM	6	SW SW	7	39.7
4 N	26 E	WM	6	SE SW		40.1
4 N	26 E	WM	6	NE SE		34.3
4 N	26 E	WM	6	NW SE		31.0
4 N	26 E	WM	6	SW SE		33.7
4 N	26 E	WM	6	SE SE		18.0
4 N	26 E	WM	7	NE NE		36.3
4 N	26 E	WM	7	NW NE		32.9
4 N	26 E	WM	7	SW NE		29.6
4 N	26 E	WM	7	SE NE		24.6
4 N	26 E	WM	7	NE NW		30.6
4 N	26 E	WM	7	NW NW	1	29.3
4 N	26 E	WM	7	SW NW	2	30.5
4 N	26 E	WM	7	SE NW		40.9
4 N	26 E	WM	7	NE SW		11.2
4 N	26 E	WM	7	NW SW	3	0.4
4 N	26 E	WM	7	NW SE		0.9
4 N	26 E	WM	8	NW NW		19.9
4 N	26 E	WM	8	SW NW		1.7
Total						1147.5

13. Transfer Application T-13107 proposes additional points of diversion for the above described right Certificate 91597 located:

Twp	Rng	Mer	Sec	Q - Q	GLot	Dist. from Columbia Riv. POD	Measured Distances
4 N	25 E	WM	2	NE NW	7	Downstream 480 feet	CID POD - 150 FEET SOUTH AND 2990 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	2	SE NW	7	Downstream 5500 feet	TERMINAL 5 POD #2 - 1442 FEET SOUTH AND 3923 FEET WEST FROM THE NE CORNER OF SECTION 2
4 N	25 E	WM	3	SW SE	2	Downstream 5500 feet	TERMINAL 3 POD #3 - 1002 FEET NORTH AND 2168 FEET WEST FROM THE SE CORNER OF SECTION 3
4 N	25 E	WM	4	SE SE	2	Downstream 2.0 miles	TERMINAL 1 POD #4 - 410 FEET NORTH AND 435 FEET WEST FROM THE SE CORNER OF SECTION 4

14. Transfer Application T-13107 proposes to change the places of use of Certificate 91597 to:

MUNICIPAL USE
WITHIN THE PORT OF MORROW SERVICE AREA BOUNDARIES

15. Transfer Application T-13107 also proposes to change the character of use of the above described rights to municipal purposes.
16. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
17. The total volume of water that may be diverted under Certificate 91597 for Municipal uses, as conditioned, is 5,163.75 Acre-Feet (AF) March 1 through October 31. ( $1147.5 \times 4.5 = 5,163.75$  AF).

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

18. Water has been used within the last five years prior to the submittal of Transfer Application T-13107 according to the terms and conditions of Certificate 91597. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
19. Pump stations, pipeline, delivery system and sprinkler systems for irrigation and delivery system associated with municipal 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-13107.
20. The proposed changes, as conditioned, would not result in enlargement of the right.
21. The proposed changes, as conditioned, would not result in injury to other water rights.
22. All other application requirements are met.

**Determination and Proposed Action**

The changes in place of use and character of use, and additional points of diversion proposed in Transfer Application T-13107 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-13107 is approved, the final order will include the following:*

- 1. The changes in place of use and character of use, and additional points of diversion proposed in Transfer Application T-13107 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 91597, and any related decree.*
3. *Water right Certificate 91597 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The use of water for the proposed municipal use under the right described by Certificate 91597 shall be limited to a rate of diversion of 22.16 cfs and further limited to a total volume diverted of 5,163.75 acre feet during the season of use being March 1 through October 31 of each year.*
5. *The quantity of water, authorized under water right Certificate 91597, diverted at the new additional points of diversion (CID POD, Terminal 5 POD #2, Terminal 3 POD #3, and Terminal 1 POD #4), together with that diverted at the original points of diversion (Columbia River Diversion (Original Diversion)), shall not exceed the quantity of water lawfully available at the original points of diversion (Columbia River Diversion (Original Diversion)).*
6. *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 point of diversion (new and existing).*
  - 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.*
7. *Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

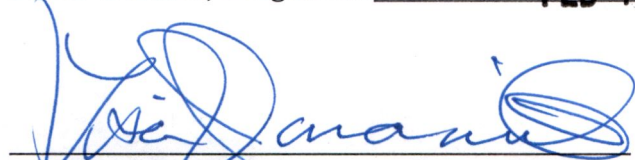
*The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*

8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2036**. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this FEB 14 2022.



Lisa J. Jaramillo, Transfers & Conservation Services Manager, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. T-13107 has been assigned to 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](mailto: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*

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**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>