

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

In the Matter of Instream Transfer	)	PRELIMINARY DETERMINATION
Application T-14037, Jackson County	)	PROPOSING APPROVAL OF A CHANGE IN
	)	PLACE OF USE AND CHARACTER OF USE

**Authority**

Oregon Revised Statutes (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 Rules (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**

City of Ashland  
Attn: Scott Fleury  
20 East Main Street  
Ashland, Oregon 97520  
[scott.fleury@ashland.or.us](mailto:scott.fleury@ashland.or.us)

**Agent**

GSI Water Solutions, Inc.  
Attn: Adam Sussman  
1600 SW Western Boulevard, Suite 240  
Corvallis, Oregon 97333  
[asussman@gsiws.com](mailto:asussman@gsiws.com)

**Findings of Fact**

1. On June 24, 2022, the City of Ashland filed an application to change the place of use and character of use under Certificate 95315 to instream use. The Department assigned the application number T-14037.
2. Notice of the application for transfer was published on July 12, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. Consistent with land use requirements, notice of the intent to file the instream transfer application was provided by the applicant to the City of Ashland local government. Additionally, the Department provided notification of the proposed action to the local government and Talent Irrigation District upon receipt of Transfer Application T-14037.

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 September 13, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Instream Transfer Application T-14037 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of October 13, 2022, for the applicant to respond. 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.
5. The portion of the right to be transferred is as follows:

**Certificate:** 95315 in the name of J. A. Parker (confirmed by Rogue River Final Decree in Volume 4, at Page 1)  
**Use:** Irrigation of 5.0 ACRES  
**Priority Date:** 1858  
**Rate:** 0.10 Cubic Foot Per Second  
**Source:** Ashland Creek a tributary of Bear Creek  
**Authorized Point of Diversion:** Not described on certificate  
**Authorized Place of Use:**

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	5	SE NE	5.0

6. Certificate 95315 does not describe the location of the point of diversion. The applicant and the Department's Watermaster, for purposes of this instream transfer, describe the point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

7. Certificate 95315 does not specify the irrigation season. However, the Rogue River Decree establishes the irrigation season for the area as April 1 through October 31.
8. A total of 42.4 acre-feet of water may be beneficially used annually under the existing right.
9. Instream Transfer Application T-14037 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.
10. Instream Transfer Application T-14037 proposes to change the place of use of the right to a point on Helman Ditch, located in T39S, R1E, WM, Sec. 9, NWNW.

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

Period	Rate (cfs)	Volume (acre-feet)
April 1 to October 31	0.10	42.4

12. The applicant 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 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. Water has been used within the last five years according to the terms and conditions of the right, 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 Application T-14037.
15. The quantities to be transferred and protected instream is as follows:

**Instream Point:** At the POD described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
95315	1858	0.10	42.4	April 1 – October 31

16. The proposed changes would not result in enlargement of the right.
17. The proposed changes would not result in injury to other water rights.
18. The amount and timing of the proposed instream flow is allowable within the limits and use of the original water right.

19. The protection of flows at the authorized point of diversion 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 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 point of the instream water right.
20. Any instream water right established as a result of this instream transfer will 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). Any instream water right established as a result of this instream transfer will 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.
21. There is no information in the record that would demonstrate the quantities proposed to be transferred instream will exceed the estimated average natural flows. The total monthly quantities of water to be protected under proposed instream right at the point will provide for a beneficial purpose.

#### **Determination and Proposed Action**

The changes in character of use and place of use to instream use proposed in application T-14037 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-14037 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-14037 are approved.*
2. *Water right certificate 95315 is cancelled. A new certificate confirming the instream water right shall be issued. A new certificate describing that portion of the right not affected by this transfer shall be issued.*
3. *The instream water right shall provide for the protection of streamflows for a point located at Helman Ditch, located in T39S, R1E, WM, Sec. 9, NWNW.*

4. The quantities of water to be protected under the instream water right are:

**Instream Point:** At the POD described below:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Measured Distances
39 S	1 E	WM	9	NW NW	200	HELMAN DITCH: 315 FEET SOUTH AND 760 FEET EAST FROM THE NW CORNER OF SECTION 9

Certificate	Priority Date	Instream Rate (cfs)	Instream Volume (AF)	Period Protected Instream
95315	1858	0.10	42.4	April 1 – October 31

5. 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.
6. 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.
7. 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 95315 and any related decree.
8. The former place of use of the transferred water shall no longer receive water as part of this right.

**NOV 09 2022**

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

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for  
Douglas E. Woodcock, Acting 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 503-979-9872 or Sarah.A.Henderson@water.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

NOV 09 2022

DATE: \_\_\_\_\_

VIA CERTIFIED MAIL AND E-MAIL

**Applicant**

City of Ashland

Attn: Scott Fleury

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Ashland, Oregon 97520

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**Agent**

GSI Water Solutions, Inc.

Attn: Adam Sussman

1600 SW Western Boulevard, Suite 240

Corvallis, Oregon 97333

[asussman@gsiws.com](mailto:asussman@gsiws.com)

SUBJECT: Instream Transfer Application T-14037

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve instream transfer application T-14037. 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 Medford Mail Tribune 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 503-979-9872 or [sarah.a.henderson@water.oregon.gov](mailto:sarah.a.henderson@water.oregon.gov) 503-986-0886 or [Patrick.K.Starnes@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer and Conservation Section

cc: Transfer Application file T-14037  
Shavon Haynes, District 13 Watermaster (*via e-mail*)  
Talent Irrigation District ([tid@talentid.org](mailto:tid@talentid.org))