

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10256, Deschutes County) CHANGE IN PLACE OF USE,
) CHARACTER OF USE, AND PARTIAL
) CANCELLATION OF A WATER RIGHT

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled. OAR Chapter 690, Division 380-2250 provides that whenever a layered supplemental right is not included in a transfer of the place of use or character of use of the primary right, the supplemental water right will be canceled before the Department issues the order approving the transfer.

Co-Applicants

Central Oregon Irrigation District 1055 SW Lake Court Redmond OR 97756	Aspen Creek MHC, LLC c/o Investment Property Group 450 Newport Dr. 595 Newport Beach, CA 92660	Aspen Creek Homeowner's Association c/o Investment Property Group 450 Newport Dr. 595 Newport Beach, CA 92660
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Findings of Fact

Background

1. On October 23, 2006, Central Oregon Irrigation District (COID) filed a transfer application to change the use and place of use under Certificate 76358. The applicants have also requested to cancel the corresponding portion of Certificate 76714 for supplemental irrigation upon issuance of the Final Order approving the transfer. The Department assigned the application number T-10256.
2. On December 27, 2006, the applicant submitted a revised map. On June 13, 2007, the Department received revisions to the application consistent with OAR 690-380-3000,

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

naming COID, Aspen Creek MHC, LLC and the Aspen Creek Homeowners Association, together as the co-applicants, completing the minimum application requirements.

3. On September 26, 2007, Certificate 76358 was cancelled and superseded by Certificate 83571.
4. The portion of the right to be transferred is as follows:

Certificate: 83571 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: IRRIGATION of 7.47 acres

Priority Date: OCTOBER 31, 1900 and DECEMBER 2, 1907

Season of Use: April 1 through October 31, further limited as follows:

April 1 through April 30 & October 1 through October 31 described herein as Season 1

May 1 through May 14 & September 16 through September 30 described herein as Season 2

May 15 through September 15 described herein as Season 3

Maximum Quantity (Rate) that can be applied to an acre:

Season 1: Limited to 1/80 cubic foot per second (CFS) per acre

Season 2: Limited to 1/60 CFS per acre

Season 3: Limited to 1/32.4 CFS per acre

Maximum Duty that can be applied to an acre:

Not to exceed 9.91 acre-feet (AF) per acre per year

The above listed rates and duty reflect allowance of a 45% transmission loss as determined by decree of the Circuit Court of Deschutes County, dated March 24, 1933. Those lands not served from the district main canal systems, but by direct pumping from the Deschutes River, are not allowed the 45% transmission loss.

Source: DESCHUTES RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Place of Use:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	17	NW SE	1.87
15 S	13 E	WM	17	SW SE	5.60

5. Certificate 83571 is a deficient water right. If water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed (described in Finding of Fact #4), the total rate and duty for the water right would be exceeded. In the event water were diverted simultaneously to all authorized lands and uses described in the right at the maximum rates and duty allowed at the PODs (described in Finding of Fact #4), the portion of the right involved in this transfer would be limited as

described in the tables below. These rates and duty are also the quantities by which Certificate 83571 shall be reduced.

Priority Date	Season 1	Season 2	Season 3	Duty
October 31, 1900 (cfs)	0.093	0.124	0.164	73.84 AF
December 2, 1907 (cfs)			0.066	

6. Transfer Application T-10256 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Use
15 S	13 E	WM	17	NW SE	Quasi-Municipal
15 S	13 E	WM	17	SW SE	Quasi-Municipal

7. Transfer Application T-10256 proposes to change the character of use to quasi-municipal.
8. Notice of the application for transfer was published on October 31, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On April 12, 2007, the Department e-mailed a copy of the *draft* Preliminary Determination proposing to approve Transfer Application T-10256 to the applicants. The *draft* Preliminary Determination set forth a deadline of May 14, 2007, for the applicants to respond. The applicants requested clarification of the ownership documentation requirements and the annual volume of water that would be allowed for quasi-municipal use. The Department emailed a second, *revised draft* to the applicants for review on April 23, 2007. On June 5, 2007, the applicants responded, requesting that the Department proceed with issuance of a Preliminary Determination, and on June 13, 2007, provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
10. On June 22, 2007, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10256 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 26, 2007, and in the Bulletin newspaper on July 3, 10 and 17, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. Aspen Creek MHC, LLC, is responsible for completion and perfection of the changes after the final order is issued.

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

12. 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.
13. 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-10256.

14. Considering current knowledge about water rights and their impact on the hydrology of the Deschutes Basin, the Department is unable to conclude that the change from irrigation of crops on 7.47 acres to quasi-municipal use on the much larger proposed place of use would not result in injury to instream water rights. An increase in consumptive water use could decrease the amount of return flows, which support instream water rights in the Deschutes River. However, if quasi-municipal use on the proposed place of use were conditioned so that the quantity of water removed from the surface and groundwater system through consumptive use would approximate the consumptive use of crops on 7.47 acres under irrigation, the proposed use would not injure other water rights.
15. The total consumptive use of irrigation water for crops in the Deschutes Basin is estimated by the Department at 1.8 acre-feet per acre irrigated. Presumably, the rest of the water diverted up to the allowed duty is not taken up by crops, but returns to the surface and groundwater system. Water withdrawn in consumptive use of crops on 7.47 acres yields 13.45AF (1.8 AF/acre x 7.47 acres).
16. Research by the Department¹ indicates that approximately 47.14% of the total volume of water diverted for municipal use in the Deschutes River Basin during the months of the irrigation season is consumptive. Therefore, the volume of water, in acre-feet, that could be diverted from the canal to the place of use for quasi-municipal purposes, (including both consumptive and non-consumptive uses) without resulting in an increase in consumptive use can be estimated by dividing the total AF by the consumptive percent of quasi-municipal use.

$$\text{Annual Diversion for Quasi - Municipal Use, AF} = \frac{13.45 \text{ AF}}{0.4714} = 28.53 \text{ AF}$$

17. Limiting the maximum annual volume of water allowed to be diverted from the canal for quasi-municipal use on the proposed place of use to 28.53 acre-feet would be sufficient to ensure that other water rights are not injured.
18. The maximum rates of diversion from the river into the canal (which include an allowance of 45% transmission loss as per decree) remain unchanged, as stated in Finding of Fact #4.
19. The proposed changes, as conditioned below, would not result in enlargement of the right.
20. The proposed changes, as conditioned below, would not result in injury to other water rights.

¹ Cooper, RM. 2002. Determining Surface Water Availability in Oregon. Open File Report SW02-002. Oregon Water Resources Department, Salem, OR 57 p.

Partial Cancellation of Water Right Certificate 76714

21. Supplemental right, Certificate 76714, is appurtenant to the same lands from which the primary right under Certificate 83571 is proposed to be transferred to Quasi-municipal, but has not been included in the transfer application.
22. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer. The portion of the supplemental right under Certificate 76714 appurtenant to the lands described in Finding of Fact #4 is not requested to be transferred. The applicants request to modify Certificate 76714, to reduce by 7.47 the number of acres to which stored water may be applied for supplemental irrigation under the right; but that the total volume of stored water authorized under the right evidenced by Certificate 76714 not be reduced.
23. Consistent with OAR 690-380-2250 (5), the Department notified the applicant in the draft Preliminary Determination of its intent to approve the transfer of the primary right and cancel the appurtenant portion of Certificate 76714 for supplemental irrigation appurtenant to the 7.47 acres, as described in Finding of Fact #4, upon issuance of a final order.
24. Pursuant to OAR 690-017-002(a), the Department has determined that the Central Oregon Irrigation District and/or Aspen Creek MHC, LLC and the Aspen Creek Homeowners Association holds the interest, as established by water irrigation contract signed on March 29 and 31, 2006, to portions of the water rights evidenced by Certificates 83571 and 76714.
25. The portion of the supplemental right to be cancelled is as follows:

Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: SUPPLEMENTAL IRRIGATION of 7.47 acres

Priority Date: February 28, 1913

Limit/Duty: limited to 50,000 acre-feet of stored water only

Source: Crane Prairie Reservoir, constructed under Permit R-1687, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	POD #11 (COID NORTH CANAL): 850 FEET NORTH AND 630 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	17	NW SE	1.87
15 S	13 E	WM	17	SW SE	5.60

26. The water right evidenced by Certificate 76714 allows for the use of up to 50,000 acre-feet of water stored in Crane Prairie Reservoir, a tributary of the Deschutes River, for

supplemental irrigation. The diversion rate is not specified and use is limited to the total volume of stored water to make up a deficiency in supply of the live flow water right appurtenant to specified lands.

Conclusions of Law

The changes in character of use and place of use proposed in Transfer Application T-10256 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the portion of the supplemental right listed above as not transferred should be cancelled.

Now, therefore, it is ORDERED:

1. The changes in character of use and place of use proposed in Transfer Application T-10256 are approved. The portion of the right evidenced by Certificate 76714 listed in Finding of Fact #25 that is not being transferred is cancelled.
2. Water right certificate 83571 is modified. The Department will issue a superseding certificate describing the right when it determines that is necessary for record keeping. The perfected portion of certificate 83571 is reduced by 7.47 acres.
3. Certificate 76714 shall be modified to reduce by 7.47 acres, the number of acres to which stored water may be applied for supplemental irrigation under the right; however, the maximum quantity of stored water that can be diverted for use under the right will remain unchanged.
4. 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 83571 and any related decree.
5. The maximum annual volume of water allowed to be diverted from the canal for quasi-municipal use on the proposed place of use shall be limited to 28.53 acre-feet.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2013. A Claim of Beneficial Use prepared by a Certified Water Rights 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.

Dated at Salem, Oregon this 26th day of December, 2007.


Phillip C. Ward, Director *PN*

Mailing date: DEC 27 2007