

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-9216, Crook County) PROPOSING APPROVAL OF
) ADDITIONAL POINTS OF DIVERSION

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.

Applicant

ASPEN VALLEY RANCH
PO BOX 2700
POST, OR 97752

Findings of Fact

1. On August 23, 2002, Aspen Valley Ranch filed a transfer application to add points of diversion under Certificates 402, 594, 595, 668, and 10947. The Department assigned the application number T-9216.
2. On July 17, 2006, the Department received amended maps and comments reflecting changes that the applicant requested to be made to the draft preliminary determination.
3. There is a supplemental permit (Permit 29082) overlying portions of the primary water right certificates involved in this transfer. Permit 29082 will remain in place and supplemental to the primary water right certificates.
4. On July 31, 2006, the Department received a letter of landowner consent and an affidavit for the partial cancellation of water right certificate 402.
5. The portion of the FIRST right to be transferred is as follows:

Certificate: 402 in the name of HOMER NORTON (confirmed by Permit E-38)
Use: IRRIGATION of 29.2 ACRES
Priority Date: MARCH 3, 1910
Rate: 0.366 CUBIC FOOT PER SECOND
Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
<i>Not specified in Certificate</i>					

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	29	NE SW	9.5
16 S	19 E	WM	29	NW SW	14.7
16 S	19 E	WM	29	NW SE	5.0
TOTAL:					29.2

6. The Department received information that better describes the location of the authorized point of diversion for Certificate 402 as follows:

Twp	Rng	Mer	Sec	Q-Q
16 S	19 E	WM	34	SW NE

7. Application T-9216 proposes to add a point of diversion approximately 2 miles downstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	19 E	WM	29	NW SE	2300 FEET NORTH AND 320 FEET EAST OF THE SOUTH 1/4 CORNER OF SECTION 29

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

Certificate: 594 in the name of ESTATE OF ROSCOE KNOX, deceased, E. B. KNOX, Administrator (confirmed by the Crooked River Decree)

Use: IRRIGATION of 17.1 ACRES, STOCK and DOMESTIC USE

Priority Dates: 1893 for 10.0 acres and 1903 for 7.1 acres

Rate: 0.219 CUBIC FOOT PER SECOND (CFS) for Irrigation and a reasonable amount for Domestic and Stock Use

Limit/Duty: 51/100 CFS per acre for Irrigation from July 1st to September 15th of each year

Source: NEWSOME CREEK, tributary to CROOKED RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
<i>Not specified in Certificate</i>					

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres	Priority date
17 S	19 E	WM	5	NE SW	7.0	1893
17 S	19 E	WM	5	NE SW	3.2	1903
17 S	19 E	WM	5	SW SW	0.2	1893
17 S	19 E	WM	5	SW SW	1.5	1903
17 S	19 E	WM	5	SE SW	2.8	1893
17 S	19 E	WM	5	SE SW	2.4	1903
TOTAL:					17.1	

9. Based upon the Crooked River Decree, the duty of water associated with Certificate 594 shall not exceed 4.0 acre feet per acre per year.

10. The Department received information that better describes the location of the authorized point of diversion for Certificate 594 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	8	NW NW	220 FEET SOUTH AND 1280 FEET EAST OF THE NW CORNER OF SECTION 8

11. Application T-9216 proposes to add two points of diversion approximately 1/4 mile downstream at the following locations:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	5	SW SW	10 FEET NORTH AND 1250 FEET EAST OF THE SW CORNER OF SECTION 5
17 S	19 E	WM	5	SE SW	940 FEET NORTH AND 1340 FEET EAST OF THE SW CORNER OF SECTION 5

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

Certificate: 595 in the name of E. B. KNOX (confirmed by the Crooked River decree)
Use: IRRIGATION of 28.8 ACRES, STOCK and DOMESTIC USE
Priority Date: 1879
Rate: 0.36 CUBIC FOOT PER SECOND (CFS) for IRRIGATION, and a reasonable amount for Domestic and Stock Use
Limit/Duty: 4.0 ACRE FEET per acre during each year
Source: NEWSOME CREEK, tributary to CROOKED RIVER
Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
<i>Not specified in Certificate</i>					

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	8	NE NW	17.7
17 S	19 E	WM	8	NW NW	2.6
17 S	19 E	WM	8	SW NW	6.7
17 S	19 E	WM	8	SE NW	1.8
TOTAL:					28.8

13. Based upon the Crooked River Decree, Certificate 595 is limited to a rate of water being one-eightieth (1/80th) of one cubic foot per second per acre and an irrigation season that lasts from February 1 until December 1 of each year.

14. The Department received information that better describes the location of the authorized point of diversion for Certificate 595 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	7	SE SE	820 FEET NORTH AND 240 FEET WEST OF THE SE CORNER OF SECTION 7

15. The Department received information that better describes the location of Domestic Use under Certificate 595 as follows:

Twp	Rng	Mer	Sec	Q-Q
17 S	19 E	WM	8	SW NW

16. Application T-9216 proposes to add a point of diversion approximately 1/2 mile downstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	8	SW NW	30 FEET NORTH AND 680 FEET EAST OF THE WEST 1/4 CORNER OF SECTION 8

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

Certificate: 668 in the name of MRS. MARY A SWEARINGEN (confirmed by the Crooked River decree)
Use: IRRIGATION of 23.3 ACRES, STOCK and DOMESTIC USE
Priority Date: 1887
Rate: 0.294 CUBIC FOOT PER SECOND (CFS) for Irrigation and a reasonable amount for Domestic and Stock Use
Limit/Duty: 63/100 CFS for irrigation, not to exceed 4.0 ACRE FEET per acre each year
Source: NEWSOME CREEK, tributary to CROOKED RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
<i>Not specified in Certificate</i>					

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	5	NW NE	3.9
17 S	19 E	WM	5	NE NW	16.3
17 S	19 E	WM	5	SE NW	3.1
TOTAL:					23.3

18. Based upon the Crooked River Decree, the irrigation season associated with Certificate 668 lasts from February 1 to December 1 of each year.

19. The Department received information that better describes the location of the authorized point of diversion for Certificate 668 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	5	NE SW	250 FEET SOUTH AND 2190 FEET EAST OF THE WEST ¼ CORNER OF SECTION 5

20. The Department received information that better describes the location of Domestic Use under Certificate 668 as follows:

Twp	Rng	Mer	Sec	Q-Q
17 S	19 E	WM	5	NW NE

21. Application T-9216 proposes to add a point of diversion approximately 1/4 mile downstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	5	SE NW	700 FEET NORTH AND 2190 FEET EAST OF WEST 1/4 CORNER OF SECTION 5

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

Certificate: 10947 in the name of HOMER NORTON (perfected under Permit S-5582)
Use: IRRIGATION of 51.6 ACRES
Priority Date: JULY 27, 1922
Rate: 0.649 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre
Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	19 E	WM	34	NE NW	<i>Not specified in Certificate</i>

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	30	SW NE	9.6
16 S	19 E	WM	30	SE NE	22.0
16 S	19 E	WM	30	NE SE	20.0
TOTAL:					51.6

23. Based upon the Crooked River Decree, Certificate 10947 is limited to a duty of not to exceed 4.0 acre feet of water per acre per year and an irrigation season that lasts from February 1 until December 1 of each year.

24. The Department received information that better describes the location of the authorized point of diversion for Certificate 10947 as follows:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	19 E	WM	34	SW NE	<i>Not specified</i>

25. Application T-9216 proposes to add a point of diversion approximately 2 miles downstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	19 E	WM	29	NW SE	2300 NORTH AND 320 FEET EAST OF THE S1/4 CORNER, SECTION 29

26. Notice of the application for transfer was published on September 10, 2002, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.

27. On May 9, 2006, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-9216 to the applicant. The draft Preliminary Determination set forth a deadline of June 21, 2006, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and amended the application.
28. On August 22, 2009, the Department issued a Preliminary Determination proposing to approve Transfer T-9216 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 August 29, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

29. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
30. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
31. The proposed change would not result in enlargement of the rights.
32. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

33. On July 31, 2006, an affidavit for the partial cancellation of a water right was received from Aspen Valley Ranch as follows:

Certificate: 402 in the name of HOMER NORTON (confirmed by Permit E-38)
Use: IRRIGATION of 7.0 ACRES
Priority Date: MARCH 3, 1910
Rate: 0.087 CUBIC FOOT PER SECOND
Source: CROOKED RIVER, tributary to DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
16 S	19 E	WM	34	NE NW	<i>Not specified in certificate</i>

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	29	NE SE	7.0

Determination and Proposed Action

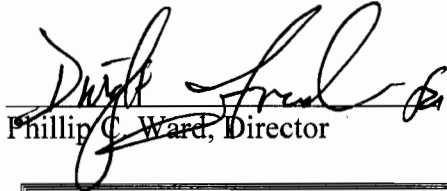
The additional points of diversion proposed in Transfer Application T-9216 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will

be approved provided that protests are not filed pursuant to OAR 690-380-4030. Furthermore, an affidavit for partial cancellation of Water Right Certificate 402 was received and indicates that a portion of the right has been abandoned in accordance with the provisions of ORS 540.621.

If approved, the final order will include the following:

- 1. The additional points of diversion proposed in T-9216 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 Certificates 402, 594, 595, 668 and 10947 and any related decree.*
- 3. Upon the issuance of a final order approving Transfer T-9216, the portion of Water Right Certificate 402 described in Finding #31 above will be cancelled.*
- 4. Upon the issuance of a final order approving Transfer T-9216, Certificates 402, 594, 595, 668 and 10947 will be cancelled. New certificates will be issued describing that portion of the rights not involved in this transfer.*
- 5. The quantity of water diverted at the additional points of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
- 6. The cancelled portion of Certificate 402, described in Finding #31 above, shall no longer receive water as part of this right.*
- 7. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
- 8. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new points of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.*
- 9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.*
- 10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 26 day of July 2006.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you have questions about the information in this document, you may reach me at (503) 986-0898 or Kara.B.Morris@wrд.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.