



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

January 22, 2015

COW CREEK RANCHES INC.  
c/o JOHN STODDART  
2155 PONY ROCK ROAD  
JORDAN VALLEY OR 97910

SUBJECT: Water Right Transfer Application T-11719

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11719. 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 Owyhee Avalanche 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 503-986-0886 or [Patrick.K.Starnes@wrdd.state.or.us](mailto:Patrick.K.Starnes@wrdd.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11719  
Ron Jacobs, District 9 Watermaster (*via e-mail*)  
CK3, LLC, CWRE/Agent for the applicant (*via e-mail*) ([pat@ck311c.net](mailto:pat@ck311c.net))

encs

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

|                                       |   |                               |
|---------------------------------------|---|-------------------------------|
| In the Matter of Transfer Application | ) | PRELIMINARY DETERMINATION     |
| T-11719, Malheur County               | ) | PROPOSING APPROVAL OF A       |
|                                       | ) | CHANGE IN POINTS OF DIVERSION |

**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.

**Applicant**

COW CREEK RANCHES INC.  
c/o JOHN STODDART  
2155 PONY ROCK ROAD  
JORDAN VALLEY, OR 97910

**Agent**

CK3, LLC  
368 SW 5<sup>TH</sup> AVE  
ONTARIO, OR 97914

**Findings of Fact**

1. On January 10, 2014, Cow Creek Ranches Inc. filed an application for an additional point of diversion under Certificate 21028. The Department assigned the application number T-11719.
2. Notice of the application for transfer was published on January 28, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 17, 2014 and November 21, 2014, the agent submitted a revised transfer application and map to reflect a change in points of diversion.
4. On December 1, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11719 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 2, 2015, 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.

|                                                                                                                                                                                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 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. |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

5. The right to be transferred is as follows:

**Certificate:** 21028 in the name of C. E. ODOM (perfected under Permit S-3008)  
**Use:** IRRIGATION OF 37.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 455.0 ACRES

**Priority Date:** JUNE 26, 1916

**Rate:** 0.465 CUBIC FOOT PER SECOND FOR LIVE FLOW FROM COW CREEK AND 406.0 ACRE FEET FROM CHEVALLEY RESERVOIR CONSTRUCTED UNDER PERMIT R-367

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Sources:** Cow Creek and Chevalley Reservoir constructed under Permit R-367

**Authorized Point of Diversion:**

| Twp  | Rng  | Mer | Sec | Q-Q   |
|------|------|-----|-----|-------|
| 28 S | 46 E | WM  | 21  | SE SW |

**Authorized Place of Use:**

| IRRIGATION  |      |     |     |       |       |
|-------------|------|-----|-----|-------|-------|
| Twp         | Rng  | Mer | Sec | Q-Q   | Acres |
| 28 S        | 46 E | WM  | 20  | SW NE | 7.6   |
| 28 S        | 46 E | WM  | 20  | SE NE | 2.6   |
| 28 S        | 46 E | WM  | 20  | NE SE | 21.0  |
| 28 S        | 46 E | WM  | 20  | SE SE | 6.0   |
| Total Acres |      |     |     |       | 37.2  |

| SUPPLEMENTAL IRRIGATION |      |     |     |       |       |
|-------------------------|------|-----|-----|-------|-------|
| Twp                     | Rng  | Mer | Sec | Q-Q   | Acres |
| 28 S                    | 46 E | WM  | 19  | NE SW | 25.4  |
| 28 S                    | 46 E | WM  | 19  | SE SW | 38.5  |
| 28 S                    | 46 E | WM  | 19  | NE SE | 27.4  |
| 28 S                    | 46 E | WM  | 19  | NW SE | 26.2  |
| 28 S                    | 46 E | WM  | 19  | SW SE | 40.0  |
| 28 S                    | 46 E | WM  | 19  | SE SE | 39.0  |
| 28 S                    | 46 E | WM  | 20  | SE NW | 4.0   |
| 28 S                    | 46 E | WM  | 20  | NE SW | 39.3  |
| 28 S                    | 46 E | WM  | 20  | NW SW | 30.8  |
| 28 S                    | 46 E | WM  | 20  | SW SW | 36.2  |
| 28 S                    | 46 E | WM  | 20  | SE SW | 38.2  |
| 28 S                    | 46 E | WM  | 20  | NW SE | 39.8  |
| 28 S                    | 46 E | WM  | 20  | SW SE | 39.0  |
| 28 S                    | 46 E | WM  | 20  | SE SE | 31.2  |
| Total Acres             |      |     |     |       | 455.0 |

6. Certificate 21028 does not describe the location of the point of diversion for the live flow component for the primary and supplemental use from Cow Creek, however information is available from the permit S-3008 which described the location of the point of diversion as follows:

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distance                                                                                               |
|-----|-----|-----|-----|-------|-----------------------------------------------------------------------------------------------------------------|
| 28S | 46E | WM  | 23  | NW SE | FEED CANAL - N25° 2700 FEET FROM THE ¼ SECTION CORNER BETWEEN SECTIONS 23 AND 26 AT THE HEAD OF THE FEED CANAL. |

7. Certificate 21028 does not clearly describe the use component of the storage in Chevalley Reservoir nor does it describe the location of the point of diversion. The information for the use of the right is defined in Certificate 21029 which is for 406.0 acre feet from the reservoir. Certificate 21028 should be corrected to show the amount to be used for primary and supplemental irrigation from the reservoir as well as the point of diversion location which is available from the transfer application and map. The location of the point of diversion as follows :

| Twp | Rng | Mer | Sec | Q-Q   | Measured Distance                                                                     |
|-----|-----|-----|-----|-------|---------------------------------------------------------------------------------------|
| 28S | 46E | WM  | 21  | SE SW | CHEVALLEY RESERVOIR - 65 FEET NORTH AND 3240 FEET WEST OF THE NE CORNER OF SECTION 28 |

8. Transfer Application T-11719 proposes to move the authorized point of diversion for the live flow portion of this right from Cow Creek within various distances. POD No. 2 is approximately 2.5 miles downstream. The Feed Canal POD is approximately 250 feet upstream from the authorized pod. The proposed points of diversion are located as follows:

| Twp                                                              | Rng  | Mer | Sec | Q-Q   | Measured Distances                                                                      |
|------------------------------------------------------------------|------|-----|-----|-------|-----------------------------------------------------------------------------------------|
| 28 S                                                             | 46 E | WM  | 28  | NW NE | POD No. 2 - 910 FEET SOUTH AND 2520 FEET WEST OF THE NE CORNER OF SECTION 28            |
| 28 S                                                             | 46 E | WM  | 23  | SW NE | FEED CANAL - 2795 FEET NORTH AND 9220 FEET EAST FROM THE NE CORNER OF SECTION 28        |
| 28 S                                                             | 46E  | WM  | 21  | SE SW | **CHEVALLEY RESERVOIR - 65 FEET NORTH AND 3240 FEET WEST OF THE NE CORNER OF SECTION 28 |
| NOTE **CHEVALLEY RESERVOIR LOCATION IS SHOWN FOR CLARIFICATION** |      |     |     |       |                                                                                         |

9. The Oregon Department of Fish and Wildlife (ODFW) 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. Listed fish species are not present at the point of diversion, the originating water right diversion is not screened, cost-share funds are not currently available, and the proposed diversion may be eligible for ODFW's cost-share program. A grace period of two years is appropriate until such time as cost-share funds become available to assist in the construction of a fish screen. If cost-share funds do not become available, the water user must screen within the indicated time period regardless of the availability of cost-share funding.

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

10. 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.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11719.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

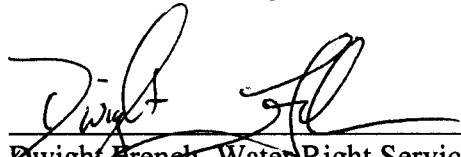
The change in points of diversion proposed in Transfer Application T-11719 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11719 is approved, the final order will include the following:*

1. *The change in points of diversion proposed in Transfer Application T-11719 is 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 21028 and any related decree.*
3. *Water Right Certificate 21028 is cancelled.*
4. *The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.*
5. *Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.*
6. *Within two years after the date of this order the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2018. The water user shall provide to 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 maintain and operate 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.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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 change and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 22 day of January, 2015.



Dwight French, Water Right Services Division Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 x 223 or [Carrie.R.Matthews@wr.d.state.or.us](mailto:Carrie.R.Matthews@wr.d.state.or.us).

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.