



Oregon
Kate Brown, Governor

Water Resources Department
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April 14, 2016

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 Revised 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 Malheur Enterprise 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 additional protest is filed, the Department will proceed with a settlement of the current protest and final order.

Please do not hesitate to contact me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson

Sarah Henderson
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)
Sarah Liljefelt, Schroeder Law Office (*via e-mail*)

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

In the Matter of Transfer Application
T-11719, Malheur County

) **REVISED**
)
) **PRELIMINARY DETERMINATION**
) **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 5TH 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.
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5. On January 22, 2015, the Department issued a Preliminary Determination proposing to approve Transfer T-11719 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on January 27, 2015, and in the Owyhee Avalanche newspaper on February 4, and 11, 2015.
6. On February 25, 2015, a Protest was filed on behalf of Baltzor Cattle Company, protesting the approval of the change in points of diversion under Transfer Application T-11719.
7. Pursuant to ORS 540.520 and OAR 690-380-4020, the Department is issuing a Revised Preliminary Determination and re-noticing the transfer application in the Malheur Enterprise Newspaper, circulating out of Vale, Oregon.
8. 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

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
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

9. 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.

10. 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

11. 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**					

12. 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)]

13. 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.
14. 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.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

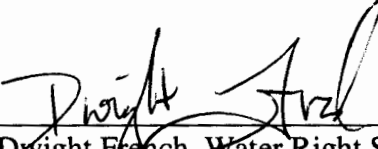
The change in points of diversion proposed in Transfer Application T-11719 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

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 13 day of April, 2016.


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

This REVISED Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrds.state.or.us.

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