



Oregon

Kate Brown, Governor

Water Resources Department

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September 21, 2016

ASPEN VALLEY RANCH
C/O JIM WOOD
GENERAL DELIVERY
POST, OR 97752

SUBJECT: Water Right Transfer Application T-12165

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12165. 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, 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 Department's notice.

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 if I may be of assistance.

Sincerely,

Kelly Starnes

Transfer Program Analyst

Transfer and Conservation Section

cc: Transfer Application file T-12165
Jeremy T. Giffin, Watermaster 11 District (*via e-mail*)
Bruce A. Estes, Agent the applicant (*via e-mail*)

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

In the Matter of Transfer Application) **PRELIMINARY DETERMINATION**
T-12165, Crook County) **PROPOSING APPROVAL OF A**
) **CHANGE IN PLACE OF USE**

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

ASPEN VALLEY RANCH
C/O JIM WOOD
GENERAL DELIVERY
POST, OR 97752

Findings of Fact

1. On September 24, 2015, ASPEN VALLEY RANCH filed an application to change the place of use under Certificates 63825, 81325, and 81329. The Department assigned the application number T-12165.
2. Notice of the application for transfer was published on September 29, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 18, 2015 the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12165 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 18, 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.
4. The portion of the first right to be transferred is as follows:
Certificate: 63825 in the name of ASPEN VALLEY RANCH (perfected under Permit S-3003)
Use: IRRIGATION OF 20.0 ACRES
Priority Date: JULY 8, 1916

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.

Rate: 0.25 CUBIC FOOT PER SECOND

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.

Source: CROOKED RIVER, tributary of the DESCHUTES RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	34	SE NE	2100 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 34
16 S	19 E	WM	34	SE NE	2200 FEET SOUTH AND 10 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	34	SW NE	14.4
16 S	19 E	WM	34	SE NE	5.6
Total					20.0

5. Transfer Application T-12165 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	34	NE SE	17.6
16 S	19 E	WM	34	NW SE	2.4
Total					20.0

6. The portion of the second right to be transferred is as follows:

Certificate: 81325 in the name of HOMER NORTON (perfected under Permit E-38)

Use: IRRIGATION OF 36.3 ACRES

Priority Date: MARCH 3, 1910

Rate: 0.454 CUBIC FOOT PER SECOND

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	29	NE SW	15.5
16 S	19 E	WM	29	NW SW	13.3
16 S	19 E	WM	29	NW SE	7.5
Total					36.3

7. Certificate 81325 does not describe the authorized point of diversion. The Department received information from Transfer 9216, Special Order Volume 83, page 2, and this transfer application, that better describes the location of the authorized point of diversion and therefore concluded the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
16 S	19 E	WM	34	SW NE	POST DITCH – 1510 FEET SOUTH AND 520 FEET EAST FROM THE N¼ CORNER OF SECTION 34

8. Transfer Application T-12165 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	27	SE SW	0.1
16 S	19 E	WM	27	SW SW	2.1
16 S	19 E	WM	28	SW SE	9.2
16 S	19 E	WM	33	NW NE	10.6
16 S	19 E	WM	34	NE NW	11.3
16 S	19 E	WM	34	NW NW	2.7
16 S	19 E	WM	34	SE NW	0.3
Total					36.3

9. The third right to be transferred is as follows:

Certificate: 81329 in the name of HOMER NORTON (perfected under Permit S-5582)

Use: IRRIGATION OF 14.4 ACRES

Priority Date: JULY 27, 1922

Rate: 0.181 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, during the irrigation season each year.

Source: CROOKED RIVER, tributary to the DESCHUTES RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	30	SW NE	6.9
16 S	19 E	WM	30	NE SE	1.5
16 S	19 E	WM	30	NW SE	6.0
Total					14.4

10. The Department received information from Transfer 9216, Special Order Volume 83, page 2, and this transfer application that better describes the location of the authorized point of diversion and therefore concluded the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distance
16 S	19 E	WM	34	SW NE	POST DITCH – 1510 FEET SOUTH AND 520 FEET EAST FROM THE N¼ CORNER OF SECTION 34

11. Transfer Application T-12165 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	29	NE SW	11.8
16 S	19 E	WM	29	NW SW	1.7
16 S	19 E	WM	29	NW SE	0.9
Total					14.4

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. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-12165.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Determination and Proposed Action


The change in place of use proposed in Transfer Application T-12165 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-12165 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-12165 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 Certificates 63825, 81325, and 81329 and any related decree.*
3. *Water right Certificate 81329 is cancelled.*
4. *Water right Certificates 63825 and 81325 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.*

5. *The former place of use of the transferred rights shall no longer receive water under the rights.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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 changes and full beneficial use of the water.*
7. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 21 day of September, 2016.



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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@wrđ.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.