

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12178, Crook County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF
)	DIVERSION, PLACE OF USE, AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT PERMIT

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.

ORS 540.510 authorizes the Department to cancel a supplemental water right or permit, or portion thereof, if the applicant does not include the supplemental water right in the transfer application.

Applicant

ASPEN VALLEY RANCH, LLC
GENERAL DELIVERY
POST, OR 97752

Findings of Fact

1. On October 7, 2015, Aspen Valley Ranch, LLC. filed an application to change the point of diversion and to change the place of use under Certificates 571 and 81327. The Department assigned the application number T-12178.
2. On December 21, 2016, the Department informed the applicant's agent, by written correspondence, of deficiencies in the application. The Department requested that the deficiencies be resolved by February 17, 2017. The applicant agent met with staff to resolve the map issues on February 16, 2017. The information necessary to resolve the remaining deficiencies was received on March 13, 2017.
3. On March 13, 2017, the applicant submitted authorization for the voluntary partial cancellation of water right permit S-29082 for supplemental irrigation from the Sherwood Creek Reservoir.

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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4. Notice of the application for transfer was published on October 13, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. On April 19, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12178 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 19, 2017, for the applicant to respond. On May 11, 2017, the applicant requested the deadline be extended to September 19, 2017.
6. On November 13, 2017, the Applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On December 22, 2017, the Department received a request from the applicant's agent, requesting to withdraw Certificate 543 from transfer application T-12178. Certificate 543 has been removed from this transfer application.
8. On February 16, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12178 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 19, 2018, for the applicant to respond.
9. On March 15, 2018, the applicant requested that the Department proceed with issuance of a Preliminary Determination.
10. On March 20, 2018, the Department sent a letter to the applicant providing clarification on the sequence of events leading up to the termination of temporary transfer application T-12339 prior to the issuance of a Final Order for T-12178.
11. On April 2, 2018, the Department received a written request from the applicant to terminate temporary transfer application T-12339 for Certificates 571 and 81327 upon issuance of a Final Order for transfer application T-12178.
12. The portion of the first right to be transferred is as follows:

Certificate: 571 in the name of JOHN A. GIBSON
 (confirmed by the Crooked River Decree entered in record at Salem in the Order of Record of the State of Oregon, in Volume 1, Page 449)

Use: IRRIGATION of 2.0 ACRES

Priority Date: 1890

Limit/Duty: Use shall not exceed 2.5/100 cubic foot per second for irrigation, the total quantity being limited to 4.0 acre feet per acre during each year.

Source: NEWSOME CREEK AND WEST FORK, tributaries of the CROOKED RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	18 E	WM	23	SE SE	2.0

13. Certificate 571 does not describe the point of diversion, nor does the Crooked River Decree, however, the applicant has provided a description of the point of diversion as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	18 E	WM	23	SE SE	880 FEET NORTH AND 1200 FEET WEST FROM THE SE CORNER OF SECTION 23

14. Transfer Application T-12178 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	5	SW NE	0.3
17 S	19 E	WM	5	SE NW	1.7
Total:					2.0

15. Transfer Application T-12178 proposes to move the authorized point of diversion approximately 4.1 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	19 E	WM	5	SW SW	10 FEET NORTH AND 1250 FEET EAST FROM THE SW CORNER OF SECTION 5

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

Certificate: 81327 in the name of E.B. KNOX confirmed by the Crooked River Decree entered in record at Salem in the Order of Record of the State of Oregon, in Volume 1, Page 449)

Use: IRRIGATION of 9.3 ACRES

Priority Date: 1879

Rate: 0.12 CFS

Limit/Duty: The total quantity being limited to 4.0 acre-feet per acre during each year, or its equivalent in case of rotation, measured at the point of diversion.

Source: NEWSOME CREEK, a tributary of the CROOKED RIVER

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	8	NE NW	4.0
17 S	19 E	WM	8	SE NW	5.3
Total:					9.3

17. Certificate 81327 does not described the location of the point of diversion, nor does the Crooked River Decree, however, the applicant has provided a description of the point of diversion as described in the table below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	19 E	WM	7	SE SE	KNOX #1: 800 FEET NORTH AND 250 FEET WEST FROM THE SE CORNER OF SECTION 7

18. Transfer Application T-12178 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	19 E	WM	33	NW NW	9.3

19. Transfer Application T-12178 proposes to move the authorized point of diversion approximately 1.3 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
16 S	19 E	WM	33	NW NW	700 FEET SOUTH AND 400 FEET EAST FROM THE NW CORNER OF SECTION 33

20. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversions and that the diversions are not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.
21. There is an existing supplemental water right permit, S-29082, appurtenant to the portion of lands in which Certificate 81327 is proposed to be transferred. The applicant has requested that affected portions of the supplemental water right permit be cancelled upon issuance of a Final Order approving T-12178

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

22. 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.
23. 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-12178.
24. The proposed changes would not result in enlargement of the rights.
25. The proposed changes would not result in injury to other water rights.
26. All other application requirements are met.

Partial Cancellation of a Water Right Permit

27. There is an existing supplemental water right permit, S-29082, appurtenant to the portion of lands on which Certificate 81327 is proposed to be transferred. The applicant has requested that affected portions of the supplemental water right permit be cancelled upon issuance of the Final Order approving T-12178.
28. The portion of the water right permit to be cancelled is as follows:

Permit: S-29082 in the name of ASPEN VALLEY RANCHES INC.
Use: SUPPLEMENTAL IRRIGATION of 9.3 ACRES

Priority Date: NOVEMBER 21, 1963

Volume: 1.25 ACRE-FEET

Source: SHERWOOD CREEK RESERVOIR, tributary to NEWSOME CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	19 E	WM	18	SE SE	975 FEET NORTH AND 500 FEET WEST FROM THE SE CORNER OF SECTION 18

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	8	NE NW	4.0
17 S	19 E	WM	8	SE NW	5.3
TOTAL					9.3

Determination and Proposed Action

The changes in points of diversion and places of use proposed in Transfer Application T-12178 appear 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-12178 is approved, the final order will include the following:

1. *The changes in points of diversion and places of use proposed in Transfer Application T-12178 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 571, 81327, and any related decree.*
3. *Water right Certificates 571 and 81327 are cancelled. New certificates will be issued describing the portion of the rights not affected by this transfer.*
4. *The portion of Water Right Permit S-29082 described above is cancelled, and a superseding permit will be issued.*
5. *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.*
6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*

