

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-10256, Crook, Deschutes, Jefferson)	PROPOSING APPROVAL OF A
Counties)	CHANGE IN PLACE OF USE,
)	CHARACTER OF USE, AND PARTIAL
)	CANCELLATION OF A WATER RIGHT

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. OAR Chapter 690, Division 380-2250 provides that whenever a layered supplemental right is not included in a transfer of the place of use or character of use of the primary right, the supplemental water right will be canceled before the Department issues the order approving the transfer.

Co-Applicants

Central Oregon Irrigation District 1055 SW Lake Court Redmond OR 97756	Aspen Creek MHC, LLC c/o Investment Property Group 450 Newport Dr. 595 Newport Beach, CA 92660	Aspen Creek Homeowner's Association c/o Investment Property Group 450 Newport Dr. 595 Newport Beach, CA 92660
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Findings of Fact

Background

1. On October 23, 2006, Central Oregon Irrigation District (COID) filed a transfer application to change the use and place of use under Certificate 76358. The applicants have also requested to cancel the corresponding portion of Certificate 76714 for supplemental irrigation upon issuance of the Final Order approving the transfer. The Department assigned the application number T-10256.
2. On December 27, 2006, the applicant submitted a revised map. On June 13, 2007, the Department received revisions to the application consistent with OAR 690-380-3000, naming COID, Aspen Creek MHC, LLC and the Aspen Creek Homeowners Association, together as the co-applicants, completing the minimum application requirements.

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.

3. The portion of the first right to be transferred is as follows:

Certificate: 76358 in the name of CENTRAL OREGON IRRIGATION DISTRICT

Use: IRRIGATION of 7.47 acres

Priority Date: OCTOBER 31, 1900 and December 2, 1907

Season of Use: April 1 to November 1, further limited as follows:

April 1 to May 1 & October 1 to November 1 described herein as Season 1

May 1 to May 15 & September 15 to October 1 described herein as Season 2

May 15 to September 15 described herein as Season 3

Quantity (Rate): Season 1 (limited to 1/80 cfs per acre): 0.09 cfs (1900 priority date)

Season 2 (limited to 1/60 cfs per acre): 0.12 cfs (1900 priority date)

Season 3 (limited to 1/32.4 cfs per acre): 0.23 cfs, being 0.16 cfs under the 1900 priority date and 0.07 cfs under the 1907 priority date

Limit/Duty: 9.91 acre-feet for each acre irrigated during the irrigation season as measured at the diversion from the source. The quantities reflect a 45% transmission loss as determined by decree of the Circuit Court for Deschutes County, dated March 24, 1933.

Source: DESCHUTES RIVER, tributary to COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	850 FEET NORTH AND 630 FEET WEST FROM E1/4 CORNER OF SECTION 29

Authorized Place of Use:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	17	NW SE	1.87
15 S	13 E	WM	17	SW SE	5.60

4. Application T-1025610256 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Use
15 S	13 E	WM	17	NW SE	Quasi-Municipal
15 S	13 E	WM	17	SW SE	Quasi-Municipal

5. Application T-10256 proposes to change the character of use to quasi-municipal.
6. Supplemental right, certificate 76714, is appurtenant to the same lands from which the primary right under certificate 76358 is proposed to be transferred to Quasi-municipal. The applicant requested that the affected acreage portion of certificate 76714 be cancelled upon issuance of the Final Order approving T-10256, but that the total volume of stored water authorized to be used under the right evidenced by Certificate 76714 not be reduced.
7. Notice of the application for transfer was published on October 31, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. On April 12, 2007, the Department e-mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10256 to the applicants. The draft Preliminary Determination set forth a deadline of May 14, 2007, for the applicants to respond. The applicants requested clarification of the ownership documentation requirements and the annual volume of water that would be allowed for quasi-municipal use. The Department emailed a second, revised draft to the applicants for review on April 23, 2007. June 5, 2007, the applicants responded, requesting that the Department proceed with issuance of a Preliminary Determination, and on June 13, 2007, provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

9. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10256.
11. Considering current knowledge about water rights and their impact on the hydrology of the Deschutes Basin, the Department is unable to conclude that the change from irrigation of crops on 7.47 acres to quasi-municipal use on the much larger proposed place of use would not result in injury to instream water rights. An increase in consumptive water use could decrease the amount of return flows, which support instream water rights in the Deschutes River. However, if quasi-municipal use on the proposed place of use were conditioned so that the quantity of water removed from the surface and groundwater system through consumptive use would approximate the consumptive use of crops on 7.47 acres under irrigation, the proposed use would not injure other water rights.
12. The total consumptive use of irrigation water for crops in the Deschutes Basin is estimated by the Department at 1.8 acre-feet per acre irrigated. Presumably, the rest of the water diverted up to the allowed duty is not taken up by crops, but returns to the surface and groundwater system. Water withdrawn in consumptive use of crops on 7.47 acres yields 13.45AF (1.8 AF/acre x 7.47 acres).
13. Research by the Department¹ indicates that approximately 47.14% of the total volume of water diverted for municipal use in the Deschutes River Basin during the months of the irrigation season is consumptive. Therefore, the volume of water, in acre-feet, that could be diverted from the canal to the place of use for quasi-municipal purposes, (including both consumptive and non-consumptive uses) without resulting in an increase in consumptive use can be estimated by dividing the total AF by the consumptive % of quasi-municipal use.

¹ Cooper, RM. 2002. Determining Surface Water Availability in Oregon. Open File Report SW02-002. Oregon Water Resources Department, Salem, OR 57 p.

$$\text{Annual Diversion for Quasi - Municipal Use, AF} = \frac{13.45 \text{ AF}}{0.4714} = 28.53 \text{ AF}$$

14. Limiting the maximum annual volume of water allowed to be diverted from the canal for quasi-municipal use on the proposed place of use to 28.53 acre-feet would be sufficient to ensure that other water rights are not injured.
15. The maximum rates of diversion from the river into the canal (which include an allowance of 45% transmission loss as per decree) remain unchanged, as stated in Finding of Fact #3.
16. Aspen Creek MHC LLC is developer and responsible for completion and perfection of the change after the final order is issued.
17. The proposed change would not result in enlargement of the right.
18. The proposed change would not result in injury to other water rights.

Partial Cancellation of Water Right Certificate 76714

19. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer. The portion of the supplemental right under Certificate 76714 appurtenant to the lands described in Finding of Fact #3 is not requested to be transferred. The applicants request to modify Certificate 76714, to reduce by 7.47 the number of acres to which stored water may be applied for supplemental irrigation under the right; but that the total volume of stored water authorized under the right evidenced by Certificate 76714 not be reduced.
20. Consistent with OAR 690-380-2250 (5), the Department is hereby proposing to approve the transfer of the primary right and shall cancel the appurtenant portion of Certificate 76714 for supplemental irrigation appurtenant to the 7.47 acres, as described in Findings of Fact #22.
21. Pursuant to OAR 690-017-002(a), the Department has determined that the Central Oregon Irrigation District and/or Aspen Creek MHC, LLC and the Aspen Creek Homeowners Association holds the interest, as established by water irrigation contract signed on March 29 and 31, 2006, to portions of the water right evidenced by Certificates 76358 and 76714.
22. The portion of the right to be cancelled is as follows:
Certificate: 76714 in the name of CENTRAL OREGON IRRIGATION DISTRICT
Use: SUPPLEMENTAL IRRIGATION of 7.47 acres
Priority Date: February 28, 1913
Limit/Duty: limited to 50,000 acre-feet of stored water only
Source: Crane Prairie Reservoir, constructed under Permit R-1687, a tributary of the DESCHUTES RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	12 E	WM	29	SE NE	850 FEET NORTH AND 630 FEET WEST FROM E1/4 CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	13 E	WM	17	NW SE	1.87
15 S	13 E	WM	17	SW SE	5.60

23. The water right evidenced by Certificate 76714 allows for the use of up to 50,000 acre-feet of water stored in Crane Prairie Reservoir, a tributary of the Deschutes River, for supplemental irrigation. The diversion rate is not specified and use is limited to the total volume of stored water to make up a deficiency in supply of the live flow water right appurtenant to specified lands. The date of priority is February 28, 1913.

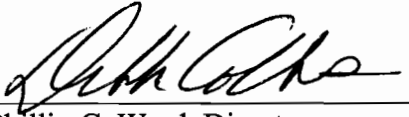
Determination and Proposed Action

The changes in character of use and place of use proposed in application T-10256 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If application T-10256 is approved, the final order will include the following:

- 1. The changes in use and place of use and place of use proposed in application T-10256 are approved. The portion of the right evidenced by Certificate 76714 that has been abandoned is cancelled.*
- 2. Water right certificates 76358 and 76714 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.*
- 3. 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 76358 and 76714 and any related decree.*
- 4. The maximum annual volume of water allowed to be diverted from the canal for quasi-municipal use on the proposed place of use shall be limited to 28.53 acre-feet.*
- 5. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2008. 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.*

Dated at Salem, Oregon this 22nd day of June 2007.



Phillip C. Ward, Director

PW

This Preliminary Determination was prepared by Vern Church. If you have questions about the information in this document, you may reach me at 541-883-4182 or Vernon.L.Church@wrđ.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.