



BOARD OF COMMISSIONERS

AGENDA REQUEST & STAFF REPORT

MEETING DATE: September 25, 2024

SUBJECT: Approval of Document No. 2024-790, a Water Rights Conveyance Agreement with Central Oregon Irrigation District

RECOMMENDED MOTION:

Move approval of Document No. 2024-790.

BACKGROUND AND POLICY IMPLICATIONS:

Deschutes County Road Department ("Department") acquired a portion ("Subject Land") of Tax Lot 171318D000500, owned by Jesse R. and Kimberly A. Dent ("Grantors"), as right of way for the Powell Butte Highway/Butler Market Road Intersection Improvement project. The Subject Land had existing Central Oregon Irrigation District (COID) water rights, and the Grantors did not quitclaim those rights to COID or transfer those rights to another portion of their property prior to right of way dedication, which was recorded on December 27, 2023 (Instrument No. 2023-31591); transfer or quitclaiming of water rights by the Grantors prior to the Grantors' execution of the dedication deed was a provision of the purchase agreement. In accordance with ORS 368.256(1)(a), the water rights cannot be exercised within the public road right of way. The Grantors later executed a quitclaim deed with COID for the water rights, which was recorded on August 20, 2024 (Instrument No. 2024-21477)

In accordance with ORS 540.580, COID must submit a petition request to the Oregon Water Resources Department ("State") for approval of a permanent transfer of the place of use of water rights appurtenant to the Subject Land. The State has provided COID with an opinion that the County is an "affected land owner" under the provisions of ORS 540.580 and a "user" as defined in OAR 690-385-0100(16); effectively, the State has asserted that the Grantors conveyed the irrigation rights for the Subject Land to the County with the right of way dedication. As such, the State is requiring the County to authorize the transfer of the irrigation rights.

Department staff have asserted that the County does not acquire appurtenant rights such as water rights with acquisition of a right of way dedication for several reasons, which include:

- A right of way dedication does not convey fee title of the subject land; fee title is still

vested with the grantor. A right of way dedication effectively creates an easement for public ingress and egress; appurtenant rights, such as water and other natural resource rights, are not conveyed with an easement.

- The County acquires right of way in accordance with ORS 035, which pertains to eminent domain and public acquisition of property. Under that chapter of state law, a condemner can only acquire the property interest necessary for the proposed use. Water rights are unnecessary for a public road.
- The purchase agreement provisions used by the Department in right of way acquisitions explicitly state that water rights appurtenant to the subject property are not conveyed.
- Water rights are not valued in a right of way appraisal and, as such, are not included in the purchase amount in a right of way acquisition.

Nonetheless, in an effort to assist COID with their petition request to the State, the Department, in coordination with County Legal Department staff, drafted a water rights conveyance agreement for COID's use. Under this agreement, the County authorizes COID to transfer the subject water rights while making no claims in holding any water rights.

BUDGET IMPACTS:

None

ATTENDANCE:

Cody Smith, County Engineer/Assistant Road Department Director