

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-10211, Josephine County                    )     CHANGE IN POINT OF DIVERSION  
  )     AND PARTIAL CANCELLATION OF A  
  )     WATER RIGHT

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

MICHAEL C. SHAW AND SHERRY LOU SHAW  
6438 HOLLAND LOOP ROAD  
CAVE JUNCTION, OREGON 97523

**Findings of Fact**

**Background**

1. On July 3, 2006, Michael C. Shaw and Sherry Lou Shaw filed a transfer application to change the point of diversion under Certificate 7160. The Department assigned the application number T-10211.

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

**Certificate:** 7160 in the name of CHARLES R. WILLIAMS (confirmed by Sucker Creek decree)

**Use:** IRRIGATION of 21.0 ACRES

**Priority Dates:** 1872 (TRACT 1) and 1908 (TRACT 2)

**Rate:** 0.26 CUBIC FOOT PER SECOND (CFS) FOR TRACT 1 AND 0.10 CFS FOR TRACT 2

**Source:** SUCKER CREEK, tributary to the EAST FORK ILLINOIS RIVER

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	29	NW SE	1580 FEET NORTH AND 1000 FEET EAST FROM THE S ¼ CORNER OF SECTION 29 (WILLIAMS DITCH)

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
39 S	7 W	WM	32	SE NW	13.0	1
39 S	7 W	WM	32	SE NW	8.0	2

- On July 9, 2007, Michael C Shaw and Sherry Lou Shaw requested the cancellation of 14.0 acres of irrigation rights under Certificate 7160.
- Application T-10211 proposes to move the authorized point of diversion approximately 3,400 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	MW	32	NE NW	1798 FEET NORTH AND 1310 FEET WEST FROM THE CENTER ¼ CORNER OF SECTION 29

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

- Notice of the application for transfer was published on July 11, 2006, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
- On September 6, 2006, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10211 to the applicants. The draft Preliminary Determination requested a revised map to clarify the location of the portion of the right to be affected, a more specific description of the proposed diversion point and clarification of the status of the 14 acres under the original right not proposed for transfer. The cover letter set forth a deadline of October 15, 2006, for the applicants to respond. Harold Center, the applicants' agent, responded, however, the applicants evidently did not receive the draft Preliminary Determination in a timely manner. On June 12, the Department mailed a copy of the draft Preliminary Determination with a new cover letter to the applicants, requesting a response by July 16, 2007. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the requested information, a revised map, and ownership information to demonstrate that the applicants are authorized to pursue the transfer.
- On August 14, 2007, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-10211 to the applicants. The draft Preliminary Determination set forth a deadline of September 17, 2007, for the applicants to respond with any comments. No comments to the revised draft were received.

8. On October 1, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10211 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 2, 2007, and in the Illinois Valley News newspaper on January 9, 16 and 23, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is 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 is present.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

13. On July 9, 2007, an affidavit certifying that a 14.0 acre portion of the water right has been abandoned and requesting cancellation of that portion of the right was received from Michael C. and Sherry Lou Shaw.

14. The portion of the right to be cancelled is as follows:

**Certificate:** 7160 in the name of CHARLES R. WILLIAMS (confirmed by Sucker Creek decree)

**Use:** IRRIGATION of 14 ACRES

**Priority Date:** 1872 (TRACT 1) and 1908 (TRACT 2)

**Rate:** 0.12 CUBIC FOOT PER SECOND (CFS) FOR TRACT 1 AND 0.10 CFS FOR TRACT 2

**Source:** SUCKER CREEK, tributary to the EAST FORK ILLINOIS RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	7 W	WM	29	NW SE	1580 FEET NORTH AND 1000 FEET EAST FROM THE S ¼ CORNER OF SECTION 29 (WILLIAMS DITCH)

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tract
39 S	7 W	WM	32	SE NW	6.0	1
39 S	7 W	WM	32	SE NW	8.0	2

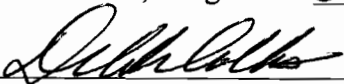
**Conclusions of Law**

The proposed change in point of diversion in application T-10211 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and the abandoned portion of the right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The change in point of diversion proposed in application T-10211 is approved. The portion of the right that has been abandoned is cancelled.
2. Water right certificate 7160 is cancelled.
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 Certificate 7160 and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
6. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
7. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2009**. 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.
8. When satisfactory proof of the completed change is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 26<sup>th</sup> day of February 2008

  
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Phillip C. Ward, Director  
PCW

Mailing date: MAR 03 2008