

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

In the Matter of Transfer Application)	RECONSIDERATION OF A FINAL
T-10593, Crook County)	ORDER RECORDED IN SPECIAL
)	ORDER VOLUME 75 PAGES 761 – 766,
)	WITHDRAWING A FINAL ORDER
)	AND ISSUING A SUPERSEDING
)	FINAL ORDER APPROVING A
)	TEMPORARY CHANGE IN PLACE OF
)	USE AND POINT OF DIVERSION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion 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.

Applicant

SHOTGUN RANCH, LLC
Attn -CAL CANNON
2730 NW NIGHTFALL CIRCLE
BEND, OR 97701

Agent

ESTES SURVEYS, LLC
Attn – BRUCE ESTES
60382 ARNOLD MARKET RD
BEND, OR 97702

Findings of Fact

1. On April 9, 2008, Cal Cannon, on behalf of SHOTGUN RANCH, LLC, filed an application to temporarily change the place of use and point of diversion under Certificate 81673 for a period of five years. The Department assigned the application number T-10593.
2. Pursuant to ORS 537.705 and 540.505 to 540.580, the Director issued an order approving Temporary Transfer T-10593. The order is recorded in Special Order Volume 75, Pages 761-766.
3. On July 28, 2008, the Department received a request for reconsideration from Martha Pagel of Schwabe, Williamson and Wyatt PC on behalf of the applicant. The request indicated

<p>This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.</p>

that the place of use, as submitted on the original application and map, were erroneous. The request for reconsideration was filed within the 60-day period specified by ORS 183.484.

4. On July 29, 2008, the Department sent a letter notifying the applicant that the Department would reconsider the Final Order approving Temporary Transfer T-10593.
5. The portion of the right to be transferred is as follows:

Certificate: 81673 in the name of SHOTGUN RANCH, LLC (confirmed by the Crooked River Decree)

Use: IRRIGATION of 19.0 ACRES

Priority Date: 1889

Rate: 0.23 CUBIC FOOT PER SECOND (cfs)

Season: February 1 to December 1 of each year

Source: SHOTGUN CREEK, tributary to the CROOKED RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	20 E	WM	9	SE NW	1940 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	NW SE	10.2
17 S	20 E	WM	4	SW SE	8.8

6. Transfer Application T-10593, as corrected by the amended map received on July 28, 2008, proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	7	NE NE	11.8
17 S	20 E	WM	8*	NW NW*	2.2
17 S	20 E	WM	9	NE NW	1.0
17 S	20 E	WM	9	NW NW	4.0

*denotes corrected location

7. A change in point of diversion is necessary to convey the water to the proposed temporary place of use. Transfer Application T-10593 proposes to move the authorized point of diversion approximately 0.5 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
17 S	20 E	WM	9	SW SW	2040 FEET SOUTH AND 920 FEET EAST FROM THE W1/4 CORNER OF SECTION 9

8. Notice of the application for temporary transfer was published on April 29, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
9. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is currently equipped with an appropriate fish screening and/or by-pass device
10. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. Certificate 84197 is appurtenant to some of the land to which Temporary Transfer T-10593 is proposed to be transferred. The authorized agent has indicated that the supplemental irrigation under Certificate 84197 shall remain unexercised during the term of this temporary transfer.
13. The proposed change, as modified by the amended map, would not result in enlargement of the right.
14. The proposed change, as modified by the amended map, would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

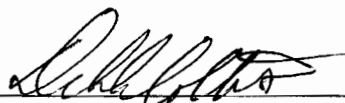
The temporary changes in place of use, as corrected by the amended map received on July 28, 2008, and point of diversion proposed in Transfer Application T-10593 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The order approving Transfer Application T-10593 and entered in Special Order Volume 75 Pages 761-766 is withdrawn and of no further force or effect.
2. The changes in place of use (as corrected by the amended map received on July 28, 2008) and point of diversion proposed in Transfer Application T-10593 are approved.
3. The former place of use **shall not** be irrigated as part of this water right during the 2008, 2009, 2010, 2011 and 2012 irrigation seasons.

4. The use shall revert to the authorized place of use at the end of the 2012 irrigation season. The authorization to use the additional point of diversion shall be terminated concurrently.
5. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
6. A subsequent application for permanent transfer of Certificate 81673 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
7. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificate 81673.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. Prior to diverting of water at the new point of diversion, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
10. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.
11. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
12. The authorized place of use for supplemental irrigation under Certificate 84197 appurtenant to the place of use listed in Finding of Fact #2 **shall not** be exercised during the term of this temporary transfer.
13. The use of the remaining water right described by Certificate 81673 shall continue to be in accordance with the terms and conditions of Certificate 81673.

Dated at Salem, Oregon this 6th day of August, 2008.


Phillip C. Ward, Director *h.*

Mailing Date: AUG 13 2008