

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

In the Matter of Transfer Application)	FINAL ORDER
T-9908, Crook County)	APPROVING CHANGES IN PLACE OF
)	USE, POINT OF DIVERSION, AND
)	CLARIFICATION OF SOURCE, AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT CERTIFICATE

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.

Applicant

Shotgun Ranch LLC
2730 NW Nightfall
Bend, OR 97701

Findings of Fact

1. Shotgun Ranch LLC filed an application to transfer the point of diversion and place of use, under Certificate 515. The Department assigned the application number T-9908.
2. The portion of the right to be transferred is as follows:

Certificate: 515 in the name of L. H. Anderson
Use: Irrigation and stock
Priority Date: 1889 for waters of Shotgun Creek; 1903 for waters of Drake Creek (The source for this portion of the right is Shotgun Creek—see discussion in Findings of Fact #15 and #16 below.)
Quantity: 0.19 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 4.0 acre-feet per acre per year
Acres: 15.0
Source: Shotgun Creek, tributary to Crooked River

This is a final order 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 either 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:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	20	E	W.M.	9	SE NW	1940 feet S and 100 feet W from the N ¼ corner of Section 9

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
17	S	20	E	W.M.	4	SW SE	15.0

3. Application T-9908 proposes to move the authorized point of diversion for the above lands approximately 1/2 mile upstream in Shotgun Creek to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	20	E	W.M.	9	SW SW	2040 feet S and 920 feet E from the W ¼ corner of Section 9

4. Application T-9908 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Acres
17	S	20	E	W.M.	9	NE NW	0.8
17	S	20	E	W.M.	9	NW NW	12.3
17	S	20	E	W.M.	9	SW NW	1.9

5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. Notice of the preliminary determination for T-9908 was published on the Water Resources Department Weekly Public Notice on December 20, 2005. The notice was also published in the Central Oregonian newspaper on March 14, 21 and 28, 2006. No protests were received in response to the notice.
7. 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.
8. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.
11. Certificate 515 states the season of use to be from July 1st to September 15th of each year for irrigation, however, a handwritten note on the certificate states that the irrigation season is in error and should conform to the season as defined in the Crooked River Decree.

12. A correction certificate was filed March 22, 1915 by the Crook County Clerk to modify and amend the period of use in several certificates, including Certificate 515, so as to conform to the general findings of the State Water Board fixing the length of the irrigation season and annual duty of water. A copy of the document is filed adjacent to Certificate 845 in the State Record of Water Right Certificates Volume 1, page 845.
13. On January 19, 1968 the Water Resources Department noted in a memo that the July 1st to September 15th irrigation season limitation on the affected certificates refers only to a non-related contest in Finding of Fact No. 11, page 307 of the Crooked River Decree. The actual irrigation season as set forth at page 308 of the Findings recorded at Volume 1, page 303 of the decree is February 1st until December 1st of each year, and the use of the water, in accordance with said findings, is limited to four acre feet of water per acre during the irrigation season.

Partial Diminishment of Certificate 515

14. ORS 540.560 provides that the Water Resources Commission may issue an order clarifying and refining the description of the land to which a water right is appurtenant, if a certificate of water right does not identify the lands to which the right is appurtenant with sufficient specificity for management, delivery, or transfer of that right. Certificate 515 lists two sources, each with a separate priority date, but does not specify the lands under each source and priority date. Because of the topography of the area it appears that historically the lands under the right have been irrigated from only one source or the other. Pursuant to issuing an order clarifying the description of the lands to which the water right is appurtenant, the Department requested that the applicant submit affidavits of partial diminishment to limit the use of water to only one source on each portion of the lands, and to allocate the use of each source to specific portions of the lands.
15. The applicant submitted a revised map on August 19, 2005, and an affidavit on September 29, 2005, clarifying the allocation of the remaining lands to either of the two sources listed in Certificate 515. Upon issuance of an order approving transfer application T-9908, Certificate 515 will be cancelled and any superseding certificates issued for the right will specify the lands under each source and priority date as described below.

16. **Source:** Shotgun Creek, tributary to Crooked River
Priority Date: 1889
Quantity: 0.25 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 4.0 acre-feet per acre per year
Acres: 20.3

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	20	E	W.M.	9	SE NW	1940 feet S and 100 feet W from the N ¼ corner of Section 9

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
17	S	20	E	W.M.	4	NW SE	10.3
17	S	20	E	W.M.	4	SW SE	10.0

17. **Source:** Drake Creek, tributary to Crooked River
Priority Date: 1903
Quantity: 0.15 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 4.0 acre-feet per acre per year
Acres: 11.7

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	20	E	W.M.	10	NW SW	Ream Ditch

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
17	S	20	E	W.M.	4	NW SE	11.7

Partial Cancellation of Certificates 36980 and 515

18. 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 supplemental right under Certificate 36980 appurtenant to the lands proposed for transfer is not included in transfer application T-9908, and will be cancelled upon issuance of a final order approving T-9908, unless the applicant amends the application to include the supplemental rights in the transfer, or to withdraw those lands from the transfer.
19. The applicant has not submitted an affidavit certifying that affected portions of the supplemental water right under certificate 36980 have been abandoned. However, the transfer application includes a remark indicating that the applicant intends to cancel the portion of certificate 36980 associated with T-9908 upon issuance of the Final Order. Consistent with OAR 690-380-2250, the Department notified the applicant of the Department's intent to cancel the portions of the supplemental water rights described below unless within 30 days of the date of the notification the applicant modified the application to include the supplemental right or withdrew the application. No response to the notification was received.
20. **Certificate:** 36980 in the name of Clyde Wayland
Use: Supplemental Irrigation
Priority Date: May 23, 1961
Quantity: 0.19 cfs
Rate/Duty: 1/80 cfs per acre, not to exceed 4.0 acre-feet per acre per year
Acres: 15.0
Source: Crooked River, tributary to the Deschutes River

Authorized Point of Diversion:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
17	S	20	E	W.M.	4	NW SE	2480 feet N and 950 feet W from the SE Corner, SW ¼ SE ¼, Section 4

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
17	S	20	E	W.M.	4	SW SE	15.0

21. On June 21, 2006 the applicant submitted an affidavit of partial cancellation for the associated domestic use appurtenant to the lands listed in Finding of Fact #2, from which the irrigation and stock use are being transferred. No quantity of water is associated with the domestic use that is being cancelled.

Conclusions of Law

The changes in point of diversion and place of use proposed in application T-9908 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

The portions of the rights listed in Findings of Fact #21 and #22 have been abandoned pursuant to ORS 540.510(1) and OAR 690-380-2250(5).

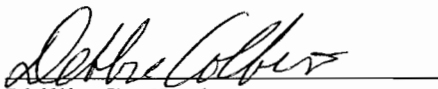
The water right holder has submitted sufficient information to clarify the description of a water right as per ORS 540.560.

Now, therefore, it is ORDERED:

1. The changes in point of diversion and place of use proposed in application T-9908 are approved.
2. Water right certificate 515 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer, correcting the season of use to the period February 1 to December 1 of each year, and stating that the annual duty of water during the irrigation season is limited to four acre-feet of water per acre per year.
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 515 and any related decree as clarified herein.
4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.

5. 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.
6. The former place of use of the transferred water shall no longer be irrigated as part of this water right.
7. 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.
8. Superseding certificates for the right will correct the season of use and clarify the lands to be irrigated from each source of water.
9. The portion of the water right for supplemental irrigation under Certificate 36980 appurtenant to the lands identified in Finding of Fact #21 is cancelled.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the transferred portion of the right will be issued.

Dated at Salem, Oregon this 22nd day of June, 2006.


Phillip C. Ward

for Director

Mailing Date: JUL 11 2006