

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-11750, Crook County	)	CHANGE IN POINT OF DIVERSION,
	)	ADDITIONAL POINTS OF DIVERSION,
	)	CHANGE IN PLACE OF USE AND
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

**Authority**

Oregon Revised Statute (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. Oregon Administrative Rule (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**

SHOTGUN RANCH, LLC  
ATTN: CALVIN CANNON  
2730 NW NIGHTFALL CIRCLE  
BEND, OR 97701

**Findings of Fact**

1. On February 24, 2014, SHOTGUN RANCH, LLC. by CAL CANNON filed an application for additional points of diversion and to change the place of use under Certificates 649, 10844, and 81673 and to change the point of diversion under Certificate 81673. The Department assigned the application number T-11750.
2. Notice of the application for transfer was published on March 4, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 17, 2014, the Department contacted Schwabe, Williamson and Wyatt, the applicant’s agent, by written correspondence to notify the applicant’s agent of deficiencies in the application. Clarification was requested regarding the type of change being made to each certificate and whether the domestic and livestock were being moved with the

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.

irrigation where applicable. In addition, there were a few discrepancies between the application and map and a certificate and map. The Department requested that the deficiencies be resolved by July 17, 2014. On July 17, 2014, the Department received a response resolving the issues raised in the June 17, 2014, deficiency correspondence.

4. On July 24, 2014, the Department contacted Schwabe, Williamson and Wyatt, the applicant's agent, by email to notify the applicant's agent of an issue with the application, that being that there is a supplemental irrigation right on a portion of the land to be transferred and the applicant needs to decide how they wish to address that. The Department requested that the issue be resolved by August 25, 2014. On August 21, 2014, the Department received an "Affidavit for the Partial Cancellation of a Water Right Certificate", resolving the issue raised in the July 24, 2014, correspondence.
5. On August 26, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11750 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 26, 2014, for the applicant to respond. On September 29, 2014, the applicant's agent submitted comments on the draft Preliminary Determination and requested that the Department proceed with issuance of a Preliminary Determination after their comments were incorporated.
6. On October 8, 2014, the Department contacted Schwabe, Williamson and Wyatt, the applicant's agent, by telephone to discuss some of their comments regarding the draft Preliminary Determination and additional changes to the draft Preliminary Determination.
7. On October 6 and 9, 2014, the applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
8. On October 13, 2014, the Department sent a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-11750 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of November 13, 2014, for the applicant to respond. On October 17, 2014, the applicant requested that the Department proceed with issuance of a Preliminary Determination upon two minor changes being made to the draft Preliminary Determination.
9. On November 19, 2014, the Department sent a copy of the Preliminary Determination proposing to approve Transfer Application T-11750 to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on November 25, 2014, and in the Bend Bulletin newspaper on November 22, and November 29, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. The portion of the first right to be transferred is as follows:

**Certificate:** 649 in the name of C. L. REAM (confirmed by Crooked River Decree)  
**Use:** IRRIGATION of 42.0 ACRES OF LAND AND STOCK USE  
**Priority Date:** 1888

**Rate:** A REASONABLE AMOUNT FOR STOCK USE AND 53/100 CUBIC FOOT PER SECOND FROM \*FEBRUARY 1<sup>ST</sup> TO DECEMBER 1<sup>ST</sup> OF EACH YEAR FOR IRRIGATION.

**Source:** DRAKE CREEK, a tributary of CROOKED RIVER

**Authorized Place of Use:**

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SE NE	10.0
17 S	20 E	WM	4	NE SE	20.0
17 S	20 E	WM	4	SE SE	12.0
Total:					42.0

11. Certificate 649 does not describe the location of the point of diversion, however information is available from the applicant and CWRE indicating that the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	NW SW	DRAKE CREEK/REAM DITCH: 220 FEET SOUTH AND 260 FEET EAST FROM THE W 1/4 CORNER OF SECTION 10

12. The applicant proposes an additional point of diversion approximately 0.4 mile upstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	SW SW	DRAKE CREEK: 90 FEET NORTH AND 670 FEET EAST FROM THE SW CORNER OF SECTION 10

13. The applicant proposes to change the place of use to:

IRRIGATION AND STOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	3	SW SW	6.2
17 S	20 E	WM	4	NE SE	1.0
17 S	20 E	WM	4	SE SE	30.4
17 S	20 E	WM	9	NE NE	4.2
17 S	20 E	WM	10	NW NW	0.2
Total:					42.0

14. Based upon the Crooked River Decree, the rate of water associated with Certificate 649 shall be 1/80 of a second foot per acre.
15. Based upon the Crooked River Decree, the duty of water associated with Certificate 649 shall not exceed 4.0 acre feet per acre per year.
16. \*Based upon the Crooked River Decree and the "Correction Certificate of Water Right" issued by the State Water Board and filed in the records of the Crook County Clerk's office March 22, 1915, the period of use for irrigation for Certificate 649 is February 1<sup>st</sup> to December 1<sup>st</sup>.

17. Based upon the Crooked River Decree, the period of use associated with Certificate 649 for stock purposes shall continue throughout the year.

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

**Certificate:** 10844 in the name of C. L. REAM (perfected under Permit S-3356)  
**Use:** IRRIGATION of 41.0 ACRES  
**Priority Date:** APRIL 9, 1917  
**Rate:** 0.52 CUBIC FOOT PER SECOND  
**Limit:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre.  
**Source:** DRAKE CREEK and REAM'S RESERVOIR, to be constructed under Permit No. R-398, a tributary of CROOKED RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q
17 S	20 E	WM	10	SW NW

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SW NE	8.0
17 S	20 E	WM	4	NE SE	5.0
17 S	20 E	WM	4	SE SE	28.0
Total:					41.0

19. Information is available from the applicant and CWRE that more accurately describes the point of diversion for Certificate 10844 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	NW SW	DRAKE CREEK/REAM DITCH - 220 FEET SOUTH AND 260 FEET EAST FROM THE W 1/4 CORNER OF SECTION 10

20. The applicant proposes an additional point of diversion on Drake Creek approximately 0.4 mile upstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	SW SW	DRAKE CREEK: 90 FEET NORTH AND 670 FEET EAST FROM THE SW CORNER OF SECTION 10

21. The applicant proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	SW NE	1.0
17 S	20 E	WM	4	SE NE	16.0
17 S	20 E	WM	4	NE SE	9.1

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	NW SE	14.9
Total:					41.0

22. Based upon the Crooked River Decree, the rate of water associated with Certificate 10844 shall be 1/80 of a second foot per acre.
23. Based upon the Crooked River Decree, the duty of water associated with Certificate 10844 shall not exceed 4.0 acre feet per acre per year.
24. Based upon the Crooked River Decree, the period of use for irrigation for Certificate 10844 is February 1<sup>st</sup> to December 1<sup>st</sup>.
25. The portion of the third right to be transferred is as follows:

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

**Use:** IRRIGATION of 22.0 ACRES AND STOCK USE

**Priority Date:** 1889 for the waters of Shotgun Creek  
1903 for the waters of Drake Creek

**Rate:** 0.13 CUBIC FOOT PER SECOND FROM SHOTGUN CREEK AND 0.15 CUBIC FOOT PER SECOND FROM DRAKE CREEK

**Period of Use:** FEBRUARY 1<sup>st</sup> TO DECEMBER 1<sup>st</sup> FOR IRRIGATION

**Source:** SHOTGUN CREEK and DRAKE CREEK, tributaries of CROOKED RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	9	SE NW	SHOTGUN CREEK - 1940 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 9
17 S	20 E	WM	10	NW SW	DRAKE CREEK - REAM DITCH

**Authorized Place of Use:**

IRRIGATION AND STOCK						
Twp	Rng	Mer	Sec	Q-Q	Acres	Source
17 S	20 E	WM	4	NW SE	10.3	Shotgun Creek
17 S	20 E	WM	4	NW SE	11.7	Drake Creek
Total:					22.0	

26. The applicant proposes to move the authorized point of diversion for Shotgun Creek approximately 0.6 of a mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	9	SW SW	SHOTGUN CREEK: 2040 FEET SOUTH AND 920 FEET EAST FROM THE W1/4 CORNER OF SECTION 9

27. The applicant proposes an additional point of diversion on Drake Creek approximately 0.4 of a mile upstream at the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	20 E	WM	10	SW SW	DRAKE CREEK - 90 FEET NORTH AND 670 FEET EAST FROM THE SW CORNER OF SECTION 10

28. The applicant proposes to change the place of use to:

IRRIGATION AND STOCK							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Source
17 S	20 E	WM	8	NW NW	800	4.8	Shotgun Creek
17 S	20 E	WM	9	NE NW	800	1.1	Shotgun Creek
17 S	20 E	WM	9	NW NW	800	4.4	Shotgun Creek
17 S	20 E	WM	4	NE SE	600	11.7	Drake Creek
Total:						22.0	

29. Based upon the Crooked River Decree, the period of use for stock use continues throughout the year.
30. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new points of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

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

31. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
32. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11750.
33. The proposed changes would not result in enlargement of the rights.
34. The proposed changes would not result in injury to other water rights.

**Partial Cancellation of a Water Right**

35. There is an existing supplemental right, Certificate 84197, appurtenant to a portion of the lands on Certificate 81673 which are proposed to be transferred.
36. On August 21, 2014, Calvin J. Cannon, on behalf of Shotgun Creek Ranch LLC, submitted an affidavit authorizing partial cancellation of Certificate 84197, thus resolving the conflict.
37. The portion of the right to be cancelled is as follows:

**Certificate:** 84197 in the name of CLYDE WAYLAND  
**Use:** SUPPLEMENTAL IRRIGATION OF 21.8 ACRES

**Priority Date:** MAY 23, 1961  
**Rate:** 0.28 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** CROOKED RIVER, tributary to the DESCHUTES RIVER

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	20 E	WM	4	NW SE	21.8

**Conclusion of Law**

The change in point of diversion, additional points of diversion and change in place of use proposed in Transfer Application T-11750 are 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, additional points of diversion and change in place of use proposed in Transfer Application T-11750 are approved. The portion of the right that has been abandoned is cancelled.
2. 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 649, 10844, and 81673, and any related decree.
3. Water Right Certificates 649, 10844, 81673, and 84197 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer and cancellation.
4. The quantity of water diverted at the new and additional points of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. Water use measurement conditions:
  - A **Before water use may begin** under this order, the water user shall install a weir, or, with prior approval of the Director, another suitable measuring device, at each new point of diversion.
  - b. The water user shall maintain the meters or measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located

within a private structure, the Watermaster shall request access upon reasonable notice.

6. The water user shall operate and maintain an approved fish screen at the new points of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
9. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 31 day of December, 2014.

  
\_\_\_\_\_  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: JAN 08 2015