

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11209, Crook County)	PROPOSING APPROVAL OF
)	CHANGES IN PLACE OF USE

Authority

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

RANCE AND NANCY KASTOR
21202 SE PINE CREEK RD
POST, OR 97752

Receiving Landowner

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

Findings of Fact

Background

1. On March 11, 2011, RANCE AND NANCY KASTOR filed an application to change the change the place of use under Certificates 524 and 31943. The Department assigned the application number T-11209.
2. The first right to be transferred is as follows:

Certificate: 524 in the name of R. BOOTEN and R. H. BOOTEN (confirmed by Crooked River Decree)
Use: IRRIGATION OF 30.0 ACRES, DOMESTIC AND STOCK USE
Priority Date: 1890
Rate: 0.38 CUBIC FOOT PER SECOND
Period of Use: JULY 1 TO SEPTEMBER 15 FOR IRRIGATION
Source: PINE CREEK, tributary to the CROOKED RIVER

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
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Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	SW NE	10.0
17 S	19 E	WM	12	NW SE	10.0
17 S	19 E	WM	12	SW SE	10.0
Total					30.0

3. The irrigation season described in Certificate 524 is not consistent with that specified in the Crooked River Decree issued on April 13, 1914. The correct irrigation season should be listed as February 1 to December 1.
4. Certificate 524 does not describe the duty of the right, however information is available from Finding of Fact XVII of the Order of Determination of the State Engineer filed on January 16, 1914, indicating that the duty allowed for the right is 4.0 acre feet per acre under terms and conditions contained in the Crooked River Decree issued on April 13, 1914.
5. Certificate 524 does not describe the point of diversion. The Crooked River Decree lists the point of diversion as Plummer Ditch. However, information is available from the Certified Water Right Examiner that indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	19 E	WM	13	NW NE	1290 FEET SOUTH AND 260 FEET EAST FROM THE N¼ CORNER OF SECTION 13

6. Transfer Application T-11209 proposes to change the place of use of the right to:

IRRIGATION, DOMESTIC AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	NW NE	3.9
17 S	19 E	WM	12	SW NE	1.6
17 S	19 E	WM	12	SE NE	15.2
17 S	19 E	WM	12	NW SE	8.6
17 S	19 E	WM	12	SW SE	0.7
Total					30.0

7. The portion of the second right to be transferred is as follows:
 - Certificate:** 31943 in the names of N. L., PHILLIP AND NORM WEIGAND (perfected under Permit S-19151)
 - Use:** IRRIGATION OF 31.6 ACRES AND SUPPLEMENTAL IRRIGATION OF 20.7 ACRES
 - Priority Date:** OCTOBER 24, 1949
 - Rate:** 1.31 CUBIC FEET 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, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated from direct flow and shall be further limited to a diversion not to exceed 4.0 acre feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage from reservoir constructed

under Permit R-1001, and shall be still further limited to the use of stored water only on lands described as supplemental

Sources: PINE CREEK AND A RESERVOIR (constructed under Permit R-1001), tributaries to the CROOKED RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
17 S	19 E	WM	12	SE NE
17 S	19 E	WM	12	NE SE
17 S	19 E	WM	12	NW SE
17 S	19 E	WM	12	SW SE
17 S	19 E	WM	13	NW NE
17 S	19 E	WM	13	SW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	SE NE	13.9
17 S	19 E	WM	12	SE SW	1.6
17 S	19 E	WM	12	NE SE	3.0
17 S	19 E	WM	12	NW SE	7.6
17 S	19 E	WM	12	SW SE	2.1
17 S	19 E	WM	13	NW NE	1.6
17 S	19 E	WM	13	NE NW	1.8
Total					31.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	SW NE	0.7
17 S	19 E	WM	12	NW SE	10.0
17 S	19 E	WM	12	SW SE	10.0
Total					20.7

8. Transfer Application T-11209 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	NE NE	13.2
17 S	19 E	WM	12	NW NE	9.1
17 S	19 E	WM	12	SW SE	9.3
Total					31.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	19 E	WM	12	NW NE	3.9
17 S	19 E	WM	12	SW NE	1.6
17 S	19 E	WM	12	SE NE	15.2
Total					20.7

9. Notice of the application for transfer was published on March 22, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. On April 29, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11209 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 30, 2011, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.

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

11. 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.
12. 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-11209.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

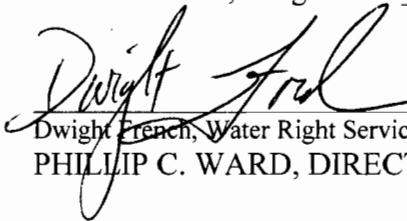
The changes in place of use proposed in Transfer Application T-11209 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11209 is approved, the final order will include the following:

1. *The changes in place of use proposed in Transfer Application T-11209 are approved.*
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 524 and 31943 and any related decree.*
3. *Water right certificates 524 and 31943 are cancelled. A new certificate will be issued describing that portion of the Certificate 31943 not affected by this transfer.*
4. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*

5. *When required by the Department, the water user shall install, maintain and operate 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.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.*
8. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 24 day of May 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Teri Hranac. If you have questions about the information in this document, you may reach me at 503-986-0881 or Teri.K.Hranac@wrds.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

**Notice of Preliminary Determination for
Water Right Transfer T-11209**

T-11209 filed by Rance and Nancy Kastor, 21202 SE Pine Creek Rd., Post, OR 97752, proposes changes in place of use under Certificates 524 and 31943. Certificate 524 allows the use of 0.38 cubic foot per second (cfs) (priority date 1890) from Pine Creek in Sec. 13, T 17 S, R 19 E, W.M. for irrigation, domestic and stock uses in Sec. 12, T 17 S, R 19 E, W.M. Certificate 31943 allows the use of 1.31 cfs (priority date October 24, 1949) from Pine Creek and a reservoir (constructed under Permit R-1001) in Sects. 12 and 13, T 17 S, R 19 E, W.M. for irrigation and supplemental irrigation in Sects. 12 and 13, T 17 S, R 19 E, W.M. The applicant proposes to change the place of use of both rights within Sects. 12 and 13, T 17 S, R 19 E, W.M. The Water Resources Department has concluded that the proposed transfer appears to be consistent with the requirements of ORS Chapter 540 and OAR 690-380-5000.