

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-13118, Wheeler County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION,
	)	A CHANGE IN PLACE OF USE, AND
	)	PARTIAL CANCELLATION OF A
	)	WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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 Rules (OAR) Chapter 690, Division 380 implement 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

SIX SHOOTER RANCH, LLC
2357 HILLSIDE ROAD
RICHFIELD, WISCONSIN 53076

Agent

TENNESON ENGINEERING CORPORATION
ATTN: LARRY TOLL
3775 CRATES WAY
THE DALLES, OR 97058

Findings of Fact

1. On February 4, 2019, Six Shooter Ranch, LLC, filed an application for an additional point of diversion, and to change the place of use under Certificate 25796. The Department assigned the application number T-13118.
2. On February 4, 2019, Six Shooter Ranch, LLC, also submitted a voluntary cancellation affidavit for the cancellation of a portion of Certificate 25796 and is further described below in Finding #14.
3. Notice of the application for transfer was published on February 12, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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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4. On April 30, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13118 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 30, 2020, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
5. The right to be transferred is as follows:

Certificate: 25796 in the name of E. R. SHOWN (confirmed by John Day River (F))

Use: IRRIGATION of 5.8 ACRES

Priority Date: 1869

Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30, measured at the point of diversion

Source: Spring in NW¼ NE¼, Section 9, T11S, R22E, W.M., and GIRDS CREEK

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
11 S	22 E	WM	4	SW SW	4.1
11 S	22 E	WM	4	SE SW	1.7
Total					5.8

6. Certificate 25796 does not describe the location of the points of diversion, however information is available from the John Day River Decree and associated adjudication map, and from the current map prepared by the applicant's Certified Water Rights Examiner (CWRE) indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
11 S	22 E	WM	4	SE SW	GIRDS CREEK POD - 326 FEET NORTH AND 2240 FEET EAST FROM THE SW CORNER OF SECTION 4
11 S	22 E	WM	9	NW NE	SPRING POD - 140 FEET SOUTH AND 3110 FEET EAST FROM THE SW CORNER OF SECTION 4

7. Transfer Application T-13118 proposes to change the place of use of the above described right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
11 S	22 E	WM	4	SW SW	0.1
11 S	22 E	WM	4	SE SW	4.1
11 S	22 E	WM	9	NE NW	1.5
11 S	22 E	WM	9	NW NW	0.1
Total					5.8

8. Transfer Application T-13118 also proposes to add an additional point of diversion for the entire 5.8 acres downstream approximately 600 feet from original Girds Creek POD to:

Twsp	Rng	Mer	Sec	Q - Q	Measured Distances
11 S	22 E	WM	4	SE SW	ADDITIONAL DIVERSION - 367 FEET NORTH AND 1637 FEET EAST FROM THE SW CORNER OF SECTION 4

9. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

10. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. Other than the small abandoned portion addressed in Finding #14 below, there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A combination of diversion structure, pump and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13118.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.
14. All other application requirements are met.

Partial Cancellation of a Water Right

15. On February 4, 2019, the applicant submitted an affidavit meeting the requirements of ORS 540.621 for the partial cancellation of water right Certificate 25796. The applicant has abandoned any and all interest in this portion of the water right for primary irrigation and is described as follows:

Certificate: 25796 in the name of E. R. SHOWN (confirmed by John Day River (F))
Use: IRRIGATION of 1.0 ACRE
Priority Date: 1869
Limit/Duty: The amount of water to which such right is entitled, for the purpose of irrigation, is limited to an amount actually beneficially used for said purposes, and shall not exceed ONE-FORTIETH of one cubic foot per second per acre irrigated to June 1 and ONE-EIGHTIETH of one cubic foot per second per acre thereafter; further limited to 1.0 acre-foot per calendar month to June 1 and 4.0 acre-feet per acre during season April 1 to September 30, measured at the point of diversion
Source: Spring in NW¼ NE¼, Section 9, T11S, R22E, W.M., and Girds Creek, tributary of JOHN DAY RIVER

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
11 S	22 E	WM	4	SW SW	0.4
11 S	22 E	WM	4	SE SW	0.6
				Total	1.0

Determination and Proposed Action

The change in place of use and additional point of diversion proposed in Transfer Application T-13118 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

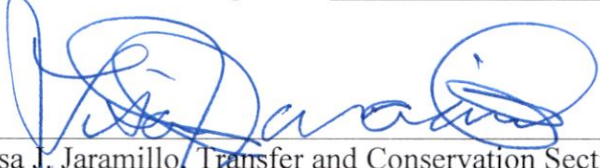
If Transfer Application T-13118 is approved, the final order will include the following:

- 1. The change in place of use and additional point of diversion proposed in Transfer Application T-13118 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 Certificate 25796 and any related decree.*
- 3. Water right Certificate 25796 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
- 4. The quantity of water diverted at the new additional point of diversion (Additional Diversion), together with that diverted at the original points of diversion (Spring POD and Girds Creek POD), shall not exceed the quantity of water lawfully available at the original points of diversion (Spring POD and Girds Creek POD).*
- 5. The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to ODFW's operational and maintenance standards. If 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.*
- 6. The former place of use of the transferred right shall no longer receive water under the right.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

JUL 08 2020

Dated at Salem, Oregon this _____.



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Ken Dowden. T-13318 has been assigned to Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

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

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

July 8 , 2020

SIX SHOOTER RANCH, LLC
2357 HILLSIDE ROAD
RICHFIELD, WISCONSIN 53076

SUBJECT: Water Right Transfer Application T-13118

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13118. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane".

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13118
Kenneth C. Thiemann, District 21 Watermaster (*via e-mail*)
Larry M. Toll, Agent for the applicant (*via e-mail*)

encs