

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A CHANGE
T-13224, Jackson County)	IN POINT OF DIVERSION TO REFLECT
)	HISTORIC USE

Authority

ORS 540.532 establishes the process in which a water right holder may submit a request for a change in point of diversion to reflect historical use under an existing water right. OAR Chapter 690-380-2120 implements the statute and provides the Department's procedures and criteria for evaluating historic point of diversion/appropriation transfer applications.

Applicant

EARNEST AND JEANIE JOHNSON
PO BOX 1471
ROGUE RIVER, OR 97537

Findings of Fact

1. On July 18, 2019, EARNEST AND JEANIE JOHNSON filed a transfer application for authorization of an historic point of diversion under Certificate 48244. The Department assigned the application number T-13224.
2. Notice of the application for transfer was published on July 23, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 12, 2020, the Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The application was not signed by both applicants. The Department requested that the deficiency be resolved by March 16, 2020.
4. On March 11, 2020, the applicant submitted a revised page 3 of the application, containing the signature of both applicants, resolving the deficiency.

<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>

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

Certificate: 48244 in the name of W. D. HODGSON, HOTEL AUSTIN BLOCK ASHLAND, OREGON AND R. L. MCBRIDE (perfected under Permit S-807)

Use: IRRIGATION of 2.5 ACRES

Priority Date: AUGUST 25, 1911

Rate: 0.031 CUBIC FOOT PER SECOND, if available at the original point of diversion; Hodgson and McBride Ditch

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-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre feet per acre for each acre irrigated during the irrigation season of each year.

Source: ROGUE RIVER, a tributary of PACIFIC OCEAN

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	4 W	WM	21	SW NW	POD 1 – NONE GIVEN

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
36 S	4 W	WM	21	SW NW	40	2.5

6. Certificate 48244 does not describe the measured distances for the location of the authorized point of diversion. Department records for Certificate 48244 do identify the location as being near the NE corner of DLC 40.
7. Transfer Application T-13224 proposes to move the authorized point of diversion to reflect historical use to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of diversion in miles (mi.)
36 S	4 W	WM	21	SW NW	POD 2 - 846 FEET NORTH AND 1976 FEET WEST FROM THE C1/4 CORNER OF SECTION 21	0.7 mi. downstream

8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an approved fish screen.

Transfer Review Criteria (ORS 540.532 and OAR 690-380-2120)

9. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current point of diversion for the water right in question, as described in Finding No. 7, has been in use for more than 10 years.
10. Pursuant to OAR 690-380-2120(2)(c), the Watermaster provided a statement that to his knowledge there has been no complaint of injury due to the use of water at the actual, current point of diversion, prior to the transfer request.
11. Pursuant to OAR 690-380-2120(3), the Department provided the applicant a list of the affected water rights and a copy of the notice to be provided to each affected water right holder. The applicant has provided written proof of service of notice of the proposed transfer on all affected water right holders.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed change in point of diversion to reflect historical use in application T-13224 is consistent with the requirements of ORS 540.532, and OAR 690-380-2120.

Now, therefore, it is ORDERED:

1. The change proposed in T-13224 is approved and effective immediately.
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 48244 and any related decree.
3. Water right certificate 48244 is cancelled. Certificate 94988 will be issued to describe the change in point of diversion for the portion of the right included in T-13224. Certificate 94989 shall be issued to describe the portion of Certificate 48244 not modified by this order. Together, the new Certificates shall supersede Certificate 48244.
4. The quantity of water diverted at the new point of diversion (POD 2) shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).

5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a weir or parshall flume, 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. Prior to October 1, 2021, 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.

Dated in Salem, Oregon on **JUN 30 2020**



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

Mailing date: **JUL 01 2020**