

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

In the Matter of Transfer Application)
T-12904, Wallowa County)
)
) FINAL ORDER APPROVING A CHANGE
) 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

DAVID AND MARIANNE YOST
65013 KLAGES ROAD
ENTERPRISE, OR 97828
daveyost55@gmail.com

Findings of Fact

1. On April 17, 2018, DAVID AND MARIANNE YOST, filed a transfer application for authorization of an historic point of diversion under Certificate 3188. The Department assigned the application number T-12904.
2. Notice of the application for transfer was published on April 24, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the right to be transferred is as follows:
Certificate: 3188 in the name of MRS J. B. WILLIAMSON (confirmed by Wallowa River Decree)
Use: IRRIGATION of 12.4 ACRES, DOMESTIC AND STOCK USE
Priority Date: 1881
Limit/Duty: The amount of water to which such right is entitled and hereby confirmed for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1.5 acre feet per acre during any

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.

period of 30 days prior to July 31st of each year, and thereafter not to exceed 1.0 acre foot per acre during the entire remainder of the irrigation season.
Source: SOUTH FORK OF THE WALLOWA RIVER, a tributary of WALLOWA RIVER

Authorized Place of Use:

IRRIGATION, DOMESTIC AND STOCK USE					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	43 E	WM	15	SW NE	12.4

4. Certificate 3188 does not describe the location of the point of diversion, however information is available from the Wallowa River Decree and the Watermaster site visit indicating the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
1 S	43 E	WM	22	NE NW	Bowman Ditch

5. Transfer Application T-12904 proposes to move the authorized point of diversion approximately 600 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	Ditch Name
1 S	43 E	WM	22	NW NE	LOSTINE CITY DITCH

6. The Oregon Department of Fish and Wildlife 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 appropriate fish screen. ODFW currently operates and maintains the fish screen.

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

7. 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. 3, has been in use for more than 10 years.
8. 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.
9. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
10. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed change would not result in enlargement of the right.

13. The proposed change would not result in injury to other water rights.

Conclusions of Law

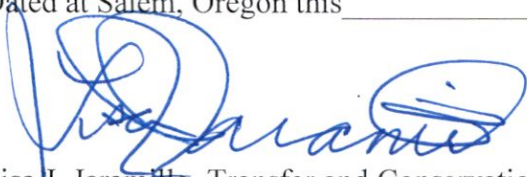
The proposed change in point of diversion to reflect historical use in application T-12904 is consistent with the requirements of ORS 540.532 and OAR 690-380-2120.

Now, therefore, it is ORDERED:

1. The change proposed in T-12904 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 3188 and any related decree.
3. Water right certificate 3188 is cancelled. Certificate 94889 will be issued to describe the change in point of diversion for the portion of the right included in T-12904. Certificate 94888 shall be issued to describe the portion of Certificate 3188 not modified by this order. Together, the new Certificates shall supersede Certificate 3188.
4. 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.
5. Prior to October 1, 2021, the water user shall install and maintain a headgate.
6. Prior to October 1, 2021, the water user shall install and maintain a parshall flume 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.
7. 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.

FEB 24 2020

Dated at Salem, Oregon this _____.



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

FEB 25 2020

Mailing date: _____