

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-13117, 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

BRYAN DOTY
2816 UPPER APPLGATE RD.
JACKSONVILLE, OR 97530

Agent

GAIL GRAHAM
338 SCENIC DRIVE
ASHLAND, OR 97520

Findings of Fact

1. On February 1, 2019, Bryan Doty filed a transfer application for authorization of an historic point of diversion under Certificate 80955. The Department assigned the application number T-13117.
2. 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.
3. The portion of the right to be transferred is as follows:

Certificate: 80955 in the name of E J. CAMERON (confirmed by Rogue River Decree of the Circuit Court of the State of Oregon for Jackson County)
Use: IRRIGATION of 6.12 ACRES
Priority Date: 1854
Rate: 0.174 CUBIC FOOT PER SECOND
Source: LITTLE APPLGATE RIVER, tributary to the APPLGATE RIVER

Authorized Point of Diversion

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
39 S	3 W	WM	11	SW SE	DAVIDSON DITCH - NORTH 39 DEGREES 02 MINUTES EAST, 1184 FEET FROM THE S¼ CORNER OF SECTION 11

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.

Authorized Place of Use:

Twtp	Rng	Mer	Sec	Q - Q	Acres
39 S	3 W	WM	3	SE SW	6.12

4. Transfer Application T-13117 proposes to move the authorized point of diversion for the above described right downstream approximately 8000 feet on the Little Applegate River, then approximately 965 feet downstream on the Applegate River to a diversion located:

Twtp	Rng	Mer	Sec	Q - Q	Measured Distance
39 S	3 W	WM	3	SE SW	POD 1 - 650 FEET NORTH AND 500 FEET WEST FROM THE S1/4 CORNER OF SECTION 3

5. 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 not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

6. 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. 4, has been in use for more than 10 years.
7. 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.
8. 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.
9. 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.
10. A diversion structure, pump and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
11. The proposed change would not result in enlargement of the right.
12. 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-13117 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-13117 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 80955 and any related decree.
3. Water right certificate 80955 is cancelled. Certificate 95142 will be issued to describe the change in point of diversion for the right included in T-13117. Certificate 95143 shall be issued to describe the portion of Certificate 80955 not modified by this order. Together, the new certificates shall supersede Certificate 80955.
4. The quantity of water diverted at the new point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (Davidson Ditch).
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at the new point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with 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.

Dated at Salem, Oregon this AUG 10 2020 ,



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

Mailing date: **AUG 11 2020**