

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A CHANGE
T-13410, Wallowa 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**

KATHLEEN HANNA  
541 NE GOLDIE DRIVE  
HILLSBORO, OR 97124

**Findings of Fact**

1. On April 10, 2020, KATHLEEN HANNA filed a transfer application for authorization of an historic point of diversion under Certificate 13704. The Department assigned the application number T-13410.
2. Notice of the application for transfer was published on April 28, 2020, 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:** 13704 in the name of J. PERCY STEARNS, ASA P. CRAIG, W. F. CRAIG, and MRS. L. P. McCUBBIN (perfected under Permit S-12011)
  - Use:** IRRIGATION of 1.0 ACRE
  - Priority Date:** DECEMBER 20, 1935
  - Rate:** 0.01 CUBIC FOOT 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-sixtieth 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 1 acre foot per acre for each acre irrigated during any 30 day period from May 1.0

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.

to July 31, and thereafter shall be limited to a diversion of not to exceed 1.0 acre foot per acre for each acre irrigated during the remainder of the irrigation season ending October 1.

**Source:** SPRING CREEK, tributary of PRAIRIE CREEK, a tributary of WALLOWA RIVER

**Authorized Point of Diversion**

Twp	Rng	Mer	Sec	Q - Q
2 S	45 E	WM	7	SE SE

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
2 S	45 E	WM	6	SW SW	1.0

- The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 13704 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	45 E	WM	7	SE SE	POD 1 - 600 FEET NORTH AND 1300 FEET WEST FROM THE SE CORNER OF SECTION 7

- Transfer Application T-13410 proposes to move the authorized point of diversion to reflect historical use, approximately 1.4 miles downstream to a diversion located:

Twp	Rng	Mer	Sec	Q - Q	Measured Distance
2 S	45 E	WM	6	SW SW	POD 2 - 10 FEET NORTH AND 360 FEET EAST FROM THE SW CORNER OF SECTION 6

- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

- 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. 5, has been in use for more than 10 years.
- 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.
- 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.

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, pump and sprinkler system 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**

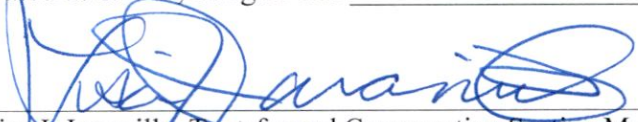
The proposed change in point of diversion to reflect historical use in application T-13410 is consistent with the requirements of ORS 540.532 and OAR 690-380-2120.

#### **Now, therefore, it is ORDERED:**

1. The change proposed in T-13410 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 13704 and any related decree.
3. Water right certificate 13704 is cancelled. Certificate 95356 will be issued to describe the change in point of diversion for the right included in T-13410. Certificate 95357 shall be issued to describe the portion of Certificate 13704 not modified by this order. Together, the new certificates shall supersede Certificate 13704.
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. Prior to October 1, 2022, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.

Dated at Salem, Oregon this FEB 02 2021,



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

Mailing date: **FEB 03 2021**