

5. On March 10, 2020, the Department contacted the applicant by written correspondence to notify the applicant the Land Use Information form still needed to be submitted. The Department requested that the deficiency be resolved by March 23, 2020. On behalf of the applicant, the District 7 Watermaster submitted a revised Land Use Information form, resolving the deficiencies.

6. The first right to be transferred is as follows:

Certificate: 34404 in the name of LORA E. MAWHIN and LEON MAWHIN (perfected under Permit S-30157)

Use: IRRIGATION of 11.42 ACRES

Priority Date: DECEMBER 7, 1964

Rate: 0.29 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 a diversion of ONE-FORTIETH 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 3.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: SPRING CREEK, a tributary of WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	11	NE SW	JORDAN DITCHES – 2820 FEET SOUTH AND 360 FEET WEST FROM THE N1/4 CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	11	NE NW	11.42

7. Transfer Application T-13289 proposes an additional point of diversion approximately 0.7 mile downstream to reflect historical use to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	11	NE NW	COX 2 - 81 FEET SOUTH AND 700 FEET WEST FROM THE N1/4 CORNER OF SECTION 11

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

Certificate: 83405 in the name of V.A. WAGNER and K.S. FRANCIS (perfected under Permit S-6925)

Use: IRRIGATION of 7.8 ACRES

Priority Date: OCTOBER 1, 1925

Rate: 0.10 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, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated. The use shall conform to such reasonable rotation system as may be ordered by the proper state officer. The right to the use of the water

for the above purpose is restricted to beneficial use on the lands or place of use described.

Source: HURRICANE CREEK AND TWO SPRING CREEKS, tributaries to WALLOWA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
<i>Not specified in certificate</i>				

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	44 E	WM	11	NE NW	7.8

9. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 83405 as follows:

Twp	Rng	Mer	Sec	Q-Q	Ditch
2 S	44 E	WM	11	SE SW	JORDAN DITCHES

10. Transfer Application T-13289 proposes an additional point of diversion approximately 0.7 mile downstream to reflect historical use to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	44 E	WM	11	NE NW	COX 1 - 59 FEET SOUTH AND 727 FEET WEST FROM THE N1/4 CORNER OF SECTION 11

11. 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)

12. Pursuant to OAR 690-380-2120(2)(a), evidence has been submitted that the actual, current points of diversion for the water rights in question, as described in Finding Nos. 6 and 8, have been in use for more than 10 years.
13. 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 points of diversion, prior to the transfer request.
14. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
15. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

16. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Conclusions of Law

The proposed additional points of diversion to reflect historical use in application T-13289 are consistent with the requirements of ORS 540.532, and OAR 690-380-2120

Now, therefore, it is ORDERED:

1. The change proposed in T-13289 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 Certificates 34404 and 83405, and any related decree.
3. Water right certificates 34404 and 83405 are cancelled. Certificate 94978 will be issued to describe the additional point of diversion for Certificate 34404 included in T-13289. Certificate 94979 will be issued to describe the additional point of diversion for the portion of Certificate 83405 included in T-13289. Certificate 94980 shall be issued to describe the portion of Certificate 83405 not modified by this order. Together, the new Certificates shall supersede Certificates 34404 and 83405.
4. The quantity of water, as authorized by Certificate 34404, diverted at the additional point of diversion (Cox 2), together with that diverted at the old point of diversion (Jordan Ditches), shall not exceed the quantity of water lawfully available at the original point of diversion (Jordan Ditches).
5. The quantity of water, as authorized by Certificate 83405, diverted at the additional point of diversion (Cox 1), together with that diverted at the old point of diversion (Jordan Ditches), shall not exceed the quantity of water lawfully available at the original point of diversion (Jordan Ditches).
6. Prior to October 1, 2021, the water user shall install and maintain a headgate, an in-line flow meter, weir, 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. Prior to October 1, 2021, 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 in Salem, Oregon on **APR 23 2020**



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

Mailing date: **APR 24 2020**