BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13087, Marion County)	CHANGE IN POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

THE SCOTTS COMPANY LLC 7644 KEENE ROAD NE GERVAIS, OR 97026

Findings of Fact

- On December 28, 2018, THE SCOTTS COMPANY LLC filed an application to change the point of appropriation under Certificate 54715. The Department assigned the application number T-13087.
- 2. Notice of the application for transfer was published on January 8, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On February 5, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department requested that the deficiency be resolved by March 6, 2019. The applicant submitted a revised Table 1 the same day, resolving the deficiency.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

- 4. On March 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13087 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 26, 2019, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- 5. On June 21, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-13087 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on June 25, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the right to be transferred is as follows:

Certificate: 54715 in the name of O. M. SCOTT AND SONS (perfected under Permit

G-10015)

Use: SUPPLEMENTAL IRRIGATION of 35.7 ACRES

Priority Date: FEBRUARY 10, 1983

Rate: 0.19 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-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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing

for the same land and shall not exceed the limitation allowed.

Source: ONE WELL, a tributary of PUDDING RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	2 W	WM	34	SE NE	84	WEST WELL 1 - 2170 FEET SOUTH AND 1100 FEET WEST FROM THE NE CORNER OF SECTION 34

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Мег	Sec	Q-Q	DLC	Acres
5 S	2 W	WM	34	SE NE	84	15.4
5 S	2 W	WM	34	NE SE	84	7.8
5 S	2 W	WM	35	SW NW	84	9.2
5 S	2 W	WM	35	NW SW	84	3.3
					Total	35.7

7. Transfer Application T-13087 proposes to move the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from the original point of appropriation in feet (ft.)
5 S	2 W	WM	34	SE NE	84	EAST. WELL 2 - 2170 FEET SOUTH AND 515 FEET WEST FROM THE NE CORNER OF SECTION 34	584.9 ft.
5 S	2 W	WM	35	SW NW	84	EAST WELL 1 - 2685 FEET NORTH AND 115 FEET EAST FROM THE SE CORNER OF SECTION 34	1266.2 ft.

Transfer Review Criteria (OAR 690-380-4010)

- 8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 9. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-13087.
- 10. The proposed change would not result in enlargement of the right.

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- 11. The proposed change would not result in injury to other water rights.
- 12. All other application requirements are met.

Conclusions of Law

The change in point of appropriation proposed in Transfer Application T-13087 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The change in point of appropriation proposed in Transfer Application T-13087 is approved.
- 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 54715 and any related decree.
- 3. Water right Certificate 54715 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 4. The quantity of water diverted at the new points of appropriation (East Well 1 and East Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (West Well 1).

- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
- 7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Or	egon this AUG 2 8 2019,
	ransfer and Conservation Section Manager, for
Thomas M. Byler, I Oregon Water Reso	
Olegon water Kest	burces Department
Mailing date:	AUG 2 9 2019