

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A CHANGE
T-13258, 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

A.W. SCOTT AND LOUISE E. SCOTT TRUSTS
PO BOX 428
WALLOWA, OR 97885

Findings of Fact

1. On September 25, 2019, A.W. SCOTT AND LOUISE E. SCOTT TRUSTS filed a transfer application for authorization of an historic point of diversion under Certificate 94348. The Department assigned the application number T-13258.
2. Notice of the application for transfer was published on October 1, 2019, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 20, 2020, the Department determined the proposed point of diversion on the Polley Allen Ditch could potentially cause injury to instream water right Certificate 59814, and contacted the Watermaster regarding the stream flow being met as authorized by the certificate.
4. On March 12, 2020, the Department received a revised Table 1 and map, removing the proposed point of diversion on the Polley Allen Ditch.
5. On June 24, 2020, Historic Point of Diversion Application T-13258 was assigned from A. W. Scott and Louise E. Scott Trusts to Marc and Lynda Rypdahl.

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.

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

Certificate: 94348 in the name of S.L. MAGILL (confirmed by Wallowa River Decree)

Use: IRRIGATION of 16.6 ACRES, DOMESTIC AND STOCK USE

Priority Date: 1896 FOR TRACT NO. 2

Limit/Duty: The amount of water to which this right is entitled is limited an amount actually beneficially used for said purposes, and shall not exceed 1½ acre feet per acre during any 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; and said right shall be subject to all other conditions and limitation contained in said decree.

Source: SOUTH FORK OF WALLOWA RIVER (LOSTINE RIVER), a tributary of WALLOWA RIVER

Authorized Place of Use:

| IRRIGATION, DOMESTIC AND STOCK USE – TRACT NO. 2 | | | | | |
|---|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 43 E | WM | 9 | NW NW | 16.6 |

7. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 94348 as follows:

| Twp | Rng | Mer | Sec | Q-Q | Ditch |
|-----|------|-----|-----|-------|--------------|
| 1 S | 43 E | WM | 10 | NW SW | MILES MAGILL |

8. Transfer Application T-13258 proposes to move the authorized point of diversion to reflect historical use to:

| Twp | Rng | Mer | Sec | Q-Q | Ditch | Survey Coordinates | Approximate distance from original point of diversion in miles (mi.) |
|-----|------|-----|-----|-------|-------|---|--|
| 1 S | 43 E | WM | 9 | SE NE | MILES | Latitude: 45.494134 Longitude: -117.438922 | 0.5 mi. downstream |

9. 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 currently equipped with an appropriate fish screening and/or by-pass device.

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

10. 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.

11. 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.
12. The Department did not identify any affected water rights pursuant to OAR 690-380-2120(3).
13. 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.
14. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

Conclusions of Law

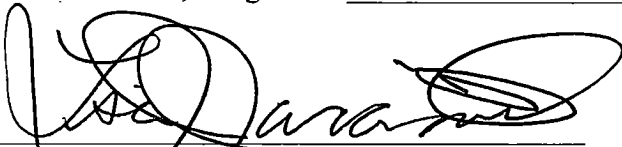
The proposed change in point of diversion to reflect historical use in application T-13258 is consistent with the requirements of ORS 540.532 and OAR 690-380-2120.

Now, therefore, it is ORDERED:

1. The change proposed in T-13258 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 94348 and any related decree.
3. Water right certificate 94348 is cancelled. Certificate 94905 will be issued to describe the change in point of diversion for the portion of the right included in T-13258. Certificate 94906 shall be issued to describe the portion of Certificate 94348 not modified by this order. Together, the new Certificates shall supersede Certificate 94348.
4. The quantity of water diverted at the new points of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a flume or weir, or, with prior approval of the Director, another suitable measuring device, at each point of diversion (new and existing).
 - b. The water user shall maintain the meters or measuring devices in good working order.

- c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
6. 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.

Dated at Salem, Oregon this JUL 23 2020.



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

Mailing date: JUL 24 2020