

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-12318, Lake County)	TEMPORARY CHANGES IN PLACE
)	OF USE AND POINTS OF
)	APPROPRIATION

Authority

Oregon Revised Statute (ORS) 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of appropriation authorized under an existing water right. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

CHARLES AND CHERYL NOFZIGER
PO BOX 36
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On March 21, 2016, CHARLES AND CHERYL NOFZIGER filed an application to temporarily change the place of use and change the points of appropriation to serve the proposed place of use under Certificates 76468, 83338, 91152, and 91153 for a period of five (5) years. The Department assigned the application number T-12318.
2. Notice of the application for transfer was published on April 5, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 15, 2016, the Department contacted the applicant's agent by telephone and by email to notify them of the deficiencies in the application. The deficiencies being a missing current recorded deed for one of the properties and an incorrect tax lot number on the application. The Department requested that the deficiencies be resolved by July 15, 2016.
4. On June 17, 2016, the applicant's agent submitted the requested information, resolving the deficiencies.

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.

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

Certificate: 76468 in the name of FLOWERREE FARMS, INC. (perfected under Permit G-9020)
Use: IRRIGATION of 5.0 ACRES
Priority Date: JUNE 11, 1980
Rate: 0.06 CUBIC FEET PER SECOND (CFS)
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 and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL 2 in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE SW	WELL 2: 1320 FEET SOUTH AND 1300 FEET WEST FROM THE C1/4 CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE SW	1.30
27 S	19 E	WM	8	NW SW	1.20
27 S	19 E	WM	8	SW SW	1.20
27 S	19 E	WM	8	SE SW	1.30
Total:					5.00

6. Temporary Transfer Application T-12318 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	1.30
27 S	19 E	WM	8	NW NW	1.20
27 S	19 E	WM	8	SW NW	1.20
27 S	19 E	WM	8	SE NW	1.30
Total:					5.00

7. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12318 proposes to move the authorized point of appropriation approximately 2660 feet North to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

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

Certificate: 83338 in the name of RICHARD C. SMITH (perfected under Permit G-10703)
Use: IRRIGATION of 10.3 ACRES

Priority Date: NOVEMBER 4, 1983

Rate: 0.128 CFS

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 and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.51
27 S	19 E	WM	8	NW NW	2.01
27 S	19 E	WM	8	SW NW	2.57
27 S	19 E	WM	8	SE NW	3.21
Total:					10.30

9. Temporary Transfer Application T-12318 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.60
27 S	19 E	WM	8	NW NW	2.60
27 S	19 E	WM	8	SW NW	2.60
27 S	19 E	WM	8	SE NW	2.50
Total:					10.30

10. The third right to be transferred is as follows:

Certificate: 91152 in the name of CHARLES AND CHERYL A. NOFZIGER (perfected under Permit G-9651)

Use: IRRIGATION of 121.6 ACRES

Priority Date: APRIL 5, 1982

Rate: 1.52 CFS

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 and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	19	SW NE	1322 FEET SOUTH AND 1335 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	19	NE NE	32.70
27 S	17 E	WM	19	NW NE	23.50
27 S	17 E	WM	19	SW NE	32.70
27 S	17 E	WM	19	SE NE	32.70
Total:					121.60

11. Temporary Transfer Application T-12318 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
27 S	17 E	WM	19	NE NE	6.50	pou
27 S	17 E	WM	19	NW NE	6.50	pou
27 S	17 E	WM	19	SW NE	6.60	pou
27 S	17 E	WM	19	SE NE	6.50	pou
27 S	19 E	WM	8	NE NW	23.80	pou/poa
27 S	19 E	WM	8	NW NW	23.90	pou/poa
27 S	19 E	WM	8	SW NW	23.90	pou/poa
27 S	19 E	WM	8	SE NW	23.90	pou/poa
Total:					121.60	

12. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12318 proposes to move the authorized point of appropriation approximately 2655 feet West to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

13. The fourth right to be transferred is as follows:

Certificate: 91153 in the name of CHARLES AND CHERYL A. NOFZIGER
(perfected under Permit G-8888)

Use: IRRIGATION of 9.2 ACRES

Priority Date: JULY 10, 1980

Rate: 0.115 CFS

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, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	19	SW NE	1322 FEET SOUTH AND 1335 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	19	NW NE	9.20

14. Temporary Transfer Application T-12318 proposes to temporarily change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.30
27 S	19 E	WM	8	NW NW	2.30
27 S	19 E	WM	8	SW NW	2.30
27 S	19 E	WM	8	SE NW	2.30
Total:					9.20

15. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12318 proposes to move the authorized point of appropriation approximately 2655 feet West to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

Temporary Transfer Review Criteria

16. 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.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(5) if the Department later finds that the transfer is causing injury to any existing water right.


Conclusions of Law

The temporary changes in place of use and point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12318 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and point of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12318 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2016, 2017, 2018, 2019 and 2020 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2020 irrigation season. The authorization to use the temporary point of appropriation shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. A subsequent application for permanent transfer of Certificates 76468, 83338, 91152, and 91153 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
6. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 76468, 83338, 91152, and 91153.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing and instantaneous reading flowmeter, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (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.

Dated at Salem, Oregon this 23 day of June, 2016.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing Date: JUN 29 2016