

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

In the Matter of Transfer Application)
T-8420, Lake County)
)
)

FINAL ORDER
APPROVING CHANGES IN POINTS OF
APPROPRIATION AND CHANGES IN
PLACES OF USE

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicants

FLAT IRON RANCH LLC
P.O. BOX 428
MYRTLE POINT OR 97458

SCOTT AND MARGIE RUNELS
P.O. BOX 39
FORT ROCK OR 97735

JERRY AND LINDA NEWMAN
P.O. BOX 761
CHRISTMAS VALLEY OR 97641

Findings of Fact

Background

1. On January 18, 2000, Charles Nofziger filed an application to make a change in places of use and points of appropriation under Certificates 75826, 83291, 83581, and 83582. The Department assigned the application number T-8420.
2. On February 20, 2008, the Department received a revised application and map.
3. On October 8, 2009, the transfer application was assigned to Flat Iron Ranch, LCC, Scott and Margie Runels, and Jerry and Linda Newman.

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

Certificate: 75826 in the name of CHARLES NOFZIGER (perfected under Permit G-9125)

Use: IRRIGATION OF 4.5 ACRES

Priority Date: JANUARY 13, 1981

Rate: 0.06 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 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 1 within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	16 E	WM	3	NW SW	WELL 1 - 1340 FEET NORTH AND 1320 FEET EAST FROM THE SW CORNER OF SECTION 3

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	3	NE SW	2.40
26 S	16 E	WM	3	NW SW	0.50
26 S	16 E	WM	3	SE SW	1.60
Total:					4.50

5. The applicant has supplied information that more accurately describes Well 1 as being located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	16 E	WM	3	NW SW	WELL 1 - 1349.64 FEET NORTH AND 3990.42 FEET EAST FROM THE S¼ CORNER OF SECTION 4

6. Transfer Application T-8420 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	16 E	WM	3	SW SW	4.50

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

Certificate: 83291 in the name of CHARLES NOFZIGER (perfected under Permit G-10099)
Use: IRRIGATION OF 101.24 ACRES
Priority Date: APRIL 27, 1983
Rate: 1.26 CUBIC FEET 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, 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 within the CHRISTMAS VALLEY BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	16 E	WM	6	NW SE	2510 FEET NORTH AND 1820 FEET WEST FROM THE SE CORNER OF SECTION 6

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
26 S	16 E	WM	6		3	0.70
26 S	16 E	WM	6		4	0.70
26 S	16 E	WM	6		5	2.80
26 S	16 E	WM	6		6	2.20
26 S	16 E	WM	6		7	0.20
26 S	16 E	WM	6		9	30.80
26 S	16 E	WM	6		10	6.70
26 S	16 E	WM	6		11	2.66
26 S	16 E	WM	6		12	3.30
26 S	16 E	WM	6		13	0.20
26 S	16 E	WM	6	NE SW		0.20
26 S	16 E	WM	6	NE SE		23.78
26 S	16 E	WM	6	NW SE		6.35
26 S	16 E	WM	6	SW SE		17.95
26 S	16 E	WM	6	SE SE		2.70
Total Acres:						101.24

8. Transfer Application T-8420 proposes to change the place of use to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	16 E	WM	12	NE SE	29.85
27 S	16 E	WM	12	NW SE	29.85
27 S	16 E	WM	12	SW SE	11.69
27 S	16 E	WM	12	SE SE	29.85
Total:					101.24

9. Transfer Application T-8420 also proposes to change the authorized point of appropriation for the 101.24 acres approximately 9.0 miles southeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	16 E	WM	12	NW SE	1382 FEET NORTH AND 1374 FEET WEST FROM THE SE CORNER OF SECTION 6

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

Certificate: 83581 in the name of SCOTT AND MARGIE RUNELS (perfected under Permit G-9127)

Use: IRRIGATION OF 2.3 ACRES

Priority Date: JANUARY 13, 1981

Rate: 0.03 CUBIC FOOT PER SECOND, IF AVAILABLE FROM:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	16 E	WM	12	NW SE	WELL 2 (NOW 4) - 1310 FEET NORTH AND 1300 FEET EAST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 26
27 S	16 E	WM	12	SW SE	WELL 1 (NOW 5) - 3960 FEET NORTH AND 1300 FEET EAST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 26

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 8 within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Measured Distances
26 S	16 E	WM	3	NE SW	WELL 8 - 1349.64 FEET NORTH AND 3990.42 FEET EAST FROM THE S $\frac{1}{4}$ CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Acres
26 S	16 E	WM	3	NW SW	2.30

11. Transfer Application T-8420 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Acres
26 S	16 E	WM	3	SW SW	2.30

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

Certificate: 83582 in the name of SCOTT AND MARGIE RUNELS (perfected under Permit G-9126)

Use: IRRIGATION OF 9.0 ACRES

Priority Date: JANUARY 13, 1981

Rate: 0.11 CUBIC FOOT PER SECOND, IF AVAILABLE FROM:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	16 E	WM	23	SW NW	WELL 2 (NOW 6) - 3940 FEET NORTH AND 1320 FEET WEST FROM THE S¼ CORNER OF SECTION 23
26 S	16 E	WM	23	SW SW	WELL 1 (NOW 7) - 1320 FEET NORTH AND 1320 FEET WEST FROM THE S¼ CORNER OF SECTION 23

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 8 (NOFZIGER) within the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	¼ ¼	Measured Distances
26 S	16 E	WM	3	NE SW	WELL 8 - 1349.64 FEET NORTH AND 3990.42 FEET EAST FROM THE S¼ CORNER OF SECTION 4

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	¼ ¼	Acres
26 S	16 E	WM	3	SW SW	9.00

13. Transfer Application T-8420 proposes to change the authorized point of appropriation approximately 7.5 miles southeast from its authorized location to:

Twp	Rng	Mer	Sec	¼ ¼	Measured Distances
27 S	16 E	WM	12	NW SE	1382 FEET NORTH AND 1374 FEET WEST FROM THE SE CORNER OF SECTION 12

14. Transfer Application T-8420 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	¼ ¼	Acres
27 S	16 E	WM	12	SW SE	9.00

15. Notice of the application for transfer was published on January 25, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

16. Notice of the application for transfer was published in the Lake County Examiner on March 16, 23, and 30, 2000, pursuant to ORS 540.520 and OAR 690-380-4000. No protests were filed in response to the notice.
17. On August 4, 2010, the Department mailed a copy of a draft Preliminary Determination proposing to deny Transfer Application T-8420 to the applicants. The proposed place of use for the rights described by Certificates 75826 and 83581 are already covered by Certificate 83584. The draft Preliminary Determination cover letter set forth a deadline of September 3, 2010, for the applicants to respond.
18. On November 29, 2010, the applicant's agent and Certified Water Right Examiner submitted a revised transfer application map that shows the proposed place of use of Certificates 75826 and 83581 on lands not already covered by a water right.
19. On December 13, 2010, the Department received the necessary information to demonstrate that the applicants, Scott and Margie Runels, are authorized to pursue the transfer.
20. On June 14, 2011, the Department mailed a copy of a revised draft Preliminary Determination proposing to approve Transfer Application T-8420 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of July 14, 2011, for the applicants to respond.
21. On July 14, 2011, Scott and Margie Runels requested, via email, that the Department proceed with the issuance of a Preliminary Determination to approve Transfer Application T-8420.
22. On August 8, 2011, the Department erroneously issued a Preliminary Determination to approve Transfer Application T-8420. Flat Iron Ranch LLC and Jerry and Linda Newman did not give their consent to proceed.
23. On September 12, 2011, the Department issued an order withdrawing the Preliminary Determination issued on August 8, 2011.
24. On December 21, 2011, Jerry and Linda Newman requested, via letter, that the Department proceed with the issuance of a Preliminary Determination to approve Transfer Application T-8420.
25. On January 11, 2012, Frederick J. Carleton, Attorney, on behalf of Angelica Kreuger, Member Flat Iron Ranch, submitted a letter stating that Flat Iron Ranch, LLC is not in agreement with Transfer Application T-8420.
26. On January 27, 2012, Darryl Anderson, CWRE, submitted a copy of a recorded water right transfer agreement dated August 21, 2003, between Charles and Cheryl Nofziger, then owner of the 101.24 acres of water right in Section 6, T 26 S, R 16 W, W.M., Jerry and Linda Newman, receiving landowners of the 101.24 acres of water right, and John Kreuger, purchaser of the land from the Nofzigers. In the agreement, the purchaser, Mr. Kreuger agreed not to challenge the transfer of the 101.24 acres to the Newmans.

27. On January 30, 2012, the Department issued a Preliminary Determination proposing to approve Transfer Application T-8420 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 7, 2012 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
28. On March 6, 2012, the notice was re-published in the Department's weekly notice. An incorrect address was published in the February 7, 2012 notice.
29. On March 25, 2012, Frederick J. Carleton, Attorney, on behalf of Angelica Kreuger, Member Flat Iron Ranch, sent an e-mail that Flat Iron Ranch, LLC is in agreement with Transfer Application T-8420.

Transfer Review Criteria (OAR 690-380-4010)

30. Water has been used within the last five years prior to the submittal of Transfer Application T-8420 according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
31. A pivot system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to submittal of Transfer Application T-8420.
32. The proposed change would not result in enlargement of the rights.
33. The proposed change would not result in injury to other water rights.

Conclusions of Law


The changes in points of appropriation and changes in places of use proposed in Transfer Application T-8420 are consistent with the requirements of ORS 537.705, 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in points of appropriation and changes in places of use proposed in Transfer Application T-8420 are 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 Certificates 75826, 83291, 83581, 83582, and any related decree.
3. Water Right Certificates 75826, 83581 and 83582 are cancelled. New certificates will be issued describing the portions of Certificates 75826, 83581 and 83582 that are not affected by this transfer.
4. Water Right Certificate 83291 is cancelled. A new certificate will be issued to describe those portions of this certificate not affected by this transfer and Transfer Application T-8450.

5. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
7. The former place of use of the transferred rights shall no longer receive water under the rights.
8. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of appropriation. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16 day of April, 2012.


Dwight French, Water Right Services Administrator for
PHILLIP C. WARD, DIRECTOR

Mailing Date: APR 17 2012