

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGES
T-8588, Lake County) IN POINTS OF APPROPRIATION AND
) PLACE 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

LLOYD L. AND REBECCA MILES
HC 84, BOX 22
SILVER LAKE, OR 97638

Findings of Fact

Background

1. On August 28, 2000, Lloyd L. and Rebecca Miles filed a transfer application to change the points of appropriation and place of use under Certificates 31236, 41096, 47919, 72463, 72464, 72465, 72467, 72468 and 74297. The Department assigned the application number T-8588.
2. The applicants were notified by the Department on July 6, 2006, that the proposed place of use changes would result in the layering of portions of primary irrigation rights (Certificates 72468 and 41096) on top of another primary irrigation right (Certificate 76090).
3. On March 8, 2007, the owners of the land to which Certificate 76090 is appurtenant, being Gene and Loraine Porter, submitted a signed statement consenting to the inclusion of a portion of Certificate 76090 in Transfer T-8588 to resolve the layering issue described in Finding #2.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 either 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 April 25, 2007, the applicant submitted a revised map, identifying 40.0 acres in the SW ¼ of the NE ¼ of Sec. 2, T. 27 South, R. 15 East, W.M., under Certificate 76090 to be included in the transfer, in order to resolve the layering issue described in Finding #2. The transfer application was not amended to include Certificate 76090 at that time.
5. The Department mailed a copy of the draft Preliminary Determination to the applicants on April 26, 2007. The draft Preliminary Determination proposed to approve Transfer Application T-8588, provided that the applicants amended the transfer application to reflect the inclusion of Certificate 76090. Additionally, because Certificate 76090 allows only 36.88 acres in the SW ¼ of the NE ¼ of Sec. 2, T. 27 South, R. 15 East, W.M., the applicants were notified that the 40.0 acres shown on the April 25, 2007 revised map needed to be adjusted down to 36.88 acres, as described in the water right certificate. The draft Preliminary Determination set forth a deadline for the applicants to respond and submit the revised application and map.
6. On May 24, 2007, the Department received a revised map from the applicant's Certified Water Right Examiner showing the 36.88 acres under Certificate 76090 (SW ¼ of the NE ¼ of Sec. 2, T. 27 South, R. 15 East, W.M.) to be transferred.
7. On July 1, 2007, the applicants provided their authorization to revise the transfer and submitted an amended transfer application to include transfer of the 36.88 acres under Certificate 76090 in the transfer application.

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

Certificate: 31236 in the name of EDWIN A. ESKELIN (perfected under Permit U-317)
Use: IRRIGATION of 84.0 ACRES
Priority Date: JANUARY 5, 1950
Quantity: 1.05 CUBIC FEET PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year
Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	SE SW	2 chains North and 25½ chains East from the SW corner of Section 2

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Acres
27	S	15	E	W.M.	2	NE SW	6.7
27	S	15	E	W.M.	2	NW SW	4.6
27	S	15	E	W.M.	2	SW SW	18.3
27	S	15	E	W.M.	2	SE SW	39.0
27	S	15	E	W.M.	2	NW SE	2.4
27	S	15	E	W.M.	2	SW SE	13.0
TOTAL:							84.0

9. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile northeast from the existing point of appropriation to Well #3 for 75.65 acres and 0.75 mile north from the existing point of appropriation to Well #4 for 8.35 acres to:

Township	Range	Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	SE SE Well #3 - 1290.7 feet North and 1089.8 feet West from the SE corner of Section 2
27	S	15	E	W.M.	2	NE NW Well #4 - 1340.9 feet South and 2645.0 feet West from the NE corner of Section 2

10. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	GLot	Well #	Acres
27	S	15	E	W.M.	2	NW NE	8.35
27	S	15	E	W.M.	2	NE SE	33.00
27	S	15	E	W.M.	2	NW SE	6.03
27	S	15	E	W.M.	2	SW SE	4.90
27	S	15	E	W.M.	2	SE SE	31.72
TOTAL:							84.00

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

Certificate: 41096 in the name of HAROLD A. AND LOIS L. MILES (perfected under Permit G-4979)

Use: IRRIGATION of 124.5 ACRES

Priority Date: APRIL 1, 1971

Quantity: 1.56 CUBIC FEET PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the PAULINA MARSH BASIN

Authorized Point of Appropriation:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates	
27	S	15	E	W.M.	2	SE SE 1310 feet North and 1540 feet East from the South ¼ corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres	
27	S	15	E	W.M.	2	NE SE 39.1
27	S	15	E	W.M.	2	NW SE 25.7
27	S	15	E	W.M.	2	SW SE 23.8
27	S	15	E	W.M.	2	SE SE 35.9
TOTAL:					124.5	

12. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile northwest from the existing point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	Well #4 - 1340.9 feet South and 2645.0 feet West from the NE corner of Section 2

13. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	GLot	Well #	Acres
27	S	15	E	W.M.	2	NE NE	1.81
27	S	15	E	W.M.	2	NW NE	21.15
27	S	15	E	W.M.	2	SW NE	35.63
27	S	15	E	W.M.	2	SE NE	1.77
27	S	15	E	W.M.	2	NE NW	32.45
27	S	15	E	W.M.	2	SE NW	31.69
TOTAL:							124.5

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

Certificate: 47919 in the name of HAROLD A. AND LOIS MILES (perfected under Permit G-5999)

Use: IRRIGATION of 87.1 ACRES

Priority Date: FEBRUARY 14, 1974

Quantity: 1.09 CUBIC FEET PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	SE SW	170 feet North and 1730 feet East from the SW corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	Acres
27	S	15	E	W.M.	33.3
27	S	15	E	W.M.	34.4
27	S	15	E	W.M.	5.0
27	S	15	E	W.M.	12.4
27	S	15	E	W.M.	2.0
TOTAL:					87.1

15. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile northwest from the existing point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	NW SW	Well #1 – 2621.3 feet North and 52.9 feet East from the SW corner of Section 2

16. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	Well #	Acres		
27	S	15	E	W.M.	2	SW NW	1	14.75
27	S	15	E	W.M.	2	NW SW	1	38.64
27	S	15	E	W.M.	2	SW SW	1	33.71
TOTAL:							87.1	

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

Certificate: 72463 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit U-461)

Use: IRRIGATION of 50.2 ACRES

Priority Date: JULY 3, 1952

Quantity: 0.63 CUBIC FOOT PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	1342 feet South and 2646 feet West from the NE corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	GLot	Acres		
27	S	15	E	W.M.	2	NW NW	4	12.5
27	S	15	E	W.M.	2	SW NW		37.7
TOTAL:							50.2	

18. Application T-8588 proposes to move the authorized point of appropriation approximately 0.75 mile south from the existing point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	SE SW	Well #2 – 184.3 feet North and 875.2 feet West from the S¼ corner of Section 2

19. Application T-8588 also proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Well #	Acres
27	S	15	E	W.M.	2	NW SE	2	32.9
27	S	15	E	W.M.	2	SW SE	2	17.3
TOTAL:								50.2

20. The fifth right to be transferred is as follows:

Certificate: 72464 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit U-695)

Use: IRRIGATION of 30.0 ACRES

Priority Date: JANUARY 17, 1955

Quantity: 0.38 CUBIC FOOT PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	1342 feet South and 2646 feet West from the NE corner of Section 2

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	GLot	Acres
27	S	15	E	W.M.	2	NW NW	4	20.0
27	S	15	E	W.M.	2	SE NW		10.0
TOTAL:								30.0

21. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile southwest from the existing point of appropriation to Well #1 for 3.81 acres and 0.75 mile south from the existing point of appropriation to Well #2 for 26.19 acres to:

Township		Range		Meridian	Sec	¼ ¼	Quantity of Water	Survey Coordinates
27	S	15	E	W.M.	2	NW SW	0.05 cfs	Well #1 – 2621.3 feet North and 52.9 feet East from the SW corner of Section 2
27	S	15	E	W.M.	2	SE SW	0.33 cfs	Well #2 – 184.3 feet North and 875.2 feet West from the S¼ corner of Section 2

22. Application T-8588 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Well #	Acres
27	S	15	E	W.M.	2	SW SW	2	3.46
27	S	15	E	W.M.	2	SE SW	1	3.81
27	S	15	E	W.M.	2	SE SW	2	9.05
27	S	15	E	W.M.	2	SW SE	2	13.68
TOTAL:								30.0

23. The sixth right to be transferred is as follows:

Certificate: 72465 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit G-385)
Use: IRRIGATION of 16.8 ACRES and SUPPLEMENTAL IRRIGATION of 8.9 ACRES
Priority Date: APRIL 10, 1956
Quantity: 0.32 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year
Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township	Range	Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW 3 1342 feet South and 2646 feet West from the NE corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	GLot	Acres (Primary)	Acres (Supplemental)	
27	S	15	E	W.M.	2	NW NW 4	7.0	0.0
27	S	15	E	W.M.	2	SW NW	0.0	8.9
27	S	15	E	W.M.	2	SE NW	9.8	0.0
TOTAL:							16.8	8.9

24. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile southwest from the existing point of appropriation to:

Township	Range	Meridian	Sec	¼ ¼	Survey Coordinates	
27	S	15	E	W.M.	2	NW SW Well #1 – 2621.3 feet North and 52.9 feet East from the SW corner of Section 2

25. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	GLot	Well #	Acres (Primary)	Acres (Supplemental)	
27	S	15	E	W.M.	2	NW NW 4	1	16.8	8.9
TOTAL:							16.8	8.9	

26. The seventh right to be transferred is as follows:

Certificate: 72467 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit G-4301)
Use: IRRIGATION of 58.45 ACRES
Priority Date: SEPTEMBER 10, 1968
Quantity: 0.73 CUBIC FOOT PER SECOND (CFS)
Rate/Duty: ONE-EIGHTIETH per acre, not to exceed 3.0 acre feet per acre per year
Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	1342 feet South and 2646 feet West from the NE corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	GLot	Acres		
27	S	15	E	W.M.	2	NE NE	1	18.15
27	S	15	E	W.M.	2	NW NE	2	40.30
TOTAL:							58.45	

27. Application T-8588 proposes to move the authorized point of appropriation approximately 0.75 mile south from the existing point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	SE SW	Well #2 – 184.3 feet North and 875.2 feet West from the S¼ corner of Section 2

28. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	Well #	Acres		
27	S	15	E	W.M.	2	NE SW	3	33.41
27	S	15	E	W.M.	2	NW SW	3	0.31
27	S	15	E	W.M.	2	SW SW	3	0.28
27	S	15	E	W.M.	2	SE SW	3	24.45
TOTAL:							58.45	

29. The eighth right to be transferred is as follows:

Certificate: 72468 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit G-5374)

Use: IRRIGATION of 20.0 ACRES

Priority Date: MARCH 19, 1971

Quantity: 0.25 CUBIC FOOT PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	1342 feet South and 2646 feet West from the NE corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	GLot	Acres		
27	S	15	E	W.M.	2	NE NE	1	20.0
TOTAL:							20.0	

30. Application T-8588 proposes to move the authorized point of appropriation approximately 2300.0 feet southeast from the existing point of appropriation to Well #5 for 6.46 acres, 2.0 feet south from the existing point of appropriation to Well #4 for 6.66 acres and 0.5 mile southwest from the existing point of appropriation to Well #1 for 6.88 acres to:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	SE NE		Well #5 – 224.2 feet North and 579.6 feet West from the E¼ corner of Section 2
27	S	15	E	W.M.	2	NE NW	3	Well #4 - 1340.9 feet South and 2645.0 feet West from the NE corner of Section 2
27	S	15	E	W.M.	2	NW SW		Well #1 – 2621.3 feet North and 52.9 feet East from the SW corner of Section 2

31. Application T-8588 also proposes to change the place of use of the right to:

Township	Range	Meridian	Sec	¼ ¼	Well #	Acres		
27	S	15	E	W.M.	2	SW NE	5	4.38
27	S	15	E	W.M.	2	SE NE	5	1.47
27	S	15	E	W.M.	2	NE SE	5	0.02
27	S	15	E	W.M.	2	NW SE	5	0.59
27	S	15	E	W.M.	2	NW NE	4	6.66
27	S	15	E	W.M.	2	SW NW	1	6.88
TOTAL:							20.0	

32. The ninth right to be transferred is as follows:

Certificate: 74297 in the name of ESTATE OF KENNETH O. LAIRD (perfected under Permit G-1241)

Use: IRRIGATION of 59.8 ACRES

Priority Date: FEBRUARY 6, 1959

Quantity: 0.57 CUBIC FOOT PER SECOND (CFS)

Rate/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the SILVER CREEK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	GLot	Survey Coordinates
27	S	15	E	W.M.	2	NE NW	3	1342.0 feet South and 2646.0 feet West from the NE corner of Section 2

Authorized Place of Use:

Township	Range	Meridian	Sec	¼ ¼	GLot	Acres		
27	S	15	E	W.M.	2	NE NW	3	40.0
27	S	15	E	W.M.	2	SE NW		19.8
TOTAL:							59.8	

33. Application T-8588 proposes to move the authorized point of appropriation approximately 0.5 mile southwest from the existing point of appropriation to:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	NW SW	Well #1 – 2621.3 feet North and 52.9 feet East from the SW corner of Section 2

34. Application T-8588 also proposes to change the place of use of the right to:

Township	Range		Meridian	Sec	¼ ¼	Lot	Well	Acres	
27	S	15	E	W.M.	2	NE NW	3	1	8.5
27	S	15	E	W.M.	2	NW NW	4	1	21.58
27	S	15	E	W.M.	2	SW NW		1	15.32
27	S	15	E	W.M.	2	SE NW		1	7.79
27	S	15	E	W.M.	2	NE SW		1	6.61
TOTAL:									59.8

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

Certificate: 76090 in the name of GENE PORTER (perfected under Permit U-394)

Use: IRRIGATION of 36.88 ACRES

Priority Date: MARCH 29, 1951

Rate: 0.46 CUBIC FOOT PER SECOND (CFS)

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre feet per acre per year

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Survey Coordinates
27	S	15	E	W.M.	2	SE NE	South 13 degrees, 23 minutes West 2538.5 feet from the NE corner of Section 2

Authorized Place of Use:

Township	Range		Meridian	Sec	¼ ¼	Acres	
27	S	15	E	W.M.	2	SW NE	36.88
TOTAL:						36.88	

36. Application T-8129 also proposes to change the place of use of the right to:

Township	Range		Meridian	Sec	¼ ¼	Lot	Acres	
27	S	15	E	W.M.	1	NE NW	0.78	
27	S	15	E	W.M.	2	NE NE	1	36.1
TOTAL:							36.88	

37. Notice of the application for transfer was published on September 5, 2000, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

38. On August 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-8588 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 August 21, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
39. Newspaper notice was published pursuant to 690-015-0080(1). Publication occurred in the Lake County Examiner (a newspaper having a general circulation in the area in which the change is proposed) on September 20, 27 and October 4, 2001. In accordance with OAR 690-380-0090(5), therefore, newspaper notice of the preliminary determination is not required.

Transfer Review Criteria (OAR 690-380-4010)

40. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
41. 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 Application T-8588.
42. The proposed changes would not result in enlargement of the rights.
43. The proposed changes would not result in injury to other water rights.

Conclusions of Law


The changes in points of appropriation and place of use proposed in application T-8588 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 changes in points of appropriation and place of use proposed in application T-8588 are approved.
2. Water right certificates 31236, 41096, 47919, 72463, 72464, 72465, 72467, 72468, 74297, and 76090 are cancelled. A new certificate will be issued describing that portion of Certificate 76090 not affected by this transfer.
3. 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 31236, 41096, 47919, 72463, 72464, 72465, 72467, 72468, 74297, and 76090 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.

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. The former place of use of the transferred rights shall no longer receive water under the rights.
7. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 27 day of September 2007.


Phillip C. Ward, Director

Mailing date: OCT 01 2007