

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
T-13488, Clackamas County) A 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

AARON C. AND WENDY J. NOFZIGER
28770 SOUTH ELISHA ROAD
CANBY, OR 97013

Findings of Fact

1. On July 13, 2020, AARON C. AND WENDY J. NOFZIGER filed an application to change the point of appropriation under Certificate 79974. The Department assigned the application number T-13488.
2. Notice of the application for transfer was published on August 4, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 28, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13488 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of December 28, 2020 for the applicants to respond. The applicants 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.
4. On December 3, 2020, the agent for the applicant requested an extra year for completion.

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.

5. On January 19, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-13488 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 January 26, 2021, 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: 79974 in the name of MAYNARD D. AND MILDRED NOFZIGER ET AL (perfected under Permit G-12126)

Use: IRRIGATION of 17.08 ACRES

Priority Date: JUNE 29, 1993

Rate: 0.16 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 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.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL in the CREAMERY CREEK BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 4 S | 1 E | WM | 26 | SE SE | 15 FEET NORTH AND 280 FEET WEST FROM THE SE CORNER OF SECTION 26 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 1 E | WM | 25 | SW SW | 17.08 |

7. Transfer Application T-13488 proposes to move the authorized point of appropriation to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances | Approximate distance from Authorized Well in Feet (ft). |
|-----|-----|-----|-----|-------|--|---|
| 4 S | 1 E | WM | 25 | SW SW | WELL 1 – 875 FEET NORTH AND 105 FEET EAST FROM THE SW CORNER OF SECTION 25 | 949 ft. |
| 4 S | 1 E | WM | 25 | SW SW | WELL 2 – 65 FEET NORTH AND 185 FEET EAST FROM THE SW CORNER OF SECTION 25 | 455.8 |

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-13488.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Conclusions of Law

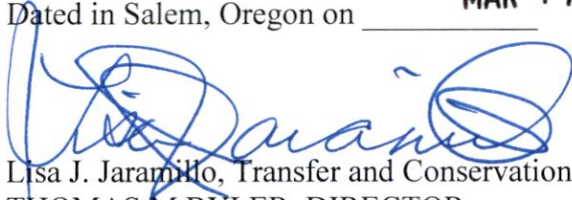
The change in point of appropriation proposed in Transfer Application T-13488 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of appropriation proposed in Transfer Application T-13488 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 79974 and any related decree.
3. Water right Certificate 79974 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.
4. The quantity of water diverted at the new points of appropriation, (Well 1 and Well 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well).
5. Water use measurement conditions:
 - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, 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.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2023**. 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 changes and full beneficial use of the water.

8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated in Salem, Oregon on **MAR 17 2021**



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

Mailing date: **MAR 19 2021**