



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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March 18, 2013

VIA E-MAIL

ARTHUR AND MARY B SPADA AND FELLER-NYQUIST FARM LLC
C/O ANGELO SPADA, MANAGER, A & R SPADA FARMS
PO BOX 157
SAINT PAUL, OR 97137

SUBJECT: Water Right Transfer Application T-11403

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11403. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Woodburn Independent newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@wrp.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Specialist

cc: File T-11403
Mike McCord, District 16 Watermaster (*via e-mail*)
Jeanne Boatwright, Boatwright Engineering, Inc., Agent/CWRE for the applicant (*via e-mail*)

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

In the Matter of Transfer Application)
T-11403, Marion County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN POINT OF
APPROPRIATION AND CHARACTER
OF USE AND PARTIAL
CANCELLATION OF WATER RIGHTS.

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicants

ARTHUR AND MARY B SPADA AND FELLER-NYQUIST FARM LLC
C/O ANGELO SPADA, MANAGER, A & R SPADA FARMS
PO BOX 157
SAINT PAUL, OR 97137

Findings of Fact

Background

1. On April 18, 2012, ARTHUR AND MARY B SPADA AND FELLER-NYQUIST FARM LLC filed an application to change the point of appropriation and to change the character of use from supplemental irrigation to primary irrigation under Certificate 60958. The Department assigned the application number T-11403.

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

Certificate: 60958 in the name of WAYNE M. COOK (perfected under Permit G-8015)
Use: IRRIGATION OF 29.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 14.8 ACRES
Priority Date: JANUARY 16, 1978
Rate: 0.549 CUBIC FOOT PER SECOND (CFS), BEING 0.364 CFS FOR PRIMARY IRRIGATION AND 0.185 CFS FOR SUPPLEMENTAL IRRIGATION, BOTH FROM WELL 2.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be 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. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.

Source: WELL 2 within the RYAN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	19	NW NE	WELL 2 - 1170 FEET SOUTH AND 1170 FEET EAST FROM THE NW CORNER OF DLC 48

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	18	SE SW	48	0.8
4 S	1 W	WM	18	SW SE	48	0.3
4 S	1 W	WM	19	NW NE	48	21.9
4 S	1 W	WM	19	SW NE	48	0.7
4 S	1 W	WM	19	NE NW	48	5.4
TOTAL						29.1

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	19	NE NE	48	9.6
4 S	1 W	WM	19	NW NE	48	5.2
TOTAL						14.8

- Transfer Application T-11403 proposes to move the authorized point of appropriation of Well 2 approximately 100 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	19	NW NE	48	WELL 2B - 1200 FEET SOUTH AND 1165 FEET EAST FROM THE NW CORNER OF DLC 48

- Transfer Application T-11403 proposes to change the character of use of 14.8 acres of supplemental irrigation to primary irrigation.
- Notice of the application for transfer was published on April 24, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

6. On February 27, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11403 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 29, 2013, 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.

Transfer Review Criteria (OAR 690-380-4010)

7. 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.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-11403.
9. The applicant has provided information that a total quantity of 2.5 acre feet of water per acre of irrigation was beneficially used for supplemental irrigation under Certificate 60958. To prevent enlargement of the right, the total quantity of water used for the proposed primary irrigation shall be limited to a maximum quantity of 37.0 acre-feet during the irrigation season.
10. The proposed changes, as conditioned, would not result in enlargement of the right.
11. The proposed changes, as conditioned, would not result in injury to other water rights.

Partial Cancellation of Water Rights

1. On April 18, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Arthur Spada, Mary B. Spada, and Arthur Spada as manager of Feller-Nyquist Farm, LLC. The right to be cancelled is as follows:

Certificate: 60958 in the name of WAYNE M. COOK (perfected under Permit G-8015)

Use: IRRIGATION OF 38.1 ACRES FROM WELL 1 AND 9.0 ACRES FROM WELL 2 AND SUPPLEMENTAL IRRIGATION OF 0.3 ACRE FROM WELL 2

Priority Date: JANUARY 16, 1978

Rate: 0.594 CUBIC FOOT PER SECOND (CFS); BEING 0.48 CFS FROM WELL 1 TO MAKE UP ANY DEFICIENCY IN THE AVAILABLE SUPPLY FROM WELL 2 AND 0.114 CFS FROM WELL 2

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be 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. The right shall be limited to any deficiency in the available supply of any prior right for the same land and shall not exceed the limitation allowed herein.

Source: WELLS 1 AND 2 in the RYAN CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	19	NE NE	WELL 1 - 1100 FEET SOUTH AND 2070 FEET EAST FROM THE NW CORNER OF DLC 48
4 S	1 W	WM	19	NW NE	WELL 2 - 1170 FEET SOUTH AND 1170 FEET EAST FROM THE NW CORNER OF DLC 48

Authorized Place of Use to be Cancelled:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Well 1 Acres	Well 2 Acres
4 S	1 W	WM	18	SE SW	48	1.4	0.6
4 S	1 W	WM	18	SW SE	48	0.3	-
4 S	1 W	WM	19	NW NE	48	25.6	3.7
4 S	1 W	WM	19	SW NE	48	0.7	-
4 S	1 W	WM	19	NE NW	48	10.1	-
4 S	1 W	WM	19	NW NW	48	-	4.7
Totals						38.1	9.0

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	19	NE NE	48	0.3

- On April 18, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Arthur Spada, Mary B. Spada, and Arthur Spada as manager of Feller-Nyquist Farm, LLC. The right to be cancelled is as follows:

Certificate: 38174 in the name of WAYNE M. COOK (perfected under Permit G-2897)

Use: IRRIGATION OF 14.8 ACRES

Priority Date: JULY 1, 1965

Rate: 0.185 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, shall be 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.

Source: A WELL in the RYAN CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	19	NE NE	48	1100 FEET SOUTH AND 2070 FEET EAST FROM THE NW CORNER OF DLC 48

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	19	NE NE	48	9.6
4 S	1 W	WM	19	NW NE	48	5.2
Total						14.8

Determination and Proposed Action

The change in point of appropriation and change in character of use proposed in Transfer Application T-11403 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the portions of the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the portions of the abandoned rights will be cancelled.

If Transfer Application T-11403 is approved, the final order will include the following:

1. *The change in point of appropriation and change in character of use proposed in Transfer Application T-11403 are approved. The portions of the rights that have been abandoned are cancelled.*
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 38174 and 60958 and any related decree.*
3. *Water right certificates 38174 and 60958 are cancelled. A new certificate will be issued describing that portion of the right described by Certificate 38174 not affected by the cancellation.*
4. *The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.*
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 the point of appropriation.*
 - b. *The water user shall maintain the meter or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is 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, 2014**. 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 at Salem, Oregon this 18 day of March 2013.


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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrds.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.