

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-13488, Clackamas County)	PROPOSING APPROVAL OF 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.

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.
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5. 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

6. 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)

- 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.
- 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.

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

Determination and Proposed Action

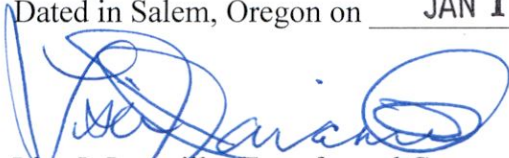
The change in points of appropriation proposed in Transfer Application T-13488 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-13488 is approved, the final order will include the following:

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 JAN 19 2021



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

This Preliminary Determination was prepared by: Tamera Smith. If you have any questions about the information in this document, you may reach me at 503-986-0864 or tamera.l.smith@oregon.gov

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

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Notice Regarding Service Members: Active duty service members have a right to stay these proceedings under the federal service members Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

JANUARY 19, 2021

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

SUBJECT: Water Right Transfer Application T-13488

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13488. 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, 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 Department's notice.

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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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

Kindest regards,

Tamera Smith
Transfer Caseworker
Transfer and Conservation Section

cc: T-13488 Transfer Application file

Amy J. Landvoigt, District 20 Watermaster *(via e-mail)*
Doann Hamilton, Agent for the applicant *(via e-mail)*

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