



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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October 12, 2021

VIA CERTIFIED MAIL AND E-MAIL

Applicants

CHARLES AND LOUANNA EGGERT
18555 SW TETON AVE
TUALATIN, OR 97062

NORTHWEST FARM CREDIT SERVICES
FLCA
650 HAWTHORNE AVE SE, STE 210
SALEM, OR 97301

SUBJECT: Water Right Transfer Application T-13409

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13409. 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 Burns Times Herald 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.

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 contact me at scott.a.grew@oregon.gov or 503-986-0890 should you have questions.

Sincerely,

Scott Grew

Transfer Specialist

cc: Transfer Application file T-13409
J R. Johnson, District 10 Watermaster (via e-mail)
Scott D. Montgomery, Agent 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)	PRELIMINARY DETERMINATION
T-13409, Harney County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINTS OF
)	APPROPRIATION, ADDITIONAL
)	POINTS OF APPROPRIATION AND
)	CHANGE IN PLACE OF USE

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.

Applicants

CHARLES AND LOUANNA EGGERT	NORTHWEST FARM CREDIT SERVICES FLCA
18555 SW TETON AVE	650 HAWTHORNE AVE SE, STE 210
TUALATIN, OR 97062	SALEM, OR 97301

Findings of Fact

1. On April 6, 2020, CHARLES and LOUANNA EGGERT and NORTHWEST FARM CREDIT SERVICES FLCA filed an application to change the point of appropriation, an additional point of appropriation and change the place of use under Certificates 93885 and 94527. The Department assigned the application number T-13409.
2. Notice of the application for transfer was published on April 28, 2020, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 26, 2021, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13409 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 25, 2021, for the applicant to respond. The applicant 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.

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.

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

Certificate: 93885 in the name of CHARLES W. EGGERT AND LOUANNA EGGERT AND NORTHWEST FARM CREDIT SERVICES FLCA (PERFECTED UNDER PERMIT G-12760)

Use: IRRIGATION OF 486.4 ACRES, BEING 238.0 ACRES FROM WELL 1, 124.2 ACRES FROM WELL 3, AND 124.2 ACRES FROM WELL 4

Priority Date: JULY 20, 1995

Rate: 4.81 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 1.88 CFS FROM WELL 1, AND LIMITED TO A COMBINED QUANTITY FROM WELL 3 AND WELL 4 NOT TO EXCEED 3.14 CFS, FURTHER LIMITED TO 1.55 CFS FROM WELL 3 AND 1.38 CFS FROM WELL 4, A MAXIMUM CUMULATIVE TOTAL FROM ALL WELLS NOT TO EXCEED 4.81 CFS

Limit/Duty: The amount of water used for irrigation under this right, 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: THREE WELLS IN HARNEY LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	16	NW SW	WELL 1 (ORIGINAL) - 2460 FEET NORTH AND 240 FEET EAST FROM THE SW CORNER OF SECTION 16
26 S	30 E	WM	10	SW SW	WELL 3 (ADDITIONAL) - 6500 FEET NORTH AND 5850 FEET EAST FROM THE SW CORNER OF SECTION 16
26 S	30 E	WM	16	SE SE	WELL 4 (ADDITIONAL) - 610 FEET NORTH AND 5130 FEET EAST FROM THE SW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION FROM WELL 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	16	NE NW	31.2
26 S	30 E	WM	16	NW NW	29.4
26 S	30 E	WM	16	SW NW	31.2
26 S	30 E	WM	16	SE NW	33.1
26 S	30 E	WM	16	NE SW	28.2
26 S	30 E	WM	16	NW SW	28.5
26 S	30 E	WM	16	SW SW	28.3
26 S	30 E	WM	16	SE SW	28.1
				Total	238.0

IRRIGATION FROM WELL 3					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	16	NE NE	30.3
26 S	30 E	WM	16	NW NE	29.6
26 S	30 E	WM	16	SW NE	31.8
26 S	30 E	WM	16	SE NE	32.5
				Total	124.2

IRRIGATION FROM WELL 4					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	16	NE SE	30.2
26 S	30 E	WM	16	NW SE	31.1
26 S	30 E	WM	16	SW SE	31.9
26 S	30 E	WM	16	SE SE	31.0
				Total	124.2

5. Transfer Application T-13409 proposes to move the authorized point of appropriation (POA) of Wells 3 and 4 and add additional points of appropriation (APOA) with approximate distances as described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Type of Change	Approximate Distances from Authorized Wells in Miles		
							Well #1	Well #3	Well #4
26 S	30 E	WM	9	SW NE	WELL #11 - 43° 19' 52.0" N, 119° 07' 27.6" W	POA	1.3	0.5	1.4
26 S	30 E	WM	10	SW SW	WELL #10 - 65 FEET NORTH AND 1255 FEET EAST FROM THE SW CORNER OF SECTION 10	POA	1.3	0.3	1.0
26 S	30 E	WM	16	NE NE	WELL #7 - 25 FEET SOUTH AND 320 FEET WEST FROM THE NE CORNER OF SECTION 16	APOA	1.0	0.3	0.9
26 S	30 E	WM	16	SE NE	WELL #2 - 2621 FEET NORTH AND 9878 FEET EAST FROM THE SW CORNER OF SECTION 16	APOA	1.8	1.0	1.0
26 S	30 E	WM	16	SE SE	WELL #8 - 600 FEET NORTH AND 185 FEET WEST FROM THE SE CORNER OF SECTION 16.	APOA	1.0	1.1	0.1
26 S	30 E	WM	16	SE SE	WELL #12 - 43° 18' 33.1" N, 119° 07' 19.5" W	APOA	0.9	1.3	0.2

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

Certificate: 94527 in the name of CHARLES W. EGGERT, LOUANNA EGGERT AND NORTHWEST FARM CREDIT SERVICES (perfected under Permit G-16257)

Use: IRRIGATION USE ON 276.6 ACRES

Priority Date: JANUARY 13, 2006

Rate: 3.38 CUBIC FEET PER SECOND (CFS); BEING 2.67 CFS FROM WELL #1 FOR IRRIGATION OF 220.1 ACRES AND 0.71 CFS FROM WELL #2 FOR IRRIGATION OF 56.5 ACRES

Limit/Duty: The amount of water used for irrigation under this right, 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 and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: WELL #1 (HARN 50472) AND WELL #2 (MALH 2323) IN HARNEY LAKE BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	30 E	WM	10	SE SW	WELL #1 - 5316 FEET NORTH AND 6728 FEET EAST FROM THE SW CORNER OF SECTION 16
26 S	30 E	WM	15	SE NE	WELL #2 - 2621 FEET NORTH AND 9878 FEET EAST FROM THE SW CORNER OF SECTION 16

Authorized Place of Use:

IRRIGATION WELL #1					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	15	NW NE	11.6
26 S	30 E	WM	15	SW NE	27.8
26 S	30 E	WM	15	NE NW	33.0
26 S	30 E	WM	15	NW NW	17.5
26 S	30 E	WM	15	SW NW	35.5
26 S	30 E	WM	15	SE NW	40.0
26 S	30 E	WM	15	NE SW	30.0
26 S	30 E	WM	15	NW SW	15.0
26 S	30 E	WM	15	NW SE	9.7
				Total	220.1

IRRIGATION WELL #2					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	15	SW NE	1.6
26 S	30 E	WM	15	SE NE	9.8
26 S	30 E	WM	15	NE SE	35.2
26 S	30 E	WM	15	NW SE	9.9
				Total	56.5

7. Transfer Application T-13409 proposes to move the authorized point of appropriation (POA) (Well 1) and add four additional points of appropriation (APOA) with approximate distances as described below:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Type of Change	Approximate Distances from Authorized Wells in Miles	
							Well #2	Well #1
26 S	30 E	WM	9	SW NE	WELL #11 - 43° 19' 52.0" N, 119° 07' 27.6" W	POA	1.5	0.7
26 S	30 E	WM	10	SW SW	WELL #10 - 65 FEET NORTH AND 1255 FEET EAST FROM THE SW CORNER OF SECTION 10	POA	0.8	0.1
26 S	30 E	WM	16	NE NE	WELL #7 - 25 FEET SOUTH AND 320 FEET WEST FROM THE NE CORNER OF SECTION 16	APOA	1.0	0.3
26 S	30 E	WM	16	NW SW	NEW WELL 1 - 2464 FEET NORTH AND 288 FEET EAST FROM THE SW CORNER OF SECTION 16	APOA	1.8	1.3
26 S	30 E	WM	16	SE SE	WELL #8 - 600 FEET NORTH AND 185 FEET WEST FROM THE SE CORNER OF SECTION 16	APOA	1.0	1.0
26 S	30 E	WM	16	SE SE	WELL #12 - 43° 18' 33.1" N, 119° 07' 19.5" W	APOA	1.1	1.1

8. Transfer Application T-13409 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	30 E	WM	10	SW SW	22.8
26 S	30 E	WM	15	NW NE	5.8
26 S	30 E	WM	15	SW NE	26.1
26 S	30 E	WM	15	SE NE	9.8
26 S	30 E	WM	15	NE NW	24.0
26 S	30 E	WM	15	NW NW	23.3
26 S	30 E	WM	15	SW NW	28.8
26 S	30 E	WM	15	SE NW	40.0
26 S	30 E	WM	15	NE SW	29.9
26 S	30 E	WM	15	NW SW	11.6
26 S	30 E	WM	15	NE SE	35.2
26 S	30 E	WM	15	NW SE	19.3
Total					276.6

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years 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.

10. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-13409.
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

The change in points of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-13409 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.

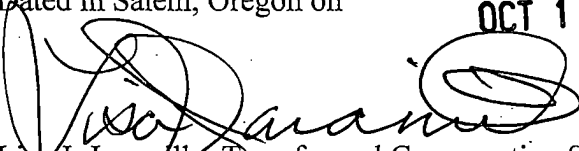
If Transfer Application T-13409 is approved, the final order will include the following:

1. *The change in points of appropriation, additional points of appropriation and change in place of use proposed in Transfer Application T-13409 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 93885 and 94527 and any related decree.*
3. *Water right Certificates 93885 and 94527 are cancelled.*
4. *Under Certificate 93885, the quantity of water diverted at the new and additional points of appropriation (Wells 2, 7, 8, 10, 11 and 12), together with that diverted at the original point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1, 3 and 4).*
5. *Under Certificate 94527, the quantity of water diverted at the new and additional points of appropriation (Wells 7, 8, 10, 11, 12 and New Well #1), together with that diverted at the original point of appropriation (Well 2), shall not exceed the quantity of water lawfully available at the original points of appropriation (Wells 1 and 2).*
6. *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.*
 - 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.*

7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *The former place of use of the transferred right shall no longer receive water under the right.*
9. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022**. 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.*
10. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated in Salem, Oregon on

OCT 12 2021



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

This Preliminary Determination was prepared by Scott Grew. If you have questions about the information in this document, you may reach him at scott.a.grew@oregon.gov or 503-986-0890.

Protests should be addressed to the attention of Water Rights Services 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 servicemembers have a right to stay these proceedings under the federal Servicemembers 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.

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