



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

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June 1, 2022

VIA CERTIFIED MAIL AND E-MAIL

Applicant

CHARLES D. AND CHERYL A. NOFZIGER

PO BOX 36

CHRISTMAS VALLEY, OR 97641

SUBJECT: Water Right Transfer Application T-13865

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13865. 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 Lakeview Examiner 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@water.oregon.gov or 503-986-0890 if I may be of assistance.

Sincerely,

Scott Grew

Transfer Specialist

cc: Transfer Application file T-13865
Jeremy T. Giffin, District 11 Watermaster (*via e-mail*)
John A. Short, 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-13865, Lake County)	PROPOSING APPROVAL OF
)	CHANGES IN POINTS OF
)	APPROPRIATION AND PLACES 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.

Applicant

CHARLES D. AND CHERYL A. NOFZIGER
PO BOX 36
CHRISTMAS VALLEY, OR 97641

Findings of Fact

1. On November 22, 2021, CHARLES D. AND CHERYL A. NOFZIGER, filed an application to change the points of appropriation and place of use under Certificates 76468, 91152, 91153 and to change the place of use under Certificate 83338. The Department assigned the application number T-13865.
2. Notice of the application for transfer was published on December 7, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 11, 2022, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13865 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 10, 2022, 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 March 29, 2022, the agent for the applicant requested the completion date of October 1, 2027 in order to provide enough time to complete the proposed changes. The Department granted the longer time for completion per OAR 690-380-5140 (3).

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 first right to be transferred is as follows:

Certificate: 76468 in the name of FLOWERREE FARMS, INC. C/O JOHN FLOWERREE (perfected under Permit G-9020)
Use: IRRIGATION of 5.0 ACRES
Priority Date: JUNE 11, 1980
Rate: 0.06 CUBIC FOOT PER SECOND (CFS)
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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: WELL 2 in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE SW	WELL 2 - 1320 FEET SOUTH AND 1300 FEET WEST FROM THE C1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE SW	1.3
27 S	19 E	WM	8	NW SW	1.2
27 S	19 E	WM	8	SW SW	1.2
27 S	19 E	WM	8	SE SW	1.3
Total:					5.0

6. Transfer Application T-13865 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	1.3
27 S	19 E	WM	8	NW NW	1.2
27 S	19 E	WM	8	SW NW	1.2
27 S	19 E	WM	8	SE NW	1.3
Total					5.0

7. Transfer Application T-13865 proposes to move the authorized point of appropriation approximately 2660 feet North to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	WELL 1 - SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

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

Certificate: 83338 in the name of RICHARD C. SMITH (perfected under Permit G-10703)
Use: IRRIGATION of 10.3 ACRES
Priority Date: NOVEMBER 4, 1983

Rate: 0.128 CFS

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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	WELL 1 - SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.51
27 S	19 E	WM	8	NW NW	2.01
27 S	19 E	WM	8	SW NW	2.57
27 S	19 E	WM	8	SE NW	3.21
Total:					10.30

9. Transfer Application T-13865 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.60
27 S	19 E	WM	8	NW NW	2.60
27 S	19 E	WM	8	SW NW	2.60
27 S	19 E	WM	8	SE NW	2.50
Total:					10.30

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

Certificate: 91152 in the name of CHARLES AND CHERYL A. NOFZIGER
(perfected under Permit G-9651)

Use: IRRIGATION of 121.6 ACRES

Priority Date: APRIL 5, 1982

Rate: 1.52 CFS

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 a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	19	SW NE	WELL 3 - 1322 FEET SOUTH AND 1335 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	19	NE NE	32.7
27 S	17 E	WM	19	NW NE	23.5
27 S	17 E	WM	19	SW NE	32.7
27 S	17 E	WM	19	SE NE	32.7
Total:					121.6

11. Transfer Application T-13865 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Type of Change
27 S	17 E	WM	19	NE NE	11.0	POU
27 S	17 E	WM	19	SE NE	15.1	POU
27 S	19 E	WM	8	NE NW	23.8	POA/POU
27 S	19 E	WM	8	NW NW	23.9	POA/POU
27 S	19 E	WM	8	SW NW	23.9	POA/POU
27 S	19 E	WM	8	SE NW	23.9	POA/POU
Total:					121.6	

12. Transfer Application T-13865 proposes to move the authorized point of appropriation approximately 2655 feet West to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	WELL 1 - SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

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

Certificate: 91153 in the name of CHARLES AND CHERYL A. NOFZIGER
(perfected under Permit G-8888)

Use: IRRIGATION of 9.2 ACRES

Priority Date: JULY 10, 1980

Rate: 0.115 CFS

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 a diversion of ONE-EIGHTIETH of one cubic foot per second or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	17 E	WM	19	SW NE	WELL 3 - 1322 FEET SOUTH AND 1335 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	17 E	WM	19	NW NE	9.2

14. Transfer Application T-13865 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	19 E	WM	8	NE NW	2.3
27 S	19 E	WM	8	NW NW	2.3
27 S	19 E	WM	8	SW NW	2.3
27 S	19 E	WM	8	SE NW	2.3
				Total:	9.2

15. Transfer Application T-13865 proposes to move the authorized point of appropriation approximately 2655 feet West to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
27 S	19 E	WM	8	NE NW	WELL 1 - SOUTH 44 DEGREES, 41 MINUTES, 21 SECONDS WEST 1856.71 FEET FROM THE N1/4 CORNER OF SECTION 8

Transfer Review Criteria (OAR 690-380-4010)

16. 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.
17. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right(s) were present within the five-year period prior to submittal of Transfer Application T-13865.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.
20. All other application requirements are met.

Determination and Proposed Action

The changes in point of appropriation and changes in place of use proposed in Transfer Application T-13865 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-13865 is approved, the final order will include the following:

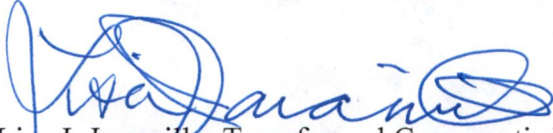
- 1. The change in point of appropriation and change in places of use proposed in Transfer Application T-13865 are approved.*
- 2. The right to the use of the water is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations contained in Certificates 76468, 83338, 91152, 91153, and any related decree.*
- 3. Water right Certificates 76468, 83338, 91152, and 91153 are cancelled. A new certificate will be issued describing that portion of the Certificate 76468 not affected by this transfer.*
- 4. For Certificate 76468 the quantity of water diverted at the new point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 2).*
- 5. For Certificate 91152, the quantity of water diverted at the new point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 3).*
- 6. For Certificate 91153, the quantity of water diverted at the new point of appropriation (Well 1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 3).*
- 7. 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.*
- 8. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 9. The former place of use of the transferred right shall no longer receive water under the right.*
- 10. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2027**. 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.*

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11. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated in Salem, Oregon on JUN 01 2022



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

This draft 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.