

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

In the Matter of Transfer Application) FINAL ORDER
T-10580, Umatilla County) APPROVING A DISTRICT TEMPORARY
) TRANSFER

Authority

ORS 540.570 establishes the process in which a district may submit a request to temporarily transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

Applicant

WESTLAND IRRIGATION DISTRICT
P.O. BOX 944
HERMISTON, OR 97838

Findings of Fact

1. On March 27, 2008, Westland Irrigation District filed a district transfer application to temporarily change the place of use under Certificates 79990, 79991, 83083, 76051 and 79439. The Department assigned the application number T-10580.
2. Notice of the application for transfer was published pursuant to ORS 540.570 and OAR 690-385-4400. No comments were filed in response to the notice.
3. The entirety of the first right and portions of its supplemental rights to be transferred are as follows:
Certificate: 79990, issued in the name of L & L Farms (perfected under Permit G-6893)
Use: Irrigation of 250.4 acres
Priority Date: JULY 19, 1976
Rate & Duty: 1.39 cubic feet per second (cfs); ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet for each acre irrigated during the irrigation season of each year.
Source: WELL #1, within the SPIKES GULCH RIVER BASIN

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

Authorized Point of Appropriation:

Twtp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	28 E	WM	23	SW SE	WELL 1 – 960 Feet North and 30 Feet East from the S¼ Corner of Section 23

Certificate: 79991, issued in the name of L & L Farms (perfected under Permit G-7036)

Use: Supplemental Irrigation of 156.5 acres

Priority Date: December 2, 1976

Rate & Duty: 1.67 cubic feet per second (cfs); ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 3 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL 3, within the SPIKES GULCH RIVER BASIN

Authorized Point of Appropriation:

Twtp	Rng	Mer	Sec	Q - Q	SURVEY COORDINATES
3 N	28 E	WM	23	NW NW	WELL 3 – 60 Feet South and 820 Feet East from the NW Corner of Section 23

Certificate: 83083, issued in the name of Tony Amstad and L & L Farms/Robert Levy (perfected under Permit S-48968)

Use: Supplemental Irrigation of 250.4 acres

Priority Date: August 10, 1981

Rate & Duty: 6.0 cubic feet per second (cfs); ONE-FORTIETH of one cubic foot per second per acre. The use allowed herein may be made anytime between November 15 and June 15 of each year that water can be put to beneficial use by irrigation, either for immediate crop or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season. The use shall be further limited to a diversion of not to exceed 1.5 ACRE-FEET per acre for each acre irrigated during the period from November 15 to the last day of February of each year, provided that the right allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed 4.5 ACRE-FEET per acre for each acre irrigated in any one year.

Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

Twtp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	29 E	WM	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 feet from the W¼ corner of Section 21.

Authorized Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)									
Twtp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE - ACRES			USER
						79990(IR)	79991(IS)	83083(IS)	
3 N	28 E	WM	33	NE SW	8103	29.2	29.2	29.2	L & L FARMS
3 N	28 E	WM	33	NW SW	8103	30.9	--	30.9	L & L FARMS
3 N	28 E	WM	33	SW SW	8103	32.6	--	32.6	L & L FARMS
3 N	28 E	WM	33	SE SW	8103	30.4	--	30.4	L & L FARMS
3 N	28 E	WM	33	NE SE	8103	31.1	31.1	31.1	L & L FARMS

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)									
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE - ACRES			USER
						79990(IR)	79991(IS)	83083(IS)	
3 N	28 E	WM	33	NW SE	8103	31.2	31.2	31.2	L & L FARMS
3 N	28 E	WM	33	SW SE	8103	32.7	32.7	32.7	L & L FARMS
3 N	28 E	WM	33	SE SE	8103	32.3	32.3	32.3	L & L FARMS
TOTAL:						250.4	156.5	250.4	

5. Transfer Application T-10580 proposes to TEMPORARILY change the place of use for the above described rights to:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)									
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE (ACRES)			USER
						79990(IR)	79991(IS)	83083(IS)	
2 N	28 E	WM	4	SW NE	800	0.4	0.4	0.4	L & L FARMS
2 N	28 E	WM	4	SE NE	800	0.5	0.5	0.5	L & L FARMS
2 N	28 E	WM	4	SW NW	800	0.8	--	0.8	L & L FARMS
2 N	28 E	WM	4	SE NW	800	0.8	0.8	0.8	L & L FARMS
2 N	28 E	WM	4	NE SW	800	33.7	31.1	33.7	L & L FARMS
2 N	28 E	WM	4	NW SW	800	33.6	--	33.6	L & L FARMS
2 N	28 E	WM	4	SW SW	800	28.5	--	28.5	L & L FARMS
2 N	28 E	WM	4	SE SW	800	28.4	--	28.4	L & L FARMS
2 N	28 E	WM	4	NE SE	800	33.5	33.5	33.5	L & L FARMS
2 N	28 E	WM	4	NW SE	800	33.0	33.0	33.0	L & L FARMS
2 N	28 E	WM	4	SW SE	800	28.5	28.5	28.5	L & L FARMS
2 N	28 E	WM	4	SE SE	800	28.7	28.7	28.7	L & L FARMS
TOTAL:						250.4	156.5	250.4	

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

Certificate: 83083, issued in the name of Tony Amstad and L & L Farms - Robert Levy (perfected under Permit S-48968)

Use: Irrigation of 127.3 acres

Priority Date: August 10, 1981

Rate & Duty: ONE-FORTIETH of one cubic foot per second per acre. The use allowed herein may be made anytime between November 15 and June 15 of each year that water can be put to beneficial use by irrigation, either for immediate crop or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season. The use shall be further limited to a diversion of not to exceed 1.5 ACRE-FEET per acre for each acre irrigated during the period from November 15 to the last day of February of each year, provided that the right allowed herein, together with the amount secured under any other right existing for the same lands shall not exceed 4.5 ACRE-FEET per acre for each acre irrigated in any one year.

Source: Umatilla River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	29 E	WM	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 feet from the W¼ corner of Section 21.

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	USER
2 N	28 E	WM	4	SW NE	800	0.4	L & L FARMS
2 N	28 E	WM	4	SE NE	800	0.5	L & L FARMS
2 N	28 E	WM	4	NW SW	800	2.7	L & L FARMS
2 N	28 E	WM	4	NE SE	800	33.5	L & L FARMS
2 N	28 E	WM	4	NW SE	800	33.0	L & L FARMS
2 N	28 E	WM	4	SW SE	800	28.5	L & L FARMS
2 N	28 E	WM	4	SE SE	800	28.7	L & L FARMS
TOTAL:						127.3	

7. Transfer Application T-10580 proposes to TEMPORARILY change the place of use for the above described right to:

Proposed Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q - Q	TL	Acres	USER
3 N	28 E	WM	33	NE SE	8103	31.1	L & L FARMS
3 N	28 E	WM	33	NW SE	8103	31.2	L & L FARMS
3 N	28 E	WM	33	SW SE	8103	32.7	L & L FARMS
3 N	28 E	WM	33	SE SE	8103	32.3	L & L FARMS
TOTAL:						127.3	

8. The portion of the third right and its supplemental right to be transferred are as follows:
Certificate: 76051, issued in the name of Teel Irrigation District (perfected under Permit S-25924)

Use: Irrigation of 123.1 acres

Priority Date: June 27, 1958

Rate & Duty: 0.83 cubic foot per second (cfs); ONE -FORTIETH of one cubic foot per second and 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: Umatilla River, tributary to the Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
3 N	29 E	WM	21	SW NE	Westland Canal - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 feet from the W¼ corner of Section 21.

Certificate: 79439, issued in the name of U.S. Bureau of Reclamation (Perfected under Permit S-7400)

Use: Supplemental Irrigation of 123.1 acres

Priority Date: July 1, 1924

Rate & Duty: ONE-EIGHTIETH of one cubic foot per second provided further that the right allowed herein for supplemental irrigation shall be limited to any

deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed therein.

Source: McKay Reservoir, a tributary of McKay Creek. Water is run down the natural channels of McKay Creek and the Umatilla River and is re-diverted at Westland Irrigation District Canal.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
2 N	32 E	WM	34	NW SE	McKAY DAM
3 N	29 E	WM	21	SW NE	WESTLAND CANAL - North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 Feet from the W¼ Corner of Section 21

Authorized Places of Use:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE (ACRES)		USER
						76051 (IR)	79439 (IS)	
3 N	28 E	WM	28	NE NW	7500	31.3	31.3	L & L FARMS
3 N	28 E	WM	28	NW NW	7500	30.0	30.0	L & L FARMS
3 N	28 E	WM	28	SW NW	7500	31.0	31.0	L & L FARMS
3 N	28 E	WM	28	SE NW	7500	30.8	30.8	L & L FARMS
TOTAL:						123.1	123.1	

9. Transfer Application T-10580 proposes to TEMPORARILY change the place of use for the above described rights to:

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)								
Twp	Rng	Mer	Sec	Q - Q	TL	CERTIFICATE (ACRES)		USER
						76051 (IR)	79439 (IS)	
3 N	28 E	WM	33	NE SW	8103	29.2	29.2	L & L FARMS
3 N	28 E	WM	33	NW SW	8103	30.9	30.9	L & L FARMS
3 N	28 E	WM	33	SW SW	8103	32.6	32.6	L & L FARMS
3 N	28 E	WM	33	SE SW	8103	30.4	30.4	L & L FARMS

10. As part of transfer application T-10580, Westland Irrigation District submitted a statement that a portion of the water rights existing on Circle 12 in the NW¼ of Section 28, and water rights on Circle 28 in the SW¼ of Section 4, will not be exercised during the 2008 irrigation season. These lands are further described as follows:

Certificates 76051 & 79439 - Portion not to be used during 2008 Irrigation Season						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
3 N	28 E	WM	28	NW NW	7500	1.2

Certificate 83083 - Portion not to be used during 2008 Irrigation Season						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
2 N	28 E	WM	4	NE SW	800	24.7
2 N	28 E	WM	4	NW SW	800	30.8
2 N	28 E	WM	4	SW SW	800	13.2

11. Notice of the application for temporary transfer was published April 8, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
12. The district temporary transfer application satisfies the criteria of OAR 690-385-4000, contains the information required under OAR 690-385-2000, and includes maps meeting the requirements of OAR 690-385-2200.
13. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
14. The proposed change in place of use would not result in enlargement of the rights.
15. The proposed changes in place of use would not result in injury to other rights.

Conclusions of Law


The proposed change in place of use in Transfer Application T-10580 satisfies the requirements of ORS 540.574(3) and 540.570.

Now, therefore, it is ORDERED:

1. The proposed, temporary changes in place of use as proposed in Transfer Application T-10580 are approved.
2. The temporary transfer is effective for the 2008 irrigation season.
3. 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 79990, 79991, 83083, 76051, 79439 and any related decree.
4. The former places of use shall not be irrigated as part of these water rights during the 2008 irrigation season.
5. The District shall not use water under portions of water rights Certificates 76051, 79439 and 83083 during the 2008 irrigation season at the authorized place of use as described in Findings of Fact #10.
6. The use of water on the lands from which the water right is transferred and at the new temporary place of use during the same irrigation season or calendar year is prohibited and may subject the district and landowner to civil penalties.

7. The use of water under this temporary transfer may be conditioned or revoked at any time to the extent necessary to avoid injury if the Department finds the transfer causes injury to any existing water right.
8. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
9. At the end of the 2008 irrigation season all uses of water approved under this temporary transfer revert automatically to the terms and conditions of the original water use permit, certificate, or adjudication, as evidenced by a court decree.
10. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.

Dated at Salem, Oregon this 18th day of June, 2008.


By Phillip C. Ward, Director

Mailing Date: JUN 20 2008