

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11040, Umatilla County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND ADDITIONAL POINTS OF
)	APPROPRIATION

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of appropriation 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.

Applicant

L & L FARMS, c/o ROBERT LEVY
822 HIGHWAY 395 S #423
HERMISTON, OR 97838

Findings of Fact

1. On March 22, 2010, Robert Levy of L & L Farms, filed an application to temporarily change the place of use and add additional points of appropriation under Certificates 76263 and 79993 for a period of one year. The Department assigned the application number T-11040.
2. Robert Levy has confirmed the water use on the proposed "TO" lands under existing Certificates 76051, 79439, 83083 and Water Use Permit 54582 on Circles #2 and #5 will be transferred off under Westland Irrigation District's Transfer Application T-11039 during the course of the 2010 irrigation season and is fully described in Findings of Facts #5 and #8.
3. The FIRST right to be transferred is as follows:
Certificate: 76263 in the name of J. R. SIMPLOT CO. (perfected under Permit G-5812)
Use: IRRIGATION of 226.1 ACRES
Priority Date: JUNE 12, 1972
Rate: 2.83 CUBIC FEET PER SECOND
Limit/Duty: ONE-EIGHTIETH of one cubic foot per second (cfs) per acre, 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 UMATILLA RIVER BASIN
Authorized Point of Appropriation:

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 OR 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.

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	34	NW SE	SPARKS WELL - 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NW¼ SE¼ OF SECTION 34

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	TL	Acres
3 N	28 E	WM	34	SW NE	9200	30.0
3 N	28 E	WM	34	SE NE	9200	24.4
3 N	28 E	WM	34	NW NW	9200	11.3
3 N	28 E	WM	34	SW NW	9200	31.5
3 N	28 E	WM	34	SE NW	9200	10.0
3 N	28 E	WM	34	NE SW	9200	8.0
3 N	28 E	WM	34	NW SW	9200	30.1
3 N	28 E	WM	34	SW SW	9200	2.4
3 N	28 E	WM	34	NE SE	9200	33.6
3 N	28 E	WM	34	NW SE	9200	38.0
3 N	28 E	WM	34	SW SE	9200	4.2
3 N	28 E	WM	34	SE SE	9200	2.6
TOTAL:						226.1

4. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Application T-11040 proposes to add three additional points of appropriation, which are an average of approximately 1.9 miles northeast from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	28 E	WM	23	SW SE	L & L WELL #1 - 960 FEET NORTH AND 30 FEET EAST FROM THE S¼ CORNER OF SECTION 23
3 N	28 E	WM	26	NE NW	L & L WELL #2 - 930 FEET SOUTH FROM THE N¼ CORNER OF SECTION 26
3 N	28 E	WM	23	NW NW	L & L WELL #3 - 60 FEET SOUTH AND 820 FEET EAST FROM THE NW CORNER OF SECTION 23

5. Application T-11040 proposes to TEMPORARILY change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	TL	Q - Q	Acres
3 N	28 E	WM	23	7100	NE SW	17.0
3 N	28 E	WM	23	7100	NW SW	18.4
3 N	28 E	WM	23	7100	SW SW	39.7
3 N	28 E	WM	23	7100	SE SW	35.3
3 N	28 E	WM	23	7100	NE SE	14.8
3 N	28 E	WM	23	7100	NW SE	31.3
3 N	28 E	WM	23	7100	SW SE	23.7
3 N	28 E	WM	23	7100	SE SE	21.7
3 N	28 E	WM	26	7300	NE NW	12.1
3 N	28 E	WM	26	7300	NW NE	12.1
TOTAL:						226.1*

*NOTE: The applicant has stated that the water rights existing on the above described "TO" lands under Certificates 76051 (IR), 79439 (IS), 83083 (IS) and Permit 54582 will be transferred off during the 2010 irrigation season under Westland Irrigation Districts transfer T-11039.

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

Certificate: 79993 in the name of J. R. SIMPLOT CO. (perfected under Permit G-5812)

Use: IRRIGATION of 15.5 ACRES

Priority Date: JUNE 12, 1972

Rate: 0.19 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 ACRE-FEET per acre per year

Source: SPARKS WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	34	NW SE	SPARKS WELL - 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NW ¹ / ₄ SE ¹ / ₄ OF SECTION 34

Authorized Place of Use:

IRRIGATION (IR)						
Twp	Rng	Mer	Sec	TL	Q - Q	Acres
3 N	28 E	WM	34	9200	NW NW	0.1
3 N	28 E	WM	34	9200	SW NW	7.9
3 N	28 E	WM	34	9200	SE NW	0.2
3 N	28 E	WM	34	9200	NW SW	7.3
TOTAL:						15.5

7. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Application T-11040 proposes to add three points of appropriation, which are an average of approximately 1.9 miles northeast from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	23	SW SE	L & L WELL #1 - 960 FEET NORTH AND 30 FEET EAST FROM THE S ¹ / ₄ CORNER OF SECTION 23
3 N	28 E	WM	26	NE NW	L & L WELL #2 - 930 FEET SOUTH FROM THE N ¹ / ₄ CORNER OF SECTION 26
3 N	28 E	WM	23	NW NW	L & L WELL #3 - 60 FEET SOUTH AND 820 FEET EAST FROM THE NW CORNER OF SECTION 23

8. Application T-11040 proposes to TEMPORARILY change the place of use of the right to:

IRRIGATION (IR)						
Twp	Rng	Mer	Sec	TL	Q - Q	Acres
3 N	28 E	WM	23	7100	NE SE	15.5*

*NOTE: The applicant has stated that the water rights existing on the above described "TO" lands under Certificates 76051 (IR), 79439 (IS), 83083 and Permit 54582 will be transferred off during the 2010 irrigation season under Westland Irrigation Districts transfer application T-11039.

9. Notice of the application for temporary transfer was published April 8, 2010, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

10. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

11. Wells, pumps, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
12. The Department has determined that the proposed additional points of appropriation L & L Farms WELL #1 (UMAT 1215), L & L Farms WELL #2 (UMAT 1216), and L & L Farms WELL #3 (UMAT 1214) will all develop the same source of water as the authorized existing Sparks Well (UMAT 1224 and 50476), and are within the same subarea of the Stage Gulch Critical Ground Water Area.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

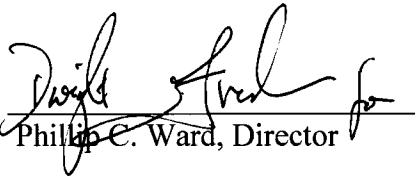
The temporary changes in place of use and additional points of appropriation are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The proposed, temporary changes to the water rights evidenced by Certificates 76263 and 79993 are approved.
2. The temporary transfer is effective for the 2010 irrigation season.
3. The former places of use **shall not** be irrigated as part of these water rights during the 2010 irrigation season.
4. At the end of the 2010 irrigation season all use of water under this temporary transfer shall automatically revert to the terms and conditions of the original water right permit, certificates or adjudication as evidenced by a court decree. The authorization to use the additional points of appropriation shall be terminated concurrently.
5. 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.
6. A subsequent application for a permanent transfer of Certificates 76263 and 79993 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
7. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 76263 and 79993.

8. To adequately assure the amount of water and total duty amount from the Sparks Well is not exceeded during the 2010 irrigation season, the Department requires the water user to monitor water use on the Sparks Well by:
 - a. Read and record the flowmeter readings weekly,
 - b. Report and submit monthly water use and flowmeter readings to the local Watermaster at the end of each month during the 2010 irrigation season. More frequent recordings of the flowmeter and water use may be requested at any time by the Watermaster upon finding a change in appropriation at the Sparks Well has occurred.
 - c. Report immediately any defects, malfunctions or breakdown of the flowmeter to the Watermaster.
9. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
10. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
11. If, at any time during the irrigation season, the Watermaster determines that the water user has not taken all necessary precautions to ensure that areas without appurtenant water rights are not receiving water, this temporary transfer may be terminated. If this transfer is terminated, the water rights subject to this transfer will revert to their original place of use.
12. The use of the remaining water rights described by Certificates 76263 and 79993 shall continue to be in accordance with the terms and conditions of Certificates 76263 and 79993.

Dated at Salem, Oregon this 18 day of May, 2010.


Phillip C. Ward, Director

Mailing Date: MAY 21 2010