

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING TEMPORARY
T-13949, Lake County)	CHANGES IN PLACE OF USE AND POINTS
)	OF APPROPRIATION

Authority

Oregon Revised Statute (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. Oregon Administrative Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicants

BEN SELZNICK
FLOWERREE HAY AND GRAIN LLC
PO BOX 7839
KETCHUM, ID 83340

JOHN FLOWERREE
FLOWERREE FARMS INC.
PO BOX 1869
RENO. NV 89505

Findings of Fact

1. On March 22, 2022, BEN SELZNICK, FLOWERREE HAY AND GRAIN LLC. AND JOHN FLOWERREE, FLOWERREE FARMS INC., filed an application to temporarily change the places of use and change the points of appropriation to serve the proposed places of use under Certificates 64243 and 76469 for a period of 5 years. The Department assigned the application number T-13949.
2. Notice of the application for transfer was published on April 5, 2022, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The applicant requested the term of the temporary transfer be from 2022 through 2027, however temporary transfers can only be a maximum of 5 years per application.

This is a final order in other than a 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 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.

4. On February 17, 2023, the agent for the applicant clarified the requested term of the temporary transfer to be from 2022 through 2026.

5. The portion of the first right to be transferred is as follows:

Certificate: 64243 in the name of FLOWERREE FARMS, INC. (perfected under Permit G-9022)
Use: IRRIGATION of 20.6 ACRES
Priority Date: JUNE 11, 1980
Rate: 0.21 CUBIC FEET 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, shall be 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 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	18 E	WM	12	SE NE	1400 FEET SOUTH AND 1410 FEET EAST FROM THE N1/4 CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	18 E	WM	12	NE NE	4.1
27 S	18 E	WM	12	NW NE	8.0
27 S	18 E	WM	12	SW NE	4.2
27 S	18 E	WM	12	SE NE	4.3
TOTAL					20.6

6. Temporary Transfer Application T-13949 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	26	NW SW	20.6

7. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13949 proposes to move the authorized point of appropriation approximately 2.95 mile north to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	26	SE SW	1327 FEET SOUTH AND 1335 FEET EAST FROM THE W1/4 CORNER OF SECTION 26

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

Certificate: 76469 in the name of FLOWERREE FARMS, INC. c/o JOHN FLOWERREE (perfected under Permit G-9026)
Use: IRRIGATION of 2.0 ACRES
Priority Date: AUGUST 27, 1980
Rate: 0.025 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 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 1 in the FORT ROCK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	35	NE NE	1260 FEET SOUTH AND 1300 FEET WEST FROM THE NE CORNER OF SECTION 35

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	35	NE NE	0.5
26 S	18 E	WM	35	NW NE	0.5
26 S	18 E	WM	35	SW NE	0.5
26 S	18 E	WM	35	SE NE	0.5
TOTAL					2.0

9. Temporary Transfer Application T-13949 proposes to temporarily change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
26 S	18 E	WM	26	NW SW	2.0

10. A change in point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-13949 proposes to move the authorized point of appropriation approximately 0.72 mile north to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	18 E	WM	26	SE SW	1327 FEET SOUTH AND 1335 FEET WEST FROM THE W1/4 CORNER OF SECTION 26

Temporary Transfer Review Criteria

11. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
13. The proposed changes would prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred rights, as required by ORS 540.523(7).
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(5) if the Department later finds that the transfer is causing injury to any existing water right.

Conclusions of Law

The temporary changes in places of use and points of appropriation to serve the temporary places of use proposed in Temporary Transfer Application T-13949 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary change in place of use and change in points of appropriation to serve the temporary places of use proposed in Temporary Transfer Application T-13949 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2022, 2023, 2024, 2025, and 2026 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2026 irrigation season. The authorization to use the temporary points of appropriation shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the changes cause injury to any existing water right.
5. The quantity of water diverted at the proposed temporary points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. A subsequent application for permanent transfer of Certificates 64243 and 76469 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 64243 and 76469.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. 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.
10. The use of the remaining water rights described by Certificates 64243 and 76469 shall continue to be in accordance with the terms and conditions of Certificates 64243 and 76469.

Dated in Salem, Oregon on **MAR 22 2023**

A handwritten signature in black ink, appearing to read 'Lisa J. Jaramillo', written over a faint circular stamp or seal.

Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING DIRECTOR
Oregon Water Resources Department

Mailing Date: **MAR 23 2023**