

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-10349, Umatilla County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND ADDITIONAL POINTS OF
)	APPROPRIATION

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 19, 2007, L & L Farms, c/o Robert Levy 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-10349.
2. Robert Levy specified water use on the proposed "TO" lands under existing Certificates 76050, 75121, 81417 and 83083 (which superseded 81417), will not be used during the course of the 2007 Irrigation Season, and are fully described in Findings of Fact #5 and #8.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 cfs per acre, not to exceed 3 acre feet per acre for each acre irrigated during the irrigation season of each year

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 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.

Source: A WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
3 N	28 E	WM	34	NW SE	1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NW¼ SE¼, SECTION 34

Authorized Place of Use:

Twp	Rng	Mer	Sec	TL#	Q-Q	Acres
3 N	28 E	WM	34	9200	SW NE	30.0
3 N	28 E	WM	34	9200	SE NE	24.4
3 N	28 E	WM	34	9200	NW NW	11.3
3 N	28 E	WM	34	9200	SW NW	31.5
3 N	28 E	WM	34	9200	SE NW	10.0
3 N	28 E	WM	34	9200	NE SW	8.0
3 N	28 E	WM	34	9200	NW SW	30.1
3 N	28 E	WM	34	9200	SW SW	2.4
3 N	28 E	WM	34	9200	NE SE	33.6
3 N	28 E	WM	34	9200	NW SE	38.0
3 N	28 E	WM	34	9200	SW SE	4.2
3 N	28 E	WM	34	9200	SE SE	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-10349 proposes to add additional points of appropriation an average of approximately 1.9 miles north and east from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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-10349 proposes to change the place of use of the right to:
IRRIGATION

Twp	Rng	Mer	Sec	TL#	Q-Q	Acres
2 N	28 E	WM	4	800	SW NW	0.8*
2 N	28 E	WM	4	800	SE NW	0.8*
2 N	28 E	WM	4	800	NE SW	30.2*
2 N	28 E	WM	4	800	NW SW	33.5*
2 N	28 E	WM	4	800	SW SW	30.3*
3 N	28 E	WM	23	7100	NE NW	30.2**
3 N	28 E	WM	23	7100	NW NW	29.0**
3 N	28 E	WM	23	7100	SW NW	34.4**
3 N	28 E	WM	23	7100	SE NW	36.9**
TOTAL:						226.1

* Note: L & L Farms states that the existing 95.6 acres under Certificate 83083 within Section 4 ("TO" lands) will not be used this 2007 season. In addition, the existing rights under Certificates 76050 and 75121, modified under transfer application T-10251, within Section 4 will not be used this 2007 season.

** Note: L & L Farms states that the existing water rights (Certificates 76799, 79439, 76051 and 76717) on the "TO" lands in Section 23 have been transferred off under the associated transfer T-10348 to avoid conflict.

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 acre feet per acre per year

Source: A WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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, SECTION 34

Authorized Place of Use:

IRRIGATION

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

7. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Application T-10349 proposes to add points of appropriation an average of approximately 1.9 miles north and east from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
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

8. Application T-10349 proposes to change the place of use of the right to:

IRRIGATION

Twp	Rng	Mer	Sec	TL#	Q-Q	Acres
2 N	28 E	WM	4	800	SW SW	1.0*
2 N	28 E	WM	4	800	SE SW	14.5*

* Note: L & L Farms states that the existing water rights (Certificates 76050, 75121 and 83083) on the "TO" lands in Section 4 will not be used this 2007 season.

9. Notice of the application for temporary transfer was published April 3, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
10. Application T-10349 proposes to temporarily transfer water rights within the boundaries of Westland Irrigation District. The district was notified of the proposed temporary transfer and did not provide any comments.
11. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is 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 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

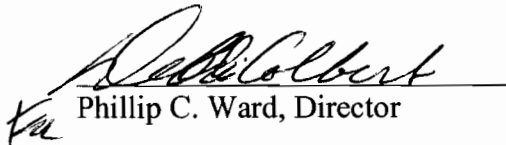
1. The temporary changes in Place of use and Additional Points of Appropriation are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.
2. The use of water under Certificate 83083 within Section 4 ("TO" lands) will not be used this 2007 season, as described in Findings of Fact #5. In addition, the existing rights under Certificates 76050, 75121 and 83083 (which superseded 81417), modified under transfer application T-10251, within Section 4 will not be used this 2007 season, as described in Findings of Fact #8.

Now, therefore, it is ORDERED:

1. The changes in place of use and add additional points of appropriation proposed in application T-10349 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2007 irrigation season.
3. The use shall revert to the authorized places of use at the end of the 2007 irrigation season. The authorization to use the additional points of appropriation shall be terminated concurrently.
4. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.

5. A subsequent application for 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.
6. 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.
7. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
8. 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 31st day of May 2007.


Phillip C. Ward, Director

Mailing Date: JUN 04 2007