

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-12303, Umatilla County) **TEMPORARY CHANGE IN PLACE OF**
) **USE AND 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

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

Findings of Fact

1. On March 9, 2016, Windy River and L & L Farms filed an application to temporarily change the place of use under Certificates 76263 and 79993 for a period of one year. The Department assigned the application number T-12303.

2. 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
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 cfs per acre, not to exceed 3 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:

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

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.

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	Tax Lot	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

3. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Transfer Application T-12303 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	NW NE	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

4. Transfer Application T-12303 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Tax Lot	Q - Q	Acres
2 N	28 E	WM	4	800	NE NE	8.3
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	24.7
2 N	28 E	WM	4	800	NW SW	33.5
2 N	28 E	WM	4	800	SW SW	13.2
3 N	28 E	WM	26	7300	NE NE	14.7
3 N	28 E	WM	26	7300	SE NE	7.1
3 N	28 E	WM	32	8105	NE NW	30.0
3 N	28 E	WM	32	8105	NW NW	31.0
3 N	28 E	WM	32	8105	SW NW	31.2
3 N	28 E	WM	32	8105	SE NW	30.8
Total:						226.1*

*NOTE: The water rights already existing on the above described proposed place of use are supplemental to the water rights identified above during the 2016 irrigation season.

5. 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

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 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	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	Tax Lot	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

6. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Transfer Application T-12303 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 S¼ CORNER OF SECTION 23
3 N	28 E	WM	26	NW NE	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

7. Transfer Application T-12303 proposes to TEMPORARILY change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Tax Lot	Q - Q	Acres
3 N	28 E	WM	26	7300	NE NE	15.5 *

***NOTE:** The water rights already existing on the above described proposed place of use are supplemental to the water rights identified above during the 2016 irrigation season.

8. Notice of the application for temporary transfer was published March 22, 2016, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
9. 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.
10. Wells, pumps, pipeline, and sprinkler systems sufficient to use the full amount of water allowed under the existing rights are present.
11. The Department has determined that the proposed additional points of appropriation will develop the same source of water as the authorized existing point of appropriation and are within the subarea of the Stage Gulch Critical Ground Water Area.
12. The proposed changes would not result in enlargement of the rights.
13. 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 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 former places of use **shall not** be irrigated as part of these water rights during the 2016 irrigation season.
3. At the end of the 2016 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.
4. 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.
5. 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.

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 water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
9. 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.
10. The use of the remaining water right described by Certificate 79993 shall continue to be in accordance with the terms and conditions of Certificate 79993.

Dated at Salem, Oregon this 27 day of June, 2016.



Dwight French, Water Right Services Administrator for
THOMAS M. BYLER, DIRECTOR
Oregon Department of Water Resources

Mailing Date: JUN 29 2016