

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-13020, Clackamas County	)	TEMPORARY CHANGE IN PLACE OF
	)	USE

**Authority**

Oregon Revised Statute (ORS) 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 diversion 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.

**Applicant**

SCHMIDT LIMITED PARTNERSHIP  
9500 SE 327TH AVENUE  
BORING, OR 97009

**Findings of Fact**

1. On August 31, 2018, SCHMIDT LIMITED PARTNERSHIP filed an application to temporarily change the place of use under Certificate 93382 for a period of 2 years. The Department assigned the application number T-13020.
2. Notice of the application for transfer was published on September 11, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 11, 2018, the Department contacted the applicant by written correspondence to notify the applicant of a deficiency in the application. The Department requested that the deficiency be resolved by January 9, 2019.
4. On December 18, 2018, the applicant submitted a revised Table 2 and map, resolving the deficiency.

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.

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

**Certificate:** 93382 in the name of J. FRANK SCHMIDT AND SON CO. (perfected under Permit S-54224)

**Use:** NURSERY USE on 26.5 ACRES

**Priority Date:** APRIL 26, 2005

**Rate:** 0.8 ACRE-FOOT EACH YEAR

**Limit/Duty:** The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For the irrigation of **any other crop**, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

**Period of Use:** YEAR ROUND

**Source:** BARLOW NORTH RESERVOIR, TO BE CONSTRUCTED UNDER APPLICATION R-86275, PERMIT R-14225, A TRIBUTARY OF NETTER CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	19	NE NW	650 FEET SOUTH AND 1450 FEET EAST FROM THE NW CORNER OF SECTION 19

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 E	WM	18	SW SE	37	8.2
4 S	1 E	WM	19	SW SE		13.7
4 S	1 E	WM	19	SE SE		4.6
					Total	26.5

6. Temporary Transfer Application T-13020 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 E	WM	18	SW SE	37	0.2
4 S	1 E	WM	18	SE SE	37	1.4
4 S	1 E	WM	19	NE NE		20.4
4 S	1 E	WM	19	NW NE		4.5
					Total	26.5

### ***Temporary Transfer Review Criteria***

7. Water has been used within the last five years according to the terms and conditions of the right. There is no evidence available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
8. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
9. The proposed change would not result in enlargement of the right.
10. The proposed change 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**

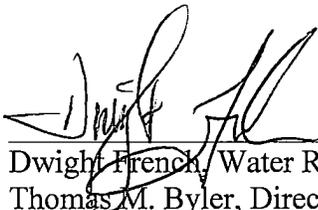
The temporary change in place of use proposed in Temporary Transfer Application T-13020 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

### **Now, therefore, it is ORDERED:**

1. The temporary change in place of use proposed in Temporary Transfer Application T-13020 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2018, and 2019 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2019 irrigation season.
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 Certificate 93382 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 Certificate 93382.
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 right described by Certificate 93382 shall continue to be in accordance with the terms and conditions of Certificate 93382.

Dated at Salem, Oregon this JAN 18 2019.



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Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

Mailing Date: JAN 22 2019