

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-13663, Clackamas County)	TEMPORARY CHANGE IN PLACE OF
)	USE

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.

Applicant

J FRANK SCHMIDT AND SON CO.
PO BOX 189
BORING, OR 97009

Findings of Fact

1. On April 6, 2021, J FRANK SCHMIDT AND SON CO. filed an application to temporarily change the place of use under Certificate 93384 for a period of 5 years. The Department assigned the application number T-13663.
2. Notice of the application for transfer was published on April 20, 2021, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. The portion of the right to be transferred is as follows:

Certificate: 93383 in the name of J FRANK SCHMIDT AND SON CO., NORTHWEST FARM CREDIT SERVICES, FLCA, AND NORTHWEST FARM CREDIT SERVICES, PCA (perfected under Permit G-13860)
Use: NURSERY OPERATIONS ON 26.5 ACRES
Priority Date: OCTOBER 5, 1999
Rate: 0.29 CUBIC FOOT PER SECOND (CFS), BEING 0.31 CFS FROM WELL BF-3, 0.47 CFS FROM WELL BF-5, AND 0.64 CFS FROM WELL BF-6

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.

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to 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 (or its equivalent) 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 (or its equivalent) and 2.5 acre feet per acre per year. The use of water for NURSERY OPERATIONS may be made at anytime, 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 (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

Period of Use: YEAR ROUND

Source: WELLS BF-3, BF-5, AND BF-6 IN BEAR CREEK BASIN

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 E	WM	19	SW NE	WELL BF-3 (ORIGINAL) - 1350 FEET SOUTH AND 1900 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	1 E	WM	19	NE NW	WELL BF-5 (ADDITIONAL) - 1200 FEET SOUTH AND 3920 FEET WEST FROM THE NE CORNER OF SECTION 19
4 S	1 E	WM	19	SE NW	WELL BF-6 (ADDITIONAL) - 2630 FEET SOUTH AND 2650 FEET WEST FROM THE NE CORNER OF SECTION 19

Authorized Place of Use:

NURSERY OPERATIONS						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
4 S	1 E	WM	18	NW SE	3	3.8
4 S	1 E	WM	19	SE SW		22.7
					Total	26.5

4. Temporary Transfer Application T-13663 proposes to temporarily change the place of use of the right to:

NURSERY OPERATIONS						
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

5. 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.
6. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
7. The proposed change would prevent the lands from which the water right is removed during the period of the temporary transfer from receiving water under the transferred right, as required by ORS 540.523(7).
8. 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-13663 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-13663 is approved.
2. The former place of use **shall not** be irrigated as part of this water right during the 2021, 2022, 2023, 2024 and 2025 irrigation seasons.
3. The use shall revert to the authorized place of use at the end of the 2025 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 93384 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 93384.
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 93384 shall continue to be in accordance with the terms and conditions of Certificate 93384.

Dated in Salem, Oregon on

JUN 09 2021



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing Date:

JUN 10 2021