

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12635, Umatilla County)	TEMPORARY CHANGE IN PLACE OF
)	USE AND ADDITIONAL 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.

Applicant

WINDY RIVER - L & L FARMS
C/O ROBERT LEVY
10000 HWY 395 S #423
HERMISTON, OR 97838

Findings of Fact

1. On April 6, 2017, WINDY RIVER - L & L FARMS, C/O ROBERT LEVY filed an application to temporarily change the place of use and for additional points of appropriation to serve the proposed place of use under Certificate 76263 and 79993 for a period of one year. The Department assigned the application number T-12635.
2. Notice of the application for transfer was published on April 11, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 27, 2017 the Department notified the applicant and agent for the applicant about deficiencies in the application and map.
4. On August 1, 2017 the agent for the applicant provided amended pages and an amended map to satisfy the deficiencies.

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 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: 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 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: ONE WELL within the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	28 E	WM	34	NW SE	SPARKS WELL - 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NW ¼ SE ¼ OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	34	SW NE	30.0
3 N	28 E	WM	34	SE NE	24.4
3 N	28 E	WM	34	NW NW	11.3
3 N	28 E	WM	34	SW NW	31.5
3 N	28 E	WM	34	SE NW	10.0
3 N	28 E	WM	34	NE SW	8.0
3 N	28 E	WM	34	NW SW	30.1
3 N	28 E	WM	34	SW SW	2.4
3 N	28 E	WM	34	NE SE	33.6
3 N	28 E	WM	34	NW SE	38.0
3 N	28 E	WM	34	SW SE	4.2
3 N	28 E	WM	34	SE SE	2.6
Total					226.1

6. Temporary Transfer Application T-12635 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
2 N	28 E	WM	4	SW NE	29.2	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	SE NE	26.4	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	NE NW	34.2	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	NW NW	34.3	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	SW NW	28.9	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	SE NW	28.9	Sparks Well & L&L Wells #1,2,3
3 N	28 E	WM	33	SW SW	0.1	Sparks Well & L&L Wells #1,2,3
3 N	28 E	WM	33	SE SW	0.1	Sparks Well & L&L Wells #1,2,3
4 N	29 E	WM	20	NE SW	0.2	Mills N Well

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
4 N	29 E	WM	20	NW SW	33.8	Mills N Well
4 N	29 E	WM	20	SW SW	10.0	Mills N Well
Total					226.1	

Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12635 proposes to temporarily add four additional points of appropriation:

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 N	9 E	WM	20	SW SE	MILLS N WELL - 1050 NORTH AND 50 FEET EAST FROM THE SOUTH ¼ CORNER OF SECTION 20

8. 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 (OF AVAILABLE AT THE ORIGINAL POINT OF APPROPRIATION)

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 acre-feet per acre for each acre irrigated during the irrigation season of each year. The use of water for industrial use may be made any time of the year.

Source: SPARKS WELL within the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 N	28 E	WM	34	NW SE	SPARKS WELL - 1300 FEET NORTH AND 60 FEET WEST FROM THE SE CORNER OF THE NW ¼ SE ¼ OF SECTION 34

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	34	NW NW	0.1
3 N	28 E	WM	34	SW NW	7.9
3 N	28 E	WM	34	SE NW	0.2
3 N	28 E	WM	34	NW SW	7.3
Total					15.5

9. Temporary Transfer Application T-12635 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA
2 N	28 E	WM	4	NE NE	12.6	Sparks Well & L&L Wells #1,2,3
2 N	28 E	WM	4	SE NE	2.9	Sparks Well & L&L Wells #1,2,3
Total					15.5	

10. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-12635 proposes to temporarily add three additional points of appropriation:

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

11. Temporary Transfer Application T-12635 proposes to temporarily transfer water rights within the boundaries of Teel Irrigation District. The district was notified of the proposed temporary transfer and indicated that the district did not object to the transfer.

Temporary Transfer Review Criteria

12. 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.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
14. The proposed changes would not result in enlargement of the rights.
15. 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.

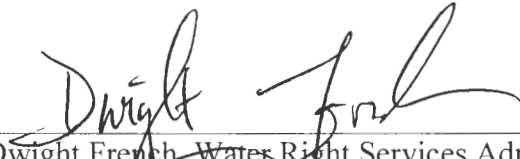
Conclusions of Law

The temporary changes in place of use and additional points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12635 are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.

Now, therefore, it is ORDERED:

1. The temporary changes in place of use and additional points of appropriation to serve the temporary place of use proposed in Temporary Transfer Application T-12635 are approved.
2. The former place of use **shall not** be irrigated as part of these water rights during the 2017 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2017 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. 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 Certificate 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. 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 (new and existing)
 - 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.
9. 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 19 day of September, 2017.


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

SEP 20 2017

Mailing Date: _____