

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

In the Matter of Transfer Application        )  
T-10829, Umatilla County                    )  
  )  
  )        FINAL ORDER APPROVING A  
  )        TEMPORARY CHANGE IN PLACE OF  
  )        USE AND ADDITIONAL 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**

L & L FARMS  
C/O ROBERT LEVY  
822 HIGHWAY 395 S #423  
HERMISTON, OR 97838

**Agent**

William Porfily  
PO Box 643  
415 E. Wheeler  
Stanfield, OR 97875

**Findings of Fact**

1. On March 16, 2009, Robert Levy of L & L Farms, filed an application to temporarily change the place of use and add additional points of appropriation under Certificates 76263, 79993, 79990, 79991 and 82431 for a period of one year. The Department assigned the application number T-10829.
2. The applicant has specified water use on the proposed "TO" lands under existing Certificates 76051, 76050 and 79439 and 83083 in Circles #3, #5 and #6 will be diminished to supplemental irrigation for the incoming right transferred during the course of the 2009 Irrigation Season, and is fully described in Findings of Facts #4, #7 and #12.
3. The entirety of the first right to be transferred is as follows:  
**Certificate:** 76263 in the name of J. R. SIMPLOT COMPANY (perfected under Permit G-5812)  
**Use:** IRRIGATION of 226.1 ACRES  
**Priority Date:** JUNE 12, 1972  
**Rate:** 2.83 CUBIC FEET PER SECOND (cfs)  
**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.

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.

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

**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
<b>TOTAL:</b>					<b>226.1</b>

4. Transfer Application T-10829 proposes to temporarily change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	TL	Q - Q	Acres
3 N	28 E	WM	23	7100	NE SE	30.3
3 N	28 E	WM	23	7100	NW SE	31.3
3 N	28 E	WM	23	7100	SW SE	23.7
3 N	28 E	WM	23	7100	SE SE	21.7
3 N	28 E	WM	26	7300	NE NE	11.1
3 N	28 E	WM	26	7300	NE NW	5.4
3 N	28 E	WM	26	7300	NW NW	6.0
3 N	28 E	WM	26	7300	SW NW	34.9
3 N	28 E	WM	26	7300	SE NW	17.4
3 N	28 E	WM	27	7404	SE NE	0.9
2 N	28 E	WM	4	800	NE NE	34.0
2 N	28 E	WM	4	800	NW NE	9.4
<b>TOTAL:</b>						<b>226.1*</b>

\*NOTE: The applicant has stated that the water rights existing on these above described "TO" lands under Certificates 76051 (IR), 79439 (IS) and 83083 (IS) will be diminished to supplemental irrigation for this incoming right during the 2009 irrigation season.

5. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Transfer Application T-10829 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	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

6. The portion of the second right to be transferred is as follows:

**Certificate:** 79993 in the name of J. R. SIMPLOT COMPANY (perfected under Permit G-5812)

**Use:** IRRIGATION of 15.5 ACRES

**Priority Date:** JUNE 12, 1972

**Rate:** 0.19 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3 acre-feet per during the irrigation season of each 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	SPARKS WELL - 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	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
<b>TOTAL:</b>						<b>15.5</b>

7. Transfer Application T-10829 proposes to TEMPORARILY change the place of use of the right to:

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	TL	Q - Q	Acres
3 N	28 E	WM	26	7300	SE NW	15.5*

\*NOTE: The applicant has stated that the water rights existing on these above described "TO" lands under Certificates 76050 (IR) and 79439 (IS) will be diminished to supplemental irrigation for this incoming right during the 2009 irrigation season.

8. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Transfer Application T-10829 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	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

9. The portions of the third primary water right and its layered supplemental water right (fourth right) to be transferred are as follows:

**Certificate:** 79990 in the name of L & L FARMS (perfected under Permit G-6893)

**Use:** IRRIGATION of 43.4 ACRES

**Priority Date:** JULY 19, 1976

**Rate:** 0.24 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3.0 ACRE-FEET per acre during the irrigation season of each year

**Source:** WELL #1, within the SPIKES GULCH RIVER BASIN (Note- Certificate 79990 contains a scrivener's error in its description of the source of water specified as a well within the Spikes Gulch River Basin. The word "River" was incorrectly introduced into a newly issued certificate confirming a diminution in an order entered September 3, 1997, Volume 51 Page 983.)

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	23	SW SE	960 FEET NORTH AND 30 FEET EAST FROM THE S¼ CORNER OF SECTION 23

**Certificate:** 79991 in the name of L & L FARMS (perfected under Permit G-7036)

**Use:** SUPPLEMENTAL IRRIGATION of 43.4 ACRES

**Priority Date:** DECEMBER 2, 1976

**Rate:** 0.46 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre, not to exceed 3 acre-feet per acre during the irrigation season of each year, provided further that the right allowed herein for supplemental irrigation shall be limited to any deficiency in the available supply of any prior right existing for the same land.

**Source:** WELL #3, within the SPIKES GULCH RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
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

**Authorized Places of Use:**

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)						
					ACRES	
Twp	Rng	Mer	Sec	Q - Q	Certificate 79990 (IR)	Certificate 79991 (IS)
3 N	28 E	WM	33	SW SE	11.1	11.1

3 N	28 E	WM	33	SE SE	32.3	32.3
<b>TOTAL:</b>					<b>43.4</b>	<b>43.4</b>

10. Transfer Application T-10829 proposes to temporarily change the place of use of the right to:

**Proposed Place of Use:**

IRRIGATION (IR) AND SUPPLEMENTAL IRRIGATION (IS)							
						ACRES	
Twp	Rng	Mer	Sec	Q - Q	TL	Certificate 79990 (IR)	Certificate 79991 (IS)
4 N	29 E	WM	20	NE SW	300	0.2	0.2
4 N	29 E	WM	20	NW SW	300	33.2	33.2
4 N	29 E	WM	20	SW SW	300	10.0	10.0
<b>TOTAL:</b>						<b>43.4</b>	<b>43.4</b>

11. An additional point of appropriation is necessary to convey the water to the proposed temporary place of use. Transfer Application T-10829 proposes to add a point of appropriation, which are an average of approximately 6.0 miles north and east from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
4 N	29 E	WM	20	SW SE	L & L MILLS NORTH WELL - 1050 FEET NORTH AND 50 FEET EAST FROM THE S¼ CORNER OF SECTION 20

12. The portion of the fifth right to be transferred is as follows:

**Certificate:** 82431 the name of COURTNEY IRRIGATION COMPANY (confirmed by Umatilla River Decree)

**Use:** IRRIGATION of 64.2 ACRES

**Priority Date:** January 9, 1900 for 17.0 acres and 1900 for 47.2 acres

**Rate:** 0.80 CUBIC FOOT PER SECOND (cfs)

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre from March 1 to November 1 and subject to the limitations of paragraph 32 of the Umatilla River Decree for each acre irrigated during the irrigation season of each year

**Source:** UMATILLA RIVER, a tributary of the COLUMBIA RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	29 E	WM	21	SW NE	North 76 Degrees 45 Minutes 56 Seconds East, 2913.19 Feet from the W¼ Corner of Section 21

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Priority Date	Q - Q	Acres
3 N	28 E	WM	12	1900	NE NW	10.1
3 N	28 E	WM	12	1900	NW NW	10.0
3 N	28 E	WM	12	1900	SW NW	8.6
3 N	28 E	WM	12	1900	SE NW	11.0
3 N	28 E	WM	12	Jan 9,1900	NE SW	1.3
3 N	28 E	WM	12	1900	NE SW	2.0
3 N	28 E	WM	12	1900	NE SW	3.3
3 N	28 E	WM	12	Jan 9,1900	NE SW	2.3
3 N	28 E	WM	12	1900	NW SW	1.6
3 N	28 E	WM	12	1900	NW SW	0.6
3 N	28 E	WM	12	Jan 9,1900	NW SW	6.4
3 N	28 E	WM	12	Jan 9,1900	NW SW	1.7
3 N	28 E	WM	12	Jan 9,1900	SW SW	4.3
3 N	28 E	WM	12	Jan 9,1900	SE SW	1.0
<b>TOTAL:</b>						<b>64.2*</b>

\*NOTE: The applicant has stated that the supplemental water rights existing on the above described "FROM" lands under Certificate 79977 and 81432 will be not be used or transferred on these 64.2 acres during the 2009 irrigation season.

13. Transfer Application T-10829 proposes to temporarily change the place of use of the right to:

**Proposed Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	TL	Priority Date	Q - Q	Acres
3 N	28 E	WM	28	7500	1900	NW NW	2.4
3 N	28 E	WM	28	7500	1900	SW NW	31.0
3 N	28 E	WM	28	7500	1900	SE NW	13.8
3 N	28 E	WM	28	7500	Jan 9,1900	SE NW	17.0
<b>TOTAL:</b>							<b>64.2*</b>

\*NOTE: The applicant has stated that the existing water rights on these above described "TO" lands under Certificates 76051 (IR) and 79439 (IS) will be diminished to supplemental irrigation for this incoming right during the 2009 irrigation season.

14. On May 20, 2009, the Department received a statement from Courtney Irrigation District consenting to the proposal submitted by L & L Farms and outlined in Findings of Fact #12 and #13 above.
15. Notice of the application for temporary transfer was published April 8, 2009, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
16. Transfer Application T-10829 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.
17. 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.

18. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
19. The Department has determined that the proposed additional points of appropriation L & L WELL #1 (UMAT 1215), L & L WELL #2 (UMAT 1216), and L & L WELL #3 (UMAT 1214) will all develop the same source of water as the authorized existing Sparks Well (UMAT 1224 & 50476), and are within the same subarea of the Stage Gulch Critical Ground Water Area.
20. The proposed changes would not result in enlargement of the rights.
21. 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.

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

2. The proposed, temporary changes to the water rights evidenced by Certificates 76263, 79993, 79990, 79991 and 82431, as conditioned (See #10 and #13 below), are approved.
3. The temporary transfer is effective for the 2009 irrigation season.
4. The former places of use **shall not** be irrigated as part of these water rights during the 2009 irrigation season.
5. At the end of the 2009 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.
6. Water rights under Certificates 79977 and 81432 shall not be exercised during the 2009 irrigation season at the authorized ("FROM" lands) place of use as described in Findings of Fact #13.
7. 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.
8. A subsequent application for permanent transfer of Certificates 76263, 79993, 79990, 79991 and 82431 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.

9. 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, 79993, 79990, 79991 and 82431.
10. To adequately assure the amount of water and total duty amount from the Sparks Well is not exceeded during the 2009 irrigation season, the Department requires the water user to monitor water use on the Sparks Well by:
  - a. Read and record the flowmeter readings weekly,
  - b. Report and submit monthly water use and flowmeter readings to the local Watermaster at the end of each month during the 2009 irrigation season. More frequent recordings of the flowmeter and water use may be requested at any time by the Watermaster upon finding a change in appropriation at the Sparks Well has occurred.
  - c. Report immediately any defects, malfunctions or breakdown of the flowmeter to the Watermaster.
11. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
12. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
13. 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.
14. The use of the remaining water rights described by Certificates 76263, 79993, 79990, 79991 and 82431 shall continue to be in accordance with the terms and conditions of Certificates 76263, 79993, 79990, 79991 and 82431.

Dated at Salem, Oregon this 21<sup>st</sup> day of May, 2009.

  
Phillip C. Ward, Director *PCW*

Mailing Date: JUN 01 2009