

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-10581, Umatilla County)	TEMPORARY CHANGES 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 27, 2008, Robert Levy filed an application on behalf of L & L Farms, to temporarily change the place of use and add additional points of appropriation under Certificates 76263 and 79993 for a period of one year. The Department assigned the application number T-10581.
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
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
Source: A WELL in the UMATILLA RIVER BASIN

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.

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
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

3. Transfer Application T-10581 proposes to change the place of use of the right to:

Twp	Rng	Mer	Sec	Q-Q	Acres	Circle #
3 N	28 E	WM	27	NE SW	29.2	9
3 N	28 E	WM	27	NW SW	27.6	9
3 N	28 E	WM	27	SW SW	32.0	9
3 N	28 E	WM	27	SE SW	28.9	9
3 N	28 E	WM	28	NE NW	15.6	12
3 N	28 E	WM	28	NW NW	31.0	12
3 N	28 E	WM	28	SW NW	31.0	12
3 N	28 E	WM	28	SE NW	30.8	12

4. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Application T-10581 proposes to add three additional points of appropriation, which are an average of approximately 1.9 miles north and east from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
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

5. Robert Levy has indicated that water use on the proposed "TO" lands in Circle 9, under existing water right Certificates 76051, 79439 and water use Permit S-48450 (as modified by

Westland Irrigation District Transfer T-9845) will not be used during the 2008 irrigation season. Water right Certificates 76051, 79439 and water use Permit S-48450 shall not be exercised on the following lands for the 2008 irrigation season:

Twp	Rng	Mer	Sec	Q-Q	TL	Acres
3 N	28 E	WM	27	NE SW	7300	29.2
3 N	28 E	WM	27	NW SW	7300	27.6
3 N	28 E	WM	27	SW SW	7300	32.0
3 N	28 E	WM	27	SE SW	7300	28.9
TOTAL:						117.7

6. Additionally, to avoid layering during the 2008 irrigation season within Circle #12, the following lands (to which Certificates 76051 and 79439 are appurtenant) shall be transferred off as a result of Transfer Application T-10580. Transfer Application T-10580 is being processed concurrently with this transfer application.

Twp	Rng	Mer	Sec	Q-Q	TL	Acres
3 N	28 E	WM	28	NE NW	7500	31.3
3 N	28 E	WM	28	NW NW	7500	30.0*
3 N	28 E	WM	28	SW NW	7500	31.0
3 N	28 E	WM	28	SE NW	7500	30.8
TOTAL:						108.4

* Note: Robert Levy indicated that in addition to the 30.0 acres that were moved off under T-10580 in the NW¼ NW¼, of Section 28, the remaining 1.2 acres will not be used or transferred during the 2008 irrigation season, allowing the full 31.0 acres to come in under this transfer.

7. 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

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: SPARKS WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
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	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

8. Transfer Application T-10581 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	28	7500	NE NW	15.5

9. Additional points of appropriation are necessary to convey the water to the proposed temporary place of use. Transfer Application T-10581 proposes to add three points of appropriation, which are an average of approximately 1.9 miles in a northeasterly direction from the authorized point of appropriation to:

Twp	Rng	Mer	Sec	Q - Q	Survey Coordinates
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

10. Additionally, to avoid layering during the 2008 irrigation season within Circle #12, the following lands (to which Certificates 76051 and 79439 are appurtenant) shall be transferred off as a result of Transfer Application T-10580. Transfer Application T-10580 is being processed concurrently with this transfer application.

Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	28 E	WM	28	NE NW	15.5

11. Notice of the application for temporary transfer was published April 8, 2008, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
12. Transfer Application T-10581 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.
13. Water has been used within the last five years according to the terms and conditions of the rights and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.

14. A well, pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
15. The proposed additional points of appropriation will develop the same source of water as the authorized point of appropriation.
16. The proposed changes would not result in enlargement of the rights.
17. 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

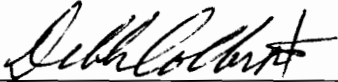
The temporary changes in place of use and additional points of appropriation are consistent with the requirements of ORS 540.523 and OAR 690-380-8000.


Now, therefore, it is ORDERED:

1. The temporary changes in place of use and additional points of appropriation proposed in Transfer Application T-10581 are approved.
2. The former places of use **shall not** be irrigated as part of these water rights during the 2008 irrigation season.
3. The use shall revert to the authorized place of use at the end of the 2008 irrigation season. The authorization to use the additional points of appropriation shall be terminated concurrently.
4. Water rights under Certificates 76051, 79439 and water use Permit S-48450 (modified under transfer application T-9845) shall not be exercised during the 2008 irrigation season at the authorized place of use as described in Findings of Fact #5.
5. 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.
6. 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.
7. 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.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.

9. The use of the remaining water rights described by Certificates 76263 and 79993 shall continue to be in accordance with the terms and conditions of Certificates 76263 and 79993.
10. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

Dated at Salem, Oregon this 18th day of June, 2008.



 Phillip C. Ward, Director

Mailing Date: JUN 20 2008