BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11235, Polk County)	TEMPORARY CHANGE IN PLACE OF
)	USE

Authority

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.

OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

MERLE MARX 4150 OAK GROVE RD RICKREALL, OR 97371-9709

Findings of Fact

- On April 21, 2011, MARX FARMS INC. filed an application to temporarily change the place of use under a portion of Certificate 62232 for a period of 5 years. The Department assigned the application number T-11235.
- 2. The portion of the right to be temporarily transferred is as follows:

Certificate:

62232 in the name of MARX FARMS INC. (perfected under Permit

S-41971)

Use:

IRRIGATION of 80 ACRES

Priority Date: SEPTEMBER 30, 1977

Rate:

107.35 ACRE FEET

Limit/Duty:

The amount of water used for irrigation, together with the amount secured

under any other right shall be limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of

each year.

Source:

MARX BROTHERS RESERVOIR, a tributary of ASH SWALE

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 Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	
6 S	4 W	WM	33	NW NE	1630 FEET NORTH AND 1170 FEET EAST	
					FROM THE C1/4 CORNER OF SECTION 33	

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
6 S	4 W	WM	28	SW SE	14.5		
6 S	4 W	WM	33	NE NE	18.0		
6 S	4 W	WM	33	NW NE	2.3		
6 S	4 W	WM	33	SW NE	13.8		
6 S	4 W	WM	33	SE NE	13.0		
6 S	4 W	WM	33	NW SE	18.4		

3. Certificate 62232 lists the reservoir dam as the point of diversion, but does not describe the location of the actual pumping point. However information is available from the transfer application and map indicating that the pumping point (which correlates with the location of an unlabeled arrow on the Final Proof Map for the right) is located as follows:

Pumping Point:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates		
6 S	4 W	W WM 33 SEN		SE NE	1155 FEET NORTH AND 1751 FEET EAST		
					FROM THE CENTER OF SECTION 33		

4. Temporary Transfer Application T-11235 proposes to temporarily change the place of use of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres			
6 S	4 W	WM	33	SW NW	40.0			
6 S	4 W	WM	33	SE NW	39.8			
6 S	4 W	WM	33	NE SW	0.1			
6 S	4 W	WM	33	NW SW	0.1			

5. Notice of the application for temporary transfer was published on April 26, 2011, pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

- 6. 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.
- 7. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right is present.
- 8. The proposed change would not result in enlargement of the right.

9. 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(6) 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 application Temporary Transfer Application T-11235 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-11235 is approved.
- 2. The former place of use **shall not** be irrigated as part of this water right during the 2011, 2012, 2013, 2014 and 2015 irrigation seasons.
- 3. The use shall revert to the authorized place of use at the end of the 2015 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 62232 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 62232.
- 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 Director may require the water user to install a totalizing flow meter or other suitable measuring device at the point of diversion. If the Director notifies the water user to install a flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
- 9. The use of the remaining water right described by Certificate 62232 shall continue to be in accordance with the terms and conditions of Certificate 62232.

Dated at Salem, Oregon this 26 day of May, 2011.

Dwight French, Water Right Services Administrator, for PHILLIP C. WARD, DIRECTOR

Mailing Date: MAY 2 7 2011