

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

In the Matter of Transfer Application	)	SUPERSEDING FINAL ORDER
T-11185, Klamath County	)	APPROVING CHANGES IN POINTS
	)	OF APPROPRIATION AND
	)	CORRECTING A SCRIVENER'S
	)	ERROR IN PREVIOUS ORDER

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use 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**

CALIFORNIA GIANT, INC.  
PO BOX 1359  
WATSONVILLE, CA 95077

**Findings of Fact**

**Background**

1. On January 13, 2011, CALIFORNIA GIANT, INC. filed an application to change the points of appropriation under Certificates 27304 and 30279. The Department assigned the application number T-11185.
2. On July 6, 2011, the applicant amended the application to clarify the proposed point of appropriation and place of use under Certificate 30279.
3. The portion of the first right to be transferred is as follows:

**Certificate:** 27304 in the name of C. G. GROSS AND MADELINE J. GROSS  
(perfected under Permit U-361)  
**Use:** IRRIGATION of 199.8 ACRES  
**Priority Date:** SEPTEMBER 26, 1950  
**Rate:** 1.9 CUBIC FEET PER SECOND

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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 irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	34	SE SW	1125 FEET NORTH AND 450 FEET WEST FROM THE S¼ CORNER OF SECTION 34

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	12 E	WM	27	SE SW	1.2
40 S	12 E	WM	27	SW SE	7.6
40 S	12 E	WM	27	SE SE	0.1
40 S	12 E	WM	34	NE NE	5.6
40 S	12 E	WM	34	NW NE	40.0
40 S	12 E	WM	34	SW NE	38.4
40 S	12 E	WM	34	SE NE	0.3
40 S	12 E	WM	34	NE NW	10.8
40 S	12 E	WM	34	SE NW	23.6
40 S	12 E	WM	34	NE SW	32.2
40 S	12 E	WM	34	NW SE	40.0
TOTAL					199.8

4. Transfer Application T-11185 proposes to move the authorized point of appropriation approximately 2750 feet north from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	34	SW NE	1400 FEET SOUTH AND 2370 FEET EAST OF THE NE CORNER OF SECTION 34

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

**Certificate:** 30279 in the name of C. G. AND MADELINE J. GROSS (perfected under Permit G-730)

**Use:** SUPPLEMENTAL IRRIGATION of 32.4 ACRES

**Priority Date:** DECEMBER 11, 1957

**Rate:** 0.3 CUBIC FOOT 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, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** GROSS WELL NO. 2 within the LOST RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	34	SW NE	20.5 CHAINS (1353 FEET) SOUTH AND 4.5 CHAINS (297 FEET) EAST FROM THE N¼ CORNER OF SECTION 34

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	12 E	WM	34	SE SW	4.4
40 S	12 E	WM	34	SW SE	28.0
TOTAL					32.4

6. Transfer Application T-11185 proposes to move the authorized point of appropriation approximately 2750 feet south from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	12 E	WM	34	SE SW	1125 FEET NORTH AND 450 FEET WEST OF THE S¼ CORNER OF SECTION 34

7. Notice of the application for transfer was published on January 18, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On July 6, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11185 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 8, 2011, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
9. On August 9, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11185 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 9, 2011, and in the Herald and News newspaper on August 30, and September 6 and 13, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. On October 18, 2011, the Department issued a Final Order for the transfer, recorded at Special Order Volume 85, Pages 552 to 555. Shortly following issuance of the order the Department recognized a scrivener's error in the location of the proposed appropriation for Certificate 30279.
11. This order is issued to correct the scrivener's error and to supersede the previous order recorded at Special Order Volume 85, Pages 552 to 555.

***Transfer Review Criteria (OAR 690-380-4010)***

12. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record 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 were present within the five-year period prior to submittal of Transfer Application T-11185.
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.

**Conclusions of Law**

The changes in points of appropriation proposed in Transfer Application T-11185 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the scrivener's error in Special Order Volume 85, Pages 552 to 555 should be corrected in the record.

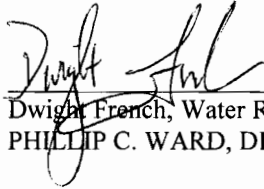
**Now, therefore, it is ORDERED:**

1. The order entered at Special Order Volume 85, Pages 552 to 555 is withdrawn and of no further force and effect and is superseded by this order.
2. The changes in points of appropriation proposed in Transfer Application T-11185 are approved.
3. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 27304 and 30279 and any related decree.
4. Water right certificates 27304 and 30279 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer.
5. The quantity of water diverted at the new points of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
6. The water user shall maintain and operate the existing measurement devices and shall make such improvements as may be required by the Department.
7. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water

Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.

9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 7 day of November 2011.



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

Mailing Date: NOV 09 2011