

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING CHANGE
T-10602, Marion County)	FROM A SURFACE WATER POINT OF
)	DIVERSION TO A GROUNDWATER
)	POINT OF APPROPRIATION AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

ARROWHEAD FARMS, INC. WESTWOOD FARMS, INC. ECHO RIDGE FARMS, INC.
Attn: TOM COLEMAN
PO BOX 127
SAINT PAUL OR 97137

Findings of Fact

Background

1. On April 25, 2008, Tom Coleman, representing Arrowhead Farms, Inc. Westwood Farms, Inc. and Echo Ridge Farms, Inc., filed an application to change the point of diversion, from surface water points of diversion to ground water points of appropriation under Certificates 47856 and 61435. The Department assigned the application number T-10602.
2. The original application proposed the new points of appropriation (POA) to be greater than 500 feet from the original points of diversion (POD). Per OAR 690-380-2130(2)(e), the Applicants submitted analysis to support the fact that the new POAs would affect the surface water similarly. The Department conducted a groundwater review and found that the

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.

proposed POAs, at more than 500 feet from the original PODs, would not affect the surface water similarly and therefore the new POAs must be within 500 feet of the original PODs. On September 5, 2008 the applicants submitted a revised map and survey coordinates for the proposed POAs, which are located within 500 feet of the original PODs.

3. The portion of the first right to be transferred is as follows:

Certificate: 47856 in the name of CREIGHTON B. JONES (perfected under Permit S-22354)

Use: IRRIGATION of 59.1 ACRES

Priority Date: APRIL 8, 1953

Rate: 0.73 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: DEEP LAKE tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	3 W	WM	2	NE SE	Beers 38	None given

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	3 W	WM	2	SW NE	38	19.2
6 S	3 W	WM	2	SE NE	38	2.0
6 S	3 W	WM	2	SE NW	38	1.3
6 S	3 W	WM	2	NE SW	38	0.8
6 S	3 W	WM	2	NE SE	38	4.8
6 S	3 W	WM	2	NW SE	38	27.3
6 S	3 W	WM	2	SW SE	38	1.3
6 S	3 W	WM	11	NE NE	38	0.4
6 S	3 W	WM	11	NW NE	38	2.0

4. Certificate 47856 does not list survey coordinates for the authorized point of diversion, however mapping for transfer application T-10602 identifies the location of the authorized point of diversion more specifically as being:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	3 W	WM	2	NE SE	38	2,240 FEET SOUTH AND 1,170 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38

5. Application T-10602 proposes to change the surface water point of diversion to two ground water points of appropriation. The proposed new points of appropriation will be located approximately 200 feet north of the authorized point of diversion (Well 1) and approximately 500 feet east of the authorized point of diversion (Well 2), located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S (Well 1)	3 W	WM	2	NW SE	38	2,030 FEET SOUTH AND 1,100 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38
6 S (Well 2)	3 W	WM	2	SW SE	38	2,310 FEET SOUTH AND 660 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38

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

Certificate: 61435 in the name of PHILLIP H. GOULET (perfected under Permit S-43640)

Use: IRRIGATION of 73.2 ACRES

Priority Date: JUNE 10, 1977

Rate: 0.92 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: DEEP LAKE, tributary to WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	3 W	WM	2	SE NE	38	970 FEET SOUTH AND 1280 FEET EAST FROM MOST NORTHERLY CORNER OF DLC 38
6 S	3 W	WM	2	NE SE	38	2240 FEET SOUTH AND 1170 FEET EAST FROM MOST NORTHERLY CORNER OF DLC 38

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	3 W	WM	1	SW SW	38	3.8
6 S	3 W	WM	2	NE SE	38	9.2
6 S	3 W	WM	2	NW SE	38	6.0
6 S	3 W	WM	2	SW SE	38	20.6
6 S	3 W	WM	2	SE SE	38	30.6
6 S	3 W	WM	11	NE NE	38	2.9
6 S	3 W	WM	11	NW NE	38	0.1

7. Application T-10602 proposes to change the surface water points of diversion to two ground water points of appropriation. The proposed new points of appropriation will be located approximately 200 feet north of the southerly authorized point of diversion (Well 1) and approximately 500 feet east of the southerly authorized point of diversion (Well 2), located as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S (Well 1)	3 W	WM	2	NW SE	38	2,030 FEET SOUTH AND 1,100 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38
6 S (Well 2)	3 W	WM	2	SW SE	38	2,310 FEET SOUTH AND 660 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38

8. Notice of the application for transfer was published on May 6, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On October 1, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10602 to the applicants. The cover letter for the Preliminary Determination set forth a deadline of November 7, 2008, for the applicants to respond. The applicants were asked to provide additional information regarding buildings covering areas of the authorized place of use, as viewed from the submitted aerial photograph. The applicants submitted an affidavit for the partial cancellation of water right Certificate 61435, a revised map and the necessary information to demonstrate that the applicants are authorized to pursue the transfer, and requested that the Department proceed with issuance of a Preliminary Determination.
10. On February 10, 2009, the Department mailed a copy of a revised draft Preliminary Determination, based on the revisions to the application and map, proposing to approve Transfer Application T-10602 10602 to the applicants. The revised draft Preliminary Determination cover letter set forth a deadline of March 10, 2009, for the applicants to respond with any additional comments. The applicants did not submit any comments by the deadline.
11. On April 15, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10602 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on April 21, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria [OAR 690-380-4010(2)]

12. 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.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10602.
14. The proposed wells meet the requirements of ORS 540.531. Pumping of the well will cause a greater than 50 percent stream depletion in less than 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).

- 15. The proposed change would not result in enlargement of the rights.
- 16. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 17. On January 8, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from the applicant. The portion of the right to be cancelled is as follows:

Certificate: 61435 in the name of PHILLIP H. GOULET (perfected under Permit S-43640)
Use: IRRIGATION of 3.3 ACRES
Priority Date: JUNE 10, 1977
Rate: 0.041 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, 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: DEEP LAKE, tributary to Willamette River

Authorized Point(s) of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
6 S	3 W	WM	2	SE NE	38	970 FEET SOUTH AND 1,280 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38
6 S	3 W	WM	2	NE SE	38	2,240 FEET SOUTH AND 1,170 FEET EAST FROM THE MOST NORTHERLY CORNER OF DLC 38

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
6 S	3 W	WM	2	NW SE	38	2.7
6 S	3 W	WM	2	SW SE	38	0.6

Conclusions of Law

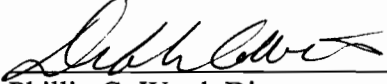
The change from a surface water point of diversion to a groundwater point of appropriation proposed in application T-10602 is consistent with the requirements of ORS 540.505 to 540.580 and 690-380-2130 and OAR 690-380-5000 and the abandoned portion of the right should be cancelled.

Now, therefore, it is ORDERED:

1. The change from a surface water point of diversion to a groundwater point of appropriation proposed in application T-10602 is approved. The portion of the right that has been abandoned is cancelled.
2. Water right Certificates 47856 and 61435 are cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
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 47856 and 61435 and any related decree.
4. 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 diversion.
5. The well from which water is taken under the right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.
6. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
7. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
8. If, within five years after approval of the transfer, the Department finds that the transfer results in substantial or undue interference with an existing ground water right due to use of the well, that would not have occurred in the absence of the transfer, the new point of appropriation shall be subordinate to the existing right injured by the transfer.
9. The original points of diversion of surface water shall not be retained as additional or supplemental points of diversion under the transferred portions of the rights. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water points of diversion, the application shall be approved.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. A Claim of Beneficial Use prepared by a Certified Water Rights 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.

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

Dated at Salem, Oregon this 21ST day of May 2009.


Phillip C. Ward, Director

Mailing date: JUN 01 2009.