

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

| | | |
|--|---|------------------------------|
| In the Matter of Transfer Applications |) | FINAL ORDER APPROVING A |
| T-11340 and T-11307, Union County |) | TEMPORARY CHANGE IN PLACE OF |
| |) | USE AND ADDITIONAL POINT OF |
| |) | APPROPRIATION, AND |
| |) | TERMINATION OF TEMPORARY |
| |) | TRANSFER T-11307 |

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

THREEMILE CANYON FARMS LLC
75906 THREEMILE RD
BOARDMAN, OR 97818

Agent

GSI WATER SOLUTIONS INC
1020 N CENTER PARKWAY, SUITE F
KENNEWICK, WA 99337

Findings of Fact

Background

1. On October 6, 2011, THREEMILE CANYON FARMS LLC, filed an application to temporarily change the place of use and add a point of appropriation to serve the proposed place of use under Certificate 87023 for a period of 5 years. The Department assigned the application number T-11340.
2. On November 23, 2011 the agent submitted a revised map changing the configuration of the modified and proposed places of use.
3. The portion of the right to be transferred is as follows:

Certificate: 87023 in the name of THREEMILE CANYON FARMS LLC (perfected under Permit G-3362)

Use: IRRIGATION of 128.0 ACRES

Priority Date: JULY 7, 1966

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.

Rate: 0.59 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the MCALISTER SLOUGH BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 S | 39 E | WM | 18 | NW SE | POA 1: 1509 FEET NORTH AND 443 FEET EAST FROM THE S1/4 CORNER OF SECTION 18 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|--------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 39 E | WM | 17 | NE NW | 5.0 |
| 3 S | 39 E | WM | 17 | NW NW | 5.0 |
| 3 S | 39 E | WM | 17 | SW SW | 38.2 |
| 3 S | 39 E | WM | 17 | SE SW | 38.4 |
| 3 S | 39 E | WM | 18 | NW SW | 6.0 |
| 3 S | 39 E | WM | 18 | SWSW | 10.0 |
| 3 S | 39 E | WM | 18 | SE SW | 8.0 |
| 3 S | 39 E | WM | 18 | NW SE | 4.1 |
| 3 S | 39 E | WM | 18 | SWSE | 9.0 |
| 3 S | 39 E | WM | 18 | SESE | 4.3 |
| Total Acres: | | | | | 128.0 |

4. Transfer Application T-11340 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|--------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 S | 39 E | WM | 17 | NE NE | 33.0 |
| 3 S | 39 E | WM | 17 | NW NE | 32.5 |
| 3 S | 39 E | WM | 17 | SW NE | 32.5 |
| 3 S | 39 E | WM | 17 | SE NE | 30.0 |
| Total Acres: | | | | | 128.0 |

5. An additional point of appropriation is necessary to convey the water to the proposed temporary place of use. Temporary Transfer Application T-11340 proposes to add a point of appropriation approximately 1.5 miles northeast from the authorized point of appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 S | 39 E | WM | 8 | SW SE | POA 2: 1400 FEET SOUTH AND 500 FEET EAST FROM THE CENTER OF SECTION 8 |

6. There is an underlying supplemental water right (Certificate 85112) on the place of use described in Finding of Fact #3 (the "FROM" lands). The applicant stated that this right will not be exercised during the term of T-11340.
7. There is an underlying primary water right (Certificate 41383) on the place of use described in Finding of Fact #4 (the "TO" lands). The applicant stated the intention to temporarily diminish this right on these lands from primary irrigation to supplemental irrigation during the term of T-11340.
8. The applicant proposes that supplemental groundwater Permit G-15843 on the "TO" lands will be exercised as needed to supplement the transferred primary right.
9. The applicant requested that temporary transfer application T-11307 be terminated upon approval of T-11340.
10. Notice of the application for transfer was published on October 11, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Temporary Transfer Review Criteria

11. 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.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
13. The proposed change would not result in enlargement of the right.
14. 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(5) 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 and temporary additional point of appropriation proposed in Temporary Transfer Application T-11340 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 temporary additional point of appropriation proposed in Temporary Transfer Application T-11340 are approved.
2. Temporary Transfer T-11307 is terminated.

3. The former place of use **shall not** be irrigated as part of this water right during the 2012, 2013, 2014, 2015 and 2016 irrigation seasons.
4. The underlying supplemental water right (Certificate 85112) within the place of use described in Finding of Fact #3 (the "FROM" lands) will not be exercised during the term of T-11340.
5. The underlying primary water right (Certificate 41383) within the place of use described in Finding of Fact #4 (the "TO" lands) will be diminished to Supplemental Irrigation during the term of T-11340.
6. Supplemental groundwater Permit G-15843 on the "TO" lands will be exercised as needed to supplement the transferred primary right.
7. The use shall revert to the authorized place of use at the end of the 2016 irrigation season. The authorization to use the temporary point of appropriation shall be terminated concurrently.
8. The approval of this temporary transfer may be revoked or modified if the Department finds the change cause injury to any existing water right.
9. A subsequent application for permanent transfer of Certificate 87023 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.
10. 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 87023.
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 device and shall make such improvements as may be required by the Department.
13. The use of the remaining water right described by Certificate 87023 shall continue to be in accordance with the terms and conditions of Certificate 87023.

Dated at Salem, Oregon this 30 day of January, 2012.


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

Mailing Date: FEB 01 2012