

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

In the Matter of Transfer Application            )   FINAL ORDER  
T-9870, Polk County                                )   APPROVING CHANGE IN POINT OF  
  )   DIVERSION, AND CHARACTER OF USE

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.

**Applicant**

J. C. Compton Company  
7400 Buena Vista Rd, P.O. Box 38  
Independence, OR 97351

**Findings of Fact**

1. On February 25, 2005, J. C. Compton Company filed a transfer application to change the point of diversion, and to change character of use under Certificate 39277. The transfer application also included a change in character of use under Certificate 39276. On March 14, 2005 the applicant amended the transfer to propose to change the character of use to "mining use." On May 6, 2005 the applicant provided an updated transfer map and provided a second amendment to the transfer reducing the acreage to be transferred, canceling Certificate 39276 instead of including it in the transfer, and proposing to change the transferred portion of the right under Certificate 39277 from supplemental to primary. The Department assigned the application number T-9870.
2. The portion of water right to be transferred is as follows:  
**Certificate:** 39277 in the name of Frank Krauger  
**Use:** Supplemental Irrigation  
**Priority Date:** March 20, 1967  
**Acres:** 19.9 acres  
**Quantity:** 0.22 cfs  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre per year: 49.75 acre-feet per year.  
In the interest of conserving ground water supplies, this supplemental right may be exercised at times when water is available in the ground water

This is a final order in other than 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 either 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.

supply provided that the total quantity diverted from all sources of supply does not exceed the limitation allowed under the rights.

**Source:** Willamette River, tributary to Columbia River

**Authorized Points of Diversion (as listed on Certificate 39277\*):**

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
8	S	4	W	W.M.	34	NW SW	5	*890 feet N. and 2,275 ft. E. from SW corner of Sec. 34
8	S	4	W	W.M.	34	SE SW	6	*1,370 feet N and 720 feet E from SW corner of Sec. 34

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼	Lot	Acres
8	S	4	W	W.M.	34	SW SW	--	8.9
9	S	4	W	W.M.	3	NW NE	--	5.5
9	S	4	W	W.M.	3	NW NW	--	5.5

3. \*There is an apparent error in the description of points of diversion in Certificate 39277. The order of the location description and reference to the government lot number appears to be in error. Based on the accompanying final proof survey map, the location of the PODs should be Lot 5, NW ¼ SW ¼, 1,370 ft. N. and 720 ft. E., and Lot 6, SE ¼ SW ¼, 890 ft. N. and 2,275 ft. E., both from SW corner of Sec. 34, T. 8 S., R. 4 W., W.M.
4. Application T-9870 proposes a change from the authorized river points of diversion to a pumping point accessing water from an excavated pond hydraulically connected to the river (statutorily defined as a groundwater point of appropriation) which is located approximately 0.15 mile (788 feet) south of the surface water source:

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
8	S	4	W	W.M.	34	SE SW	6	135 ft. N and 2,050 ft. E of SW corner of Section 34

5. The proposed point of appropriation is not within 500 feet of the surface water source, but is located within 1,000 feet of the original points of diversion. March 25, 2005 the applicant submitted evidence prepared by a licensed geologist demonstrating that the use of groundwater at the proposed point of diversion will meet the criteria of 690-380-2130(2)(a) to (c). A review of nearby well logs indicates that wells in the area produce from unconfined sands and gravels. Furthermore, static water levels in nearby wells that are completed in the gravel and sand aquifer are at or above the elevation of the surface water source (Willamette River). This hydraulic characteristic indicates that ground water is connected to surface water and that the proposed change in point of appropriation will affect the surface water source similarly to the authorized point of diversion.
6. Based on Finding #5, the proposed transfer appears to meet the requirements under OAR 690-380-2130(2) for change from a surface water point of diversion to a ground water point of appropriation.

7. Application T-9870 proposes to use the transferred portion of the right for mining use on the following land currently authorized as the place of use under Certificate 39277:

Township		Range		Meridian	Sec	¼ ¼		Lot
8	S	4	W	W.M.	34	NW	SW	5
8	S	4	W	W.M.	34	SW	SW	5
8	S	4	W	W.M.	34	SE	SW	6
8	S	4	W	W.M.	34	SW	SE	7
9	S	4	W	W.M.	3	NW	NE	3
9	S	4	W	W.M.	3	NE	NW	4
9	S	4	W	W.M.	3	NW	NW	5

8. Application T-9870 proposes to change the character of use associated with the above listed portion of Certificate 39277 (supplemental to Certificate 39276) from irrigation to mining use.
9. The applicant indicated to the Department on June 2, 2005 that the primary groundwater right (39276) has not been exercised on the authorized place of use within the last five years, but the supplemental right (39277) has been exercised. The applicant provided information establishing the extent to which the surface water right (39277) has been used as the sole source for irrigation of the lands.
10. The evidence of use provided in application T-9870 included an affidavit of use, a cash farm lease agreement and a dated aerial photo. The lease agreement is for 1999, 2000, and 2001 farming seasons for farming approximately 20 acres within tax lots 100, 300, and 201. Evidence of water use was provided for irrigation of 19.9 acres on the authorized place of use listed in Finding #2.
11. Based on the evidence of use provided in application T-9870, it appears that 90.6 acres (110.5 – 19.9 acres) under Certificates 39277 and 39276 may be subject to forfeiture due to non-use under the terms and conditions of the certificates for five consecutive years. The right for the other 19.9 acres (listed in Finding #2) used for the permitted use in the last 5 years is subject to transfer.
12. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens. The proposed pumping point accesses hydraulically connected groundwater rather than river water, therefore a fish screen is not needed at the new point of appropriation.
13. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right are present.
14. The proposed change would not result in injury to other water rights.

15. Pursuant to OAR 690-380-4010(5) upon receipt of the draft preliminary determination, the applicant submitted a report of ownership and lien information for the land to which the water right is appurtenant on June 27, 2005.

**Cancellation of Certificate 39276 and Partial Cancellation of Certificate 39277**

16. On June 2, 2005 the applicant submitted an affidavit authorizing cancellation of the entire right under Certificate 39276 and on July 12, 2005 submitted an affidavit authorizing cancellation of a portion of the right under Certificate 39277.
17. The first right to be cancelled is as follows:

**Certificate:** 39276 in the name of Frank Krauger  
**Use:** Irrigation and supplemental irrigation  
**Priority Date:** March 20, 1967  
**Acres:** 110.5 acres primary irrigation and 25.0 acres supplemental irrigation  
**Rate:** 1/80 cfs per acre: 1.38 cfs; being 1.07 cfs for primary and 0.31 cfs for supplemental irrigation from Well 5 and 0.31 cfs for supplemental irrigation from Well 6  
**Duty:** Not to exceed 2.5 acre-feet per acre per year during the irrigation season.  
**Source:** Wells #5 and #6, tributary to Columbia River  
**Authorized Points of Appropriation:**

Township	Range	Meridian	Sec	¼ ¼	Lot	Survey Coordinates	
9	S	4	W	W.M.	3	NE NW 4	Well 5--1,820 feet E. and 600 ft. S. from NW corner of Sec. 3
9	S	4	E	W.M.	3	NE NW 4	Well 6--2,350 ft E. and 900 ft. S. from NW corner of Sec. 3

**Authorized Place of Use:**

PRIMARY IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Well
8 S	4 W	WM	34	NW SW	5	1.80	5
8 S	4 W	WM	34	SW SW	5	36.20	5
8 S	4 W	WM	34	SE SW	6	22.40	5
8 S	4 W	WM	34	SW SE	7	3.90	5
9 S	4 W	WM	3	NW NE	3	8.50	6
9 S	4 W	WM	3	NW NE*	4	16.50	6
9 S	4 W	WM	3	NW NE*	4	14.20	5
9 S	4 W	WM	3	NW NW	5	7.00	5

SUPPLEMENTAL IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres	Well
9 S	4 W	WM	3	NW NE	3	8.50	5
9 S	4 W	WM	3	NW NE	4	16.50	5

18. \*There is an apparent error in the description of place of use in Certificate 39276. A quarter-quarter section description for the area under T9S, R4W, Sec. 3, Lot 4 has been transposed on the certificate. The quarter-quarter section description should be "NE ¼, NW ¼".

19. The portion of the second right to be cancelled is as follows:

**Certificate:** 39277 in the name of Frank Krauger  
**Use:** Supplemental irrigation  
**Priority Date:** March 20, 1967  
**Acres:** 90.6  
**Quantity:** 1.0 cfs  
**Rate/Duty:** 1/80 cfs per acre, not to exceed 2.5 acre-feet per acre per year during the irrigation season.  
**Source:** Willamette River, tributary to Columbia River  
**Authorized Points of Appropriation (as listed on Certificate 39277, see Finding #3 above for correct locations):**

Township		Range		Meridian	Sec	¼ ¼	Lot	Survey Coordinates
8	S	4	W	W.M.	34	NW SW	5	*890 feet N and 2275 feet E from the SW corner, Section 34
8	S	4	E	W.M.	34	NE NW	6	*1370 feet N and 720 feet E from the SW corner, Section 34

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	34	NW SW	5	1.80
8 S	4 W	WM	34	SW SW	5	27.30
8 S	4 W	WM	34	SE SW	6	22.40
8 S	4 W	WM	34	SW SE	7	3.90
9 S	4 W	WM	3	NW NE	3	3.00
9 S	4 W	WM	3	NE NW	4	30.70
9 S	4 W	WM	3	NW NW	5	1.50

**Conclusions of Law**

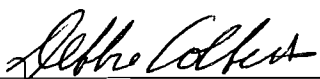
The transfer application T-9870 to change the river points of diversion to a groundwater point of appropriation, and to change character of use, is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

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

1. The changes in point of diversion, place of use, and character of use proposed in application T-9870 are approved.
2. Water right certificates 39276 and 39277 are cancelled. A new certificate will be issued describing that portion of the right under certificate 39277 not involved in this transfer.
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 Certificate 39277 and any related decree.

4. The proposed change shall be completed on or before October 1, 2006.
5. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
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 appropriated. 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. Specifically, the water user shall measure and keep a daily running log of the volume of water used for dust abatement and the estimated volumetric water content of rock exported from the site. This record shall be available to the Watermaster whenever needed for determining water quantities.
7. The new point of appropriation shall retain the original date of priority and shall be subject to all 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 pump, 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 an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
10. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 21<sup>ST</sup> day of September, 2005.

  
\_\_\_\_\_  
for Phillip C. Ward, Director

SEP 22 2005

Mailing date: \_\_\_\_\_