

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

In the Matter of Transfer Application)
T-9922, Linn County, Oregon)

FINAL ORDER
APPROVING A CHANGE IN POINT OF
DIVERSION)

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

Miller Forests, Inc.
PO Box 12395
Salem, Oregon 97309

Findings of Fact

1. On May 2, 2005, Miller Forests, Inc., filed a transfer application to change the point of diversion known as POD 2 under Certificates 80678, 80679, 80680, 80681, 80682, 80683, and 80806. The Department assigned the application number T-9922.
2. The first right to be transferred is as follows:

Certificate: 80678 in the name of Miller Forests, Inc. (perfected under Permit S-16343)

Use: Irrigation of 40.0 acres

Priority Date: May 23, 1945

Rate: 0.50 cubic foot per second (cfs), being 0.25 cfs from Smallman Creek and 0.25 cfs from the North Santiam River

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Smallman Creek and the North Santiam River, tributary to the Santiam River

Original Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
10 S	2 W	WM	10	NW NW		54
10 S	2 W	WM	10	NW NW	1	

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an 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 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.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	SE NE		54	10.4
10 S	2 W	WM	10	NE NW		54	0.1
10 S	2 W	WM	10	NW NW		54	12.0
10 S	2 W	WM	10	SW NW		54	17.0
10 S	2 W	WM	10	SE NW		54	0.5

3. The second right to be transferred is as follows:

Certificate: 80679 in the name of Miller Forests, Inc. (perfected under Permit S-17584)

Use: Irrigation of 55.0 acres

Priority Date: March 3, 1947

Rate: 0.688 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: North Santiam River, tributary to the Santiam River

Original Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
10 S	2 W	WM	9	SW NE	3	
10 S	2 W	WM	9	SW NW	5	
10 S	2 W	WM	9	NE SW	4	

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	SW NE	3		15.2
				NW SE			
10 S	2 W	WM	9	NE SW		62	9.6
10 S	2 W	WM	9	NE SW	4		15.2
10 S	2 W	WM	9	NW SW		62	15.0

4. The third right to be transferred is as follows:

Certificate: 80680 in the name of Miller Forests, Inc. (perfected under Permit S-18686)

Use: Irrigation of 15.91 acres

Priority Date: January 25, 1949

Rate: 0.20 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: North Santiam River, tributary to the Santiam River

Original Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
10 S	2 W	WM	9	SW NW	5	
10 S	2 W	WM	9	NE SW	4	

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	NE SW	4		1.80
10 S	2 W	WM	9	NE SW		62	1.20
10 S	2 W	WM	9	NW SW		62	5.31
10 S	2 W	WM	9	NW SW	5		3.60
10 S	2 W	WM	9	NW SE	3		4.00

5. The fourth right to be transferred is as follows:

Certificate: 80681 in the name of Miller Forests, Inc. (perfected under Permit S-27823)

Use: Irrigation of 39.1 acres

Priority Date: February 1, 1962

Rate: 0.49 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: North Santiam River, tributary to the Santiam River

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NE	3		2790 feet North and 470 feet East from the S $\frac{1}{4}$ Corner of Section 9

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	SW NE	3		0.3
10 S	2 W	WM	9	NW SE	3		25.3
10 S	2 W	WM	9	SW SE			13.5

6. The fifth right to be transferred is as follows:

Certificate: 80682 in the name of Miller Forests, Inc. (perfected under Permit S-36132)

Use: Irrigation of 132.6 acres

Priority Date: April 12, 1971

Rate: 1.66 cubic feet per second (cfs), being 0.68 cfs from the North Santiam River and 0.98 cfs from Smallman Creek

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Smallman Creek and the North Santiam River, tributary to the Santiam River

Original Points of Diversion:

North Santiam River							
Township	Range	Meridian	Sec	$\frac{1}{4}$ $\frac{1}{4}$	Lot	DLC	Location
10	S	2	W	W.M.	9	SW NW	5 2690 feet North and 4190 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE SW	4 2510 feet North and 3060 feet West from the SE Corner of Section 9.

Smallman Creek										
Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	10	NW	NW		54	3200 feet North and 1360 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	SW	NE	3		4760 feet North and 430 feet East from the SE Corner of Section 9.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

North Santiam River							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	SW NW	5		1.2
10 S	2 W	WM	9	NE SW		62	0.4
10 S	2 W	WM	9	NE SW	4		6.4
10 S	2 W	WM	9	SW SW		62	19.1
10 S	2 W	WM	9	SE SW		62	10.6
10 S	2 W	WM	9	SE SW	9		16.6
Smallman Creek							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	NE NE	1		1.5
10 S	2 W	WM	9	NE NE		54	2.5
10 S	2 W	WM	9	SE NE	2		18.2
10 S	2 W	WM	9	SE NE		54	2.4
10 S	2 W	WM	9	NE SE			31.8
10 S	2 W	WM	9	SE SE			1.0
10 S	2 W	WM	10	NW NW		54	6.0
10 S	2 W	WM	10	NW NW	1		0.5
10 S	2 W	WM	10	SW NW		54	4.8
10 S	2 W	WM	10	SE NW		54	9.6

7. The sixth right to be transferred is as follows:

Certificate: 80683 in the name of Miller Forests, Inc. (perfected under Permit S-37628)

Use: Irrigation of 71.4 acres

Priority Date: February 22, 1973

Rate: 0.89 cubic foot per second

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Smallman Creek, tributary to the North Santiam River

Original Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NE	3		3190 feet North and 1370 feet West from the SE Corner of Section 9

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	NE SE			7.5
10 S	2 W	WM	9	SW SE			25.8
10 S	2 W	WM	9	SE SE			38.1

8. The seventh right to be transferred is as follows:

Certificate: 80806 in the name of Miller Forests, Inc. (perfected under Permit S-52770)

Use: Irrigation of 32.4 acres

Priority Date: March 2, 1995

Rate: 0.405 cubic foot per second from live flow, and 32.4 acre feet from stored water

Limit/Duty: One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage. The period of use allowed under this right for direct flow from the North Santiam River is limited to March 1 through June 30 of each year. The use of water from Detroit Reservoir is limited to March 1 through October 31 of each year.

Source: North Santiam River, and Detroit Reservoir, constructed under Permit R-1625, tributary to the Santiam River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	7	SW NW			Detroit Reservoir
10 S	2 W	WM	9	SW NW	5		POD 1 - 2780 feet North and 4450 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	NE SW	4		POD 2 - 2470 feet North and 3770 feet West from the SE Corner of Section 9
10 S	2 W	WM	9	SW NE	3		POD 3 - 3130 feet North and 1430 feet West from the SE Corner of Section 9
10 S	2 W	WM	10	NW NW		54	POD 4 - 4820 feet North and 380 feet East from the SW Corner of Section 10

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	9	NE NE		54	4.8
10 S	2 W	WM	9	SE NE		54	1.0
10 S	2 W	WM	9	SE NE	2		2.0
10 S	2 W	WM	9	SW NW	5		5.4
10 S	2 W	WM	9	NW SW		62	1.8
10 S	2 W	WM	9	SW SW		62	7.4
10 S	2 W	WM	9	SE SW		62	2.8
10 S	2 W	WM	9	SE SW	9		0.7
10 S	2 W	WM	16	NE NW	1		0.2
10 S	2 W	WM	16	NE NW		62	1.4
10 S	2 W	WM	16	NW NW		62	4.9

9. Application T-9922 proposes to move the authorized point of diversion known as POD 2 approximately 2400 feet upstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
10 S	2 W	WM	9	SW NE	3		3040 feet North and 1500 feet West from the SE Corner of Section 9.

10. On May 17, 2005, 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.
11. On January 25, 2006, the Department issued a preliminary determination proposing to approve Transfer T-9922 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 January 31, 2006, and in the Jefferson Review on February 9, 16, and 23, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
12. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available 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 are present.
14. The proposed change would not result in enlargement of the rights.
15. The proposed change would not result in injury to other water rights.

Conclusions of Law:

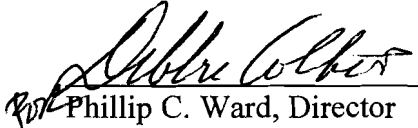
The proposed change in the point of diversion, known as POD 2, in application T-9922 is consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ordered:

1. The change in point of diversion proposed in application T-9922 is approved.
2. Water right certificates 80678, 80679, 80680, 80681, 80682, 80683, and 80806 are cancelled.
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 80678, 80679, 80680, 80681, 80682, 80683, and 80806, and any related decree.
4. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.
5. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original points of diversion.
6. When required by the Department, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.

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

Dated at Salem, Oregon this 2nd day of August 2006.


Phillip C. Ward, Director

Mailing date: AUG 04 2006