

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

In the Matter of Transfer Application	)	<b>FINAL ORDER</b>
T-8845, Linn County, Oregon	)	APPROVING A CHANGE FROM A
	)	SURFACE WATER POINT OF
	)	DIVERSION TO A GROUNDWATER
	)	APPROPRIATION

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**

Walter R. Miller for Miller Forests, Inc.  
P.O. Box 12395  
Salem, Oregon 97309

**Findings of Fact**

1. On July 20, 2001, Walter R. Miller filed an application for a change from a surface water point of diversion to a groundwater appropriation for POD 3 under Certificates 80678, 80679, 80680, 80681, 80682, 80683, and 80806. The Department assigned the application number T-8845.

2. The first right to be transferred is as follows:

<b>Certificate:</b>	80678 in the name of Miller Forests, Inc. (perfected under Permit S-16343)
<b>Use:</b>	Irrigation of 40.0 acres.
<b>Priority Date:</b>	May 23, 1945
<b>Quantity:</b>	0.50 cubic foot per second (cfs), being 0.25 cfs from Smallman Creek and 0.25 cfs from the North Santiam River.
<b>Rate/Duty:</b>	One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre
<b>Sources:</b>	Smallman Creek and the North Santiam River, tributary to the Santiam River

**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.

**Original Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC
10	S	2	W	W.M.	10	NW	NW		54
10	S	2	W	W.M.	10	NW	NW	1	

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	SE	NE		54	10.4
10	S	2	W	W.M.	10	NE	NW		54	0.1
10	S	2	W	W.M.	10	NW	NW		54	12.0
10	S	2	W	W.M.	10	SW	NW		54	17.0
10	S	2	W	W.M.	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

**Quantity:** 0.688 cubic foot per second

**Rate/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre

**Source:** North Santiam River, tributary to the Santiam River

**Original Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC
10	S	2	W	W.M.	9	SW	NE	3	
10	S	2	W	W.M.	9	SW	NW	5	
10	S	2	W	W.M.	9	NE	SW	4	

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	NE	SW		62	9.6
10	S	2	W	W.M.	9	NE	SW	4		15.2
10	S	2	W	W.M.	9	NW	SW		62	15.0
10	S	2	W	W.M.	9	SW	NE	3		15.2
10	S	2	W	W.M.	9	NW	SE			

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

**Quantity:** 0.20 cubic foot per second

**Rate/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre

**Source:** North Santiam River, tributary to the Santiam River

**Original Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC
10	S	2	W	W.M.	9	SW	NW	5	
10	S	2	W	W.M.	9	NE	SW	4	

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	NE	SW		62	1.20
10	S	2	W	W.M.	9	NE	SW	4		1.80
10	S	2	W	W.M.	9	NW	SW		62	5.31
10	S	2	W	W.M.	9	NW	SW	5		3.60
10	S	2	W	W.M.	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

**Quantity:** 0.49 cubic foot per second

**Rate/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre

**Source:** North Santiam River, tributary to the Santiam River

**Original Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NE	3		2790 feet North and 470 feet East from the S¼ Corner of Section 9.

**Authorized Points of Diversion:**

Township	Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

Township	Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	SW NE	3		0.3
10	S	2	W	W.M.	9	NW SE	3		25.3
10	S	2	W	W.M.	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

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

**Rate/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre

**Sources:** Smallman Creek and the North Santiam River, tributary to the Santiam River

**Original Points of Diversion:**

North Santiam River									
Township	Range		Meridian	Sec	¼ ¼		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:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

North Santiam River										
Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	SW	NW	5		1.2
10	S	2	W	W.M.	9	NE	SW		62	0.4
10	S	2	W	W.M.	9	NE	SW	4		6.4
10	S	2	W	W.M.	9	SW	SW		62	19.1
10	S	2	W	W.M.	9	SE	SW		62	10.6
10	S	2	W	W.M.	9	SE	SW	9		16.6

Smallman Creek										
Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	NE	NE		54	2.5
10	S	2	W	W.M.	9	NE	NE	1		1.5
10	S	2	W	W.M.	9	SE	NE		54	2.4
10	S	2	W	W.M.	9	SE	NE	2		18.2
10	S	2	W	W.M.	9	NE	SE			31.8
10	S	2	W	W.M.	9	SE	SE			1.0
10	S	2	W	W.M.	10	NW	NW		54	6.0
10	S	2	W	W.M.	10	NW	NW	1		0.5
10	S	2	W	W.M.	10	SW	NW		54	4.8
10	S	2	W	W.M.	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

**Quantity:** 0.89 cubic foot per second

**Rate/Duty:** One-eightieth cfs per acre, not to exceed 2.5 acre-feet per acre

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

**Original Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NE	3		3190 feet North and 1370 feet West from the SE Corner of Section 9.

**Authorized Points of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	NE	SE			7.5
10	S	2	W	W.M.	9	SW	SE			25.8
10	S	2	W	W.M.	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

**Quantity:** 0.405 cubic foot per second and 32.4 acre-feet stored water only

**Rate/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:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	5	E	W.M.	7	SW	NW			Detroit Reservoir
10	S	2	W	W.M.	9	SW	NW	5		POD 1 – 2780 feet North and 4450 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	NE	SW	4		POD 2 – 2470 feet North and 3770 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	9	SW	NE	3		POD 3 – 3130 feet North and 1430 feet West from the SE Corner of Section 9.
10	S	2	W	W.M.	10	NW	NW		54	POD 4 – 4820 feet North and 380 feet East from the SE Corner of Section 9.



**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
10	S	2	W	W.M.	9	NE	NE		54	4.8
10	S	2	W	W.M.	9	SE	NE		54	1.0
10	S	2	W	W.M.	9	SE	NE	2		2.0
10	S	2	W	W.M.	9	NW	SW		62	1.8
10	S	2	W	W.M.	9	SW	NW	5		5.4
10	S	2	W	W.M.	9	SW	SW		62	7.4
10	S	2	W	W.M.	9	SE	SW		62	2.8
10	S	2	W	W.M.	9	SE	SW	9		0.7
10	S	2	W	W.M.	16	NE	NW		62	1.4
10	S	2	W	W.M.	16	NE	NW	1		0.2
10	S	2	W	W.M.	16	NW	NW		62	4.9

9. Application T-8845 proposes to change the point of diversion of Diversion Point 3 approximately 350 feet downstream in the source to a well located:

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Location
10	S	2	W	W.M.	9	SW	NE	3		2880 feet North and 1680 feet West from the SE Corner of Section 9.

10. On August 9, 2004, the Department received a letter from the Certified Water Right Examiner, agent for the applicant, that corrected the location coordinates for the proposed point of diversion from 1880 feet North to 2880 feet North from the SE Corner of Section 9.
11. On July 19, 2006, the applicant requested to amend the transfer from an additional point of diversion to a change in point of diversion for Diversion Point 3.
12. On June 26, 2001, 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.
13. On August 11, 2004, the Department issued a preliminary determination proposing to approve Transfer T-8845 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 August 24, 2004, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
14. 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.
15. The Groundwater Section has found that the proposed well meets all the requirements of ORS 540.531.

16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
17. The proposed change would not result in enlargement of the rights.
18. The proposed change would not result in injury to other water rights.

### **Conclusion of Law**

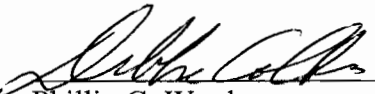
The proposed change from surface water point of diversion to groundwater appropriation proposed for POD 3 in application T-8845 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ordered:**

1. The change from surface water point of diversion to groundwater appropriation proposed for POD 3 proposed in application T-8845 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. Prior to diverting water, 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. All applicable restrictions that existed at the original point of diversion shall apply at the proposed well.
8. The proposed well shall retain the original date of priority. However, if within five years after approving the transfer, the Department finds that the transfer results in substantial interference with existing groundwater rights that would not have occurred in the absence of the transfer, the proposed well shall be subordinate to any existing right injured by the transferred water rights.

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

Dated at Salem, Oregon this 2<sup>nd</sup> day of August, 2006.

  
Phillip C. Ward  
Director

Mailing Date: AUG 14 2006