

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10698, Jackson County) CHANGE IN POINT OF DIVERSION

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.

Applicant

MILLER FAMILY TRUST
c/o RON MILLER, TRUSTEE
PO BOX 65
SHADY COVE, OR 97539

Agent

GARY KAISER
19440 HWY 62
EAGLE POINT, OR 97524

Findings of Fact

Background

1. On August 18, 2008, MILLER FAMILY TRUST, c/o RON MILLER, TRUSTEE, filed an application for a change of point of diversion under Certificate 36144. The Department assigned the application number T-10698.
2. The portion of the right to be transferred is as follows:
 - Certificate:** 36144 in the name of PRESTON FULLBRIGHT; MARTIN E. and LILLIAN E. KELLOGG; MILES H. AND CAROLINE S. WILLIAMS; EARLIE WILLIAMS MARSHALL; MARGARET ELLENE CARLSON, AND LEO W. BICKEL (perfected under Permit S-8572)
 - Use:** IRRIGATION of 0.81 ACRE
 - Priority Date:** JULY 5, 1928
 - 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 per acre
 - Source:** ROGUE RIVER, tributary to the PACIFIC OCEAN

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.

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	1 W	WM	21	SE SE	1335 FEET NORTH AND 1045 FEET WEST FROM THE SE CORNER OF SECTION 21

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
34 S	1 W	WM	21	SE SE	4	0.81

- Transfer Application T-10698 proposes to change the authorized point of diversion for Tax Lot 602 to a point which is approximately 60 feet downstream from the authorized point of diversion, located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
34 S	1 W	WM	21	SE SE	1275 FEET NORTH AND 1075 FEET WEST FROM THE SE CORNER OF SECTION 21

- Notice of the application for transfer was published on August 26, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- On September 25, 2009, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10698. The draft Preliminary Determination letter set forth a deadline of November 27, 2009, for the applicant to respond. On October 20, 2009, the applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
- On October 27, 2009, the Department issued a preliminary determination proposing to approve Transfer T-10698 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on November 3, 2009, pursuant to ORS 540-520 and OAR 690-380-4020. No protests were filed in response to the notice.
- The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion was not equipped with an appropriate fish screening and/or by-pass device.
- On October 20, 2009, Applicant provided ODFW's Fish Screen Inspection Form which stated the screen meets current state criteria for fish protection. The Inspection Form also indicated that fish passage and fish bypass were not issues at this diversion.

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

- Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.

10. 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 Transfer Application T-10698.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

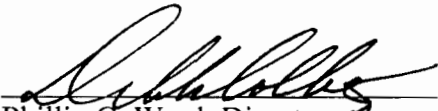
The change in point of diversion proposed in Transfer Application T-10698 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in point of diversion proposed in application T-10698 is approved.
2. Water right certificate 36144 is cancelled. A new certificate will be issued describing that portion of the right not affected by 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 36144 and any related decree.
4. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.
5. Water use measurement conditions:
 - a. The water user has installed a totalizing flow meter or another suitable measuring device, at the point of diversion.
 - b. The water user shall maintain the meter or measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
6. The water user shall maintain and operate a fish screening and/or by-pass device, as appropriate, at the point of diversion consistent with the Oregon Department of Fish and Wildlife's operational and maintenance standards.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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 change and full beneficial use of the water.

8. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 7th day of December 2009.


Phillip C. Ward, Director *rw*

Mailing Date: DEC 11 2009