

STATE OF OREGON

COUNTY OF MARION

ORDER APPROVING A CHANGE IN POINT OF DIVERSION

Pursuant to ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 9377 submitted by

MILLER FORESTS, INC. BY JOHN MILLER  
P.O. BOX 12395  
SALEM, OREGON 97309.

The first right to be modified, as evidenced by Certificate 30040, was perfected under Permit 16685 with a dates of priority of OCTOBER 16, 1945 FOR 0.16 CUBIC FOOT PER SECOND(CFS) AND JANUARY 16, 1946 FOR 0.07 CFS. The right allows the use of CLAGGETT CREEK, a tributary of CLEAR LAKE, for IRRIGATION OF 36.4 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.23 cubic foot per second, if available at the authorized point of diversion: SW $\frac{1}{4}$  NW $\frac{1}{4}$ , AS PROJECTED WITHIN ALVIS SMITH DLC 69, SECTION 26, T 6 S, R 3 W, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

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 137-004-080 and OAR 690-01-005 you may either petition for judicial review or petition the Director for reconsideration of this order.

The second right to be modified, as evidenced by Certificate 30041, was perfected under Permit 16685 with a dates of priority of OCTOBER 16, 1945 FOR 1.49 CUBIC FEET PER SECOND(CFS) AND JANUARY 16, 1946 FOR 0.24 CFS. The right allows the use of CLAGGETT CREEK, a tributary of CLEAR LAKE, for IRRIGATION OF 138.6 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.23 cubic foot per second, if available at the authorized point of diversion: SE¼ NE¼, NE¼ SE¼, AS PROJECTED WITHIN SMITH DLC 69, SECTION 27, T 6 S, R 3 W, W.M., or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2½ acre-feet for each acre irrigated during the irrigation season of each year.

The third right to be modified, as evidenced by a PORTION of Certificate 35020, was perfected under Permit 27951 with a date of priority of MARCH 28, 1962. The right allows the use of CLAGGETT CREEK, for IRRIGATION OF 48.77 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.30 CUBIC FOOT PER SECOND(CFS), if available at the authorized point of diversion: NW¼ NW¼, AS PROJECTED WITHIN SMITH DLC 69, SECTION 26, T 6 S, R 3 W, W.M.; 1280 FEET SOUTH AND 310 FEET WEST FROM THE NE CORNER OF SMITH DLC 69, or its equivalent in case of rotation, measured at the point of diversion from the source.

The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acre or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2½ acre-feet for each acre irrigated during the irrigation season of each year; provided further that the use of the waters of Claggett Creek as allowed herein shall be limited to the lands described as primary.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized places of use are located as follows:

PERMIT 16685 (CERTIFICATE 30040)

NW¼ NW¼ 0.40 ACRE  
AS PROJECTED WITHIN  
SMITH DLC 69  
SECTION 26

NE¼ NE¼ 10.40 ACRES  
NW¼ NE¼ 1.20 ACRES  
SW¼ NE¼ 6.20 ACRES  
SE¼ NE¼ 18.20 ACRES  
ALL AS PROJECTED WITHIN  
SMITH DLC 69  
SECTION 27

TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.

PERMIT 16685 (CERTIFICATE 30041)

SW¼ NE¼ 10.60 ACRES  
SE¼ NE¼ 15.80 ACRES  
NE¼ SW¼ 8.40 ACRES  
SE¼ SW¼ 6.20 ACRES  
NE¼ SE¼ 32.80 ACRES  
NW¼ SE¼ 32.50 ACRES  
SW¼ SE¼ 17.60 ACRES  
SE¼ SE¼ 14.70 ACRES  
ALL AS PROJECTED WITHIN SMITH DLC 69  
SECTION 27

TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.

PERMIT 27951

PRIMARY

NW¼ NW¼ 0.80 ACRE  
AS PROJECTED WITHIN SMITH DLC 69  
SECTION 26

NE¼ NE¼ 17.10 ACRES  
NW¼ NE¼ 12.00 ACRES  
SW¼ NE¼ 11.40 ACRES  
NE¼ NW¼ 2.20 ACRES  
SE¼ NW¼ 5.27 ACRES  
ALL AS PROJECTED WITHIN SMITH DLC 69  
SECTION 27

TOWNSHIP 6 SOUTH, RANGE 3 WEST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to change the points of diversion to:

CLEAR LAKE DIVERSION - NW $\frac{1}{4}$  NE $\frac{1}{4}$ , AS PROJECTED WITHIN SMITH DLC 69, SECTION 27, T 6 S, R 3 W, W.M.; 700 FEET SOUTH AND 1960 FEET WEST FROM THE NW CORNER OF SMITH DLC 69.

CLAGGETT CREEK DIVERSION - NE $\frac{1}{4}$  SE $\frac{1}{4}$ , AS PROJECTED WITHIN SMITH DLC 69, SECTION 27, T 6 S, R 3 W, W.M.; 650 FEET SOUTH AND 150 FEET WEST FROM THE E $\frac{1}{4}$  CORNER OF SECTION 27.

THIS CHANGE TO EXISTING WATER RIGHTS MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be completed on or before October 1, 2005.
2. The quantity of water diverted at the new points of diversion, together with that diverted at the old points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
3. The water user shall install and maintain headgates, in-line flow meters, weirs, or other suitable devices for measuring and recording the quantity of water diverted. The type and plans of the headgates and measuring devices must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
4. Water shall be acquired from the same surface water sources as the original points of diversion.

5. The water user shall install and maintain fish screens or fish by-pass devices. The type and plans of the screens or by-pass devices 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.

The water user may participate in the Oregon Department of Fish and Wildlife's cost sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.

Certificates 30040, 30041, and 35020 are cancelled. A new certificate will be issued to confirm that portion of Permit 27951 NOT involved in this transfer. When satisfactory proof of the completed change is received, new certificates confirming these water rights will be issued.

WITNESS the signature of the Water Resources

Director, affixed MARCH 10, 2004.

  
for Paul R. Cleary, Director