

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING
T-7126, Polk County)	ADDITIONAL POINTS OF
)	DIVERSION, CHANGES IN PLACE OF
)	USE AND CHARACTER OF USE, AND
)	PARTIAL CANCELLATION OF
)	WATER RIGHTS

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
P.O. BOX 12395
SALEM, OREGON 97309

Findings of Fact

1. On March 31, 1994 Miller Forests filed an application to add additional points of diversion under Certificates 31710, 45570, 46091, 57268 and 62093, to change the place of use for portions of the rights under Certificates 57267, 57268 and 46091, and to change the character of use of a portion of the right under Certificate 31710. The Department assigned application number T-7126.
2. February 20, 2001 amendments to the application and map were received. April 1, 2005 Don Knauer, on behalf of the applicant, amended the application and map to remove 4.2 acres in Government Lot 4 (SW ¼ of the SE ¼) of Section 11, T8S, R4W, W.M. from the transfer; being 1.6 acres under Certificate 31710 and 2.6 acres under Certificate 46091, and to clarify the point of diversion changes proposed under Certificates 45570 and 57268.
3. The portion of the first right to be transferred is as follows:
Certificate: 31710 in the name of Emil Marx (perfected under Permit S-24819)
Use: Irrigation of 14.90 Acres and Supplemental Irrigation of 13.50 Acres
Priority Date: April 15, 1957
Rate: 0.36 cubic foot per second (cfs)

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.

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

Source: Willamette River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	11	SW SE	4	Coordinates not given on certificate, but location is consistent with POD #1 listed elsewhere in this order

Authorized Place of Use:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SE SW	8	8.10
8 S	4 W	WM	11	SW SE	4	6.80

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	5.60
8 S	4 W	WM	11	SE SW	8	7.90

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

Certificate: 45570 in the name of Marx Farms Inc. (perfected under Permit S-38428)

Use: Supplemental Irrigation of 54.80 Acres

Priority Date: July 20, 1973

Rate: 0.69 cfs

Limit/Duty: One-Eighthieth cfs per acre, not to exceed 2.50 acre-feet per acre per year

Source: Willamette River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	SE NW	2	1080 feet South & 92 feet East from NW Corner of LOT 2 (SE NW), Section 14—location same as POD #3

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	14	NE SW	3	15.60
8 S	4 W	WM	14	NW SW	3	38.00
8 S	4 W	WM	15	NE SE		1.20

5. The portion of the third right to be transferred is as follows:

Certificate: 46091 in the name of Marx Farms Inc. (perfected under Permit S-38463)

Use: Irrigation of 162.60 Acres

Priority Date: July 25, 1973

Rate: 2.04 cfs

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

Source: Willamette River, tributary to Columbia River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	NW NE	1	POD 2—440 feet South & 300 feet East from N1/4 Corner, Section 14
8 S	4 W	WM	14	SE NW	2	POD 3—2420 feet South & 440 feet West from N1/4 Corner, Section 14

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	1.80
8 S	4 W	WM	11	SE SW	8	9.40
8 S	4 W	WM	11	SW SE	4	9.60
8 S	4 W	WM	14	NW NE	1	3.50
8 S	4 W	WM	14	NE NW	1	38.00
8 S	4 W	WM	14	NW NW		33.60
8 S	4 W	WM	14	SW NW		32.60
8 S	4 W	WM	14	SE NW	2	29.80
8 S	4 W	WM	14	NE SE	3	3.90
8 S	4 W	WM	15	SE NE	2	0.40

6. The portion of the fourth right to be transferred is as follows:

Certificate: 57267 in the name of Green Villa Farms (perfected under Permit G-5826)

Use: Supplemental Irrigation of 14.10 Acres

Priority Date: July 13, 1973

Rate: 0.08 cfs; being 0.03 cfs from Well 1, 0.03 cfs from Well 2 and 0.02 cfs from Well 3

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

Source: 3 Wells in the Willamette River Basin

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
8 S	4 W	WM	9	SE SE	40	Well 1—30 feet North & 1370 feet West from the NE Corner of Burbank DLC #41
8 S	4 W	WM	16	SE NE	41	Well 2—2620 feet South & 1770 feet West from the NE Corner of Burbank DLC #41
8 S	4 W	WM	16	SW NW	41	Well 3—2600 feet South & 370 feet West from the NE Corner of Burbank DLC #41

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	4 W	WM	15	SW NW	41	1.00
8 S	4 W	WM	16	SE NW	41	4.70
8 S	4 W	WM	16	SE NW	42	2.40
8 S	4 W	WM	16	NE SW	42	6.00

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

Certificate: 57268 in the name of Green Villa Farms (perfected under Permit S-38409)

Use: Irrigation of 818.20 Acres

Priority Date: December 21, 1973

Rate: 10.20 cfs total from all sources

Limit/Duty: One-Eightieth cfs per acre, not to exceed 2.5 acre-feet per acre per year from all sources

Source: Humbug Lake, tributary to Willamette River, with any deficiency in supply from Humbug Lake to be made up by appropriation from Willamette River

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Survey Coordinates
8 S	4 W	WM	11	SW SW	9		Lake POD 1—520 feet North & 50 feet East from NW Corner, Section 14
8 S	4 W	WM	10	SE SE		40	Lake POD 2—30 feet North & 400 feet West from NW Corner, Section 14
8 S	4 W	WM	15	SE NE		40	Lake POD 3—1460 feet South & 470 feet West from NW Corner, Section 14
8 S	4 W	WM	14	NE NW			Willamette POD—460 feet South & 2560 feet East from NW Corner, Section 14

Authorized Place of Use:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	4 W	WM	9	SE SW		40	1.90
8 S	4 W	WM	9	SE SW		41	0.50
8 S	4 W	WM	9	NE SE		40	2.20
8 S	4 W	WM	9	NW SE		40	2.00
8 S	4 W	WM	9	SW SE		40	25.50
8 S	4 W	WM	9	SW SE		41	0.70
8 S	4 W	WM	9	SE SE		40	38.80
8 S	4 W	WM	9	SE SE		41	0.80
8 S	4 W	WM	10	NE SW		40	2.60
8 S	4 W	WM	10	NW SW		40	3.00
8 S	4 W	WM	10	SW SW		40	39.40
8 S	4 W	WM	10	SW SW		41	0.60
8 S	4 W	WM	10	SE SW		40	40.00
8 S	4 W	WM	10	NE SE		40	1.50
8 S	4 W	WM	10	NE SE	5		0.50
8 S	4 W	WM	10	NW SE		40	2.30
8 S	4 W	WM	10	SW SE		40	40.00
8 S	4 W	WM	10	SE SE		40	31.80
8 S	4 W	WM	10	SE SE	5		6.80
8 S	4 W	WM	11	NW SW	9		0.10
8 S	4 W	WM	11	SW SW	9		0.80
8 S	4 W	WM	15	NE NE		40	22.90
8 S	4 W	WM	15	NW NE		40	40.00
8 S	4 W	WM	15	SW NE		40	38.80
8 S	4 W	WM	15	SE NE		40	24.00
8 S	4 W	WM	15	NE NW		40	40.00

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
8 S	4 W	WM	15	NW NW		40	0.80
8 S	4 W	WM	15	NW NW		41	39.20
8 S	4 W	WM	15	SW NW		41	37.00
8 S	4 W	WM	15	SW NW		40	0.80
8 S	4 W	WM	15	SE NW		40	38.50
8 S	4 W	WM	15	NW SW		41	28.80
8 S	4 W	WM	16	NE NE		41	40.00
8 S	4 W	WM	16	NW NE		41	28.10
8 S	4 W	WM	16	SW NE		41	35.90
8 S	4 W	WM	16	SW NE		42	3.80
8 S	4 W	WM	16	SE NE		42	0.90
8 S	4 W	WM	16	SE NE		41	38.20
8 S	4 W	WM	16	NE NW		41	9.10
8 S	4 W	WM	16	SE NW		41	15.50
8 S	4 W	WM	16	SE NW		42	2.40
8 S	4 W	WM	16	NE SW		42	19.00
8 S	4 W	WM	16	NE SE		41	26.30
8 S	4 W	WM	16	NE SE		42	10.50
8 S	4 W	WM	16	NW SE		42	35.90

8. The sixth water right to be transferred is as follows:

Certificate: 62093 in the name of Miller Forests (perfected under Permit S-46822)

Use: Irrigation of 18.0 Acres

Priority Date: May 3, 1982

Rate: 0.23 cfs

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

Source: Willamette River, tributary to Columbia River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	NW NE	1	44 feet South & 300 feet East from N1/4 Corner, Section 14—equals location of POD #2

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	5.60
8 S	4 W	WM	11	SE SW	8	9.30
8 S	4 W	WM	14	NE NW		1.10
8 S	4 W	WM	14	NW NW		2.00

9. Application T-7126 proposes to add points of diversion and re-describe existing points of diversion for several rights, so that a common set of 3 points of diversion on the Willamette River can serve all of the above rights through a common distribution system as described below.

10. Application T-7126 proposes to add to the right under Certificate 31710 two authorized points of diversion (POD 2 & POD 3) approximately ¼ mile and 2/3 mile from the existing point of diversion (POD 1) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	NW NE	1	POD 2—440 feet South & 300 feet East from the N ¼ Corner of Section 14
8 S	4 W	WM	14	SE NW	2	POD 3—2420 feet South & 440 feet West from the N ¼ Corner of Section 14

11. Application T-7126 proposes to add to the rights under Certificates 57268 and 62093 two authorized points of diversion (Willamette POD 1 & POD 3) approximately 1/8 mile and 1/3 mile from the existing point of diversion (Willamette POD 2) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	SW SE	4	POD 1—650 feet South & 650 feet East from the SE Corner of DLC 56
8 S	4 W	WM	14	SE NW	2	POD 3—2420 feet South & 440 feet West from the N ¼ Corner of Section 14

Note: Section corners on the final proof survey for Certificate 57268 do not match the relationship of corners with physical features on other Final Proof maps of this area. When Humbug Lake and the Willamette River are matched on the maps, the authorized POD on Certificate 57268 appears to be in the location known as Willamette POD 2 on other rights. The existing authorized POD for the right under Certificate 57268 will henceforth be known as Willamette POD 2 and will be redescribed by coordinates from the N¼ corner of Section 14 in conformity with the descriptions on other water right certificates.

12. Application T-7126 proposes to add to the right under Certificate 45570 two authorized points of diversion (Willamette POD 1 & POD 2) approximately 0.4 mile and 2/3 mile from the existing point of diversion (which will now be known as POD 3) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	SW SE	4	POD 1—650 feet South & 650 feet East from the SE Corner of DLC 56
8 S	4 W	WM	14	NW NE	1	POD 2—440 feet South & 300 feet East from the N ¼ Corner of Section 14

Note: The coordinates given in Certificate 45570 for the authorized POD are referenced from the NW Corner of Lot 2, however it appears to have the same location known as Willamette POD 3 on other rights when measured with coordinates from the N¼ corner of Section 14. It will henceforth be known as Willamette POD 3 and will be redescribed by coordinates from the N¼ corner of Section 14 in conformity with descriptions on other right certificates.

13. Application T-7126 proposes to add to the right under Certificate 46091 one additional point of diversion (POD 1) approximately ¼ and 2/3 mile from the authorized points of diversion (PODs 2 & 3) as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
8 S	4 W	WM	14	SW SE	4	POD 1—650 feet South & 650 feet East from the SE Corner of DLC 56

14. Application T-7126 proposes to change the place of use for 14.1 acres of the right under Certificate 57267 from:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	4 W	WM	15	SW NW	41	1.00
8 S	4 W	WM	16	SE NW	41	4.70
8 S	4 W	WM	16	SE NW	42	2.40
8 S	4 W	WM	16	NE SW	42	6.00

to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	4 W	WM	9	NE SE	40	0.10
8 S	4 W	WM	9	SW SE	40	2.90
8 S	4 W	WM	9	SW SE	41	0.30
8 S	4 W	WM	9	SE SE	40	0.20
8 S	4 W	WM	15	SW NW	41	1.20
8 S	4 W	WM	15	NW SW	41	5.20
8 S	4 W	WM	16	NW NE	41	4.00
8 S	4 W	WM	16	NE NW	41	0.20

15. Application T-7126 proposes to change the place of use for 14.1 acres of the right under Certificate 57268 from:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	4 W	WM	15	SW NW	41	1.00
8 S	4 W	WM	16	SE NW	41	4.70
8 S	4 W	WM	16	SE NW	42	2.40
8 S	4 W	WM	16	NE SW	42	6.00

to:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	4 W	WM	9	NE SE	40	0.10
8 S	4 W	WM	9	SW SE	40	2.90
8 S	4 W	WM	9	SW SE	41	0.30
8 S	4 W	WM	9	SE SE	40	0.20
8 S	4 W	WM	15	SW NW	41	1.20
8 S	4 W	WM	15	NW SW	41	5.20
8 S	4 W	WM	16	NW NE	41	4.00
8 S	4 W	WM	16	NE NW	41	0.20

16. Application T-7126 proposes to change the place of use for 5.7 acres of the right under Certificate 46091 from:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	14	NW NE	1	0.30
8 S	4 W	WM	14	NE NW	1	2.40
8 S	4 W	WM	14	SE NW	2	3.00

to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	1.40
8 S	4 W	WM	11	SE SW	8	4.30

17. Application T-7126 proposes to change the character of use of the following 13.5 acres of the right under Certificate 31710 from supplemental to primary irrigation:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	5.60
8 S	4 W	WM	11	SE SW	8	7.90

18. OAR 690-380-2320 provides that a change in use from supplemental use to primary use may be allowed only to the extent of the quantity of water historically used under the supplemental water right. The primary water right shall be canceled before or at the same time as the issuance of the transfer order changing the supplemental use to primary.
19. The lands listed in Finding #17 have been irrigated exclusively with water from Willamette River rather than from the primary Humbug Lake source for a period of several years prior to filing of the transfer application.
20. 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.
21. Water has been used within the five years prior to filing of the application 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.
22. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights are present.
23. The proposed change would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.

Partial Cancellation of Water Right Certificate 45703

- 25. ORS 540.621 provides that when the owner of a perfected and developed water right desires cancellation of the portion of the water right that has been abandoned, the Department may issue an order canceling the abandoned portion of the water right. Effective upon the date of the order, the water which was the subject of use under the water right shall revert to the public and become again subject to appropriation by other users.
- 26. There is an existing primary water right appurtenant to the land to which the portion of the right under Certificate 31710 identified in Findings 17 and 19 above is proposed to be transferred. On March 2, 2001 Walter R. Miller, on behalf of landowner Miller Forests, Inc. submitted an affidavit authorizing cancellation of the following portion of the appurtenant right:

Certificate: 45703 in the name of Margaret F. Lachmund
Use: Irrigation of 13.50 Acres
Priority Date: July 19, 1928
Rate: 0.170 cfs
Limit/Duty: One-Eighth cfs per acre, not to exceed 2.50 acre-feet per acre per year
Source: Humbug Lake, tributary to Willamette River

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
8 S	4 W	WM	15	NE NE	NONE SPECIFIED ON CERTIFICATE

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
8 S	4 W	WM	11	SW SW	9	5.60
8 S	4 W	WM	11	SE SW	8	7.90

Conclusions of Law

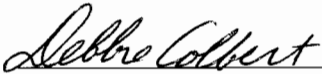
The additional points of diversion and changes in place of use and character of use proposed in application T-7126 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

- 1. The addition of points of diversion and changes in place of use and character of use proposed in application T-7126 are approved.
- 2. Water right certificates 31710, 45570, 46091, 57267, 57258, and 62093 are cancelled. New certificates will be issued describing those portions of the rights 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 Certificates 31710, 45570, 46091, 57267, 57268, 62093 and any related decree.

4. The proposed changes shall be completed on or before October 1, 2007.
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, 2008.
6. The quantity of water diverted at the additional 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.
7. The former place of use from which irrigation water has been transferred shall no longer be irrigated as part of these water rights.
8. When required by the Department, 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.
9. The water user shall install and maintain fish screens or fish by-pass devices, as appropriate, at the new points of diversion. 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 Department of Fish and Wildlife's cost-sharing program for installation of screening and by-pass devices in accordance with ORS 540.525.
10. The portion of certificate 45703 described in Finding #26 is cancelled upon issuance of this order, and certificate 81572 is issued for the remaining portion of the right.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 20th day of October, 2005.



for Phillip C. Ward, Director

Mailing date: NOV 16 2005