

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

In the Matter of Transfer Application            )     **FINAL ORDER**  
T-9376, Marion County                            )     **APPROVING A CHANGE IN POINTS**  
  )     **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**

Knoll Butte Farms, LLC  
13318 Dominic Road NE  
Mt. Angel, Oregon 97362

**Findings of Fact**

**Background**

1. On March 19, 2003, Miller Forests, Inc., filed an application to change the points of diversion under Certificates 83357 and 67921. The Department assigned the application number T-9376.
2. On October 24, 2005, the transfer application was assigned to Knoll Butte Farms, LLC, by Miller Forests, Inc.
3. The first right to be transferred is as follows:

**Certificate:** 83357 in the name of KNOLL BUTTE FARMS, LLC (perfected under Permit S-24967)

**Use:** IRRIGATION of 12.4 ACRES

**Priority Date:** AUGUST 8, 1957

**Rate:** 0.16 CUBIC FOOT PER SECOND (CFS)

**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.

**Source:** NORTH SANTIAM RIVER SLOUGH, tributary to the SANTIAM RIVER

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 Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
9 S	1 W	WM	19	SW SE	3	80 feet North and 3880 feet East from the SW Corner of Section 19
9 S	1 W	WM	30	NW NE	1	300 feet South and 3480 feet East from the SW Corner of Section 19

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	1 W	WM	19	SW SE	3	6.0
9 S	1 W	WM	30	NW NE	1	6.4

- North Santiam River Slough is a tributary of the North Santiam River rather than the Santiam River as stated by Certificate 83357.
- The portion of the second right to be transferred is as follows:

**Certificate:** 67921 in the name of GLIDEWELL FARMS, INC. (perfected under Permit S-45426)

**Use:** IRRIGATION of 23.3 ACRES

**Priority Date:** MARCH 25, 1980

**Rate:** 0.29 CUBIC FOOT PER SECOND (CFS)

**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.

**Source:** HATCH-SANDER-WALLACE SLOUGH, tributary to the NORTH SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
9 S	1 W	WM	19	SW SE	40 feet North and 1160 feet East from the South ¼ Corner of Section 19

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	1 W	WM	19	SW SE	12.0
9 S	1 W	WM	19	SE SE	11.3

- Application T-9376 proposes to move the authorized point of diversion of both rights approximately 700 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Survey Coordinates
9 S	1 W	WM	30	NW NE	1	570 feet South and 3700 feet East from the SW Corner of Section 19

- Notice of the application for transfer was published on April 1, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

8. On May 22, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9376 to the applicant. The draft Preliminary Determination set forth a deadline of June 22, 2007, for the applicant to respond. 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.
9. On February 27, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-9376 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 March 4, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. 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 is currently equipped with an appropriate fish screening and/or by-pass device.

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

11. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights was present within the five-year period prior to the submittal of Application T-9376.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

**Conclusions of Law**

The change in points of diversion proposed in application T-9376 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 points of diversion proposed in application T-9376 is approved.
2. Water Right Certificates 83357 and 67921 are cancelled. A new certificate will be issued describing that portion of the right described by Certificate 67921 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 Certificates 83357 and 67921, 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 points of diversion.
5. 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.
6. When required by the Department, the water user shall install, maintain and operate 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 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 approved change shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. 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, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon, this 10<sup>th</sup> day of April 2008.

  
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Phillip C. Ward, Director

*PCW*  
Mailing Date: APR 15 2008