

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

In the Matter of Transfer Application)
T-11188, Linn County)
)
)

FINAL ORDER APPROVING A
CHANGE FROM A SURFACE WATER
DIVERSION POINT TO A GROUND
WATER POINT OF APPROPRIATION

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 FOREST, INC.
PO BOX 12395
SALEM, OR 97309

Agent

DON KNAUER
PO BOX 5416
SALEM, OR 97304

Findings of Fact

Background

1. On January 24, 2011, MILLER FORESTS, INC. filed an application to change from a surface water diversion point to a ground water point of appropriation under Certificate 83602. The Department assigned the application number T-11188.
2. On August 18, 2011, the applicant's agent submitted an amended map and amended the application, reducing the number of acres to be transferred.
3. The portion of the first right to be transferred is as follows:

Certificate: 83602 in the name of HERMAN M. JOHNSTON (perfected under Permit S-20356)
Use: IRRIGATION of 68.8 ACRES
Priority Date: MAY 22, 1951
Rate: 0.86 CUBIC FOOT PER SECOND

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.

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 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 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

Source: THOMAS CREEK, tributary to the SOUTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
10 S	2 W	WM	20	SW NE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	17	NE SE	1.2
10 S	2 W	WM	17	NW SE	1.2
10 S	2 W	WM	17	SW SE	23.4
10 S	2 W	WM	17	SE SE	35.0
10 S	2 W	WM	20	NE NE	5.1
10 S	2 W	WM	20	NW NE	2.9
TOTAL					68.8

4. Certificate 83602 does not specify the location of the point of diversion; however, information available from the Certified Water Right Examiner indicates the point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	2 W	WM	20	SW NE	1865 FEET SOUTH AND 1440 FEET WEST FROM THE SE CORNER OF SECTION 17

5. Transfer application T-11188 proposes to change from a surface water diversion point to a ground water point of appropriation (well) approximately 150 feet from the existing point of diversion to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	2 W	WM	20	SW NE	1760 FEET SOUTH AND 1580 FEET WEST FROM THE SE CORNER OF SECTION 17

6. Notice of the application for transfer was published on February 1, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On August 19, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11188 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 19, 2011, 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.

8. On September 7, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11188 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 September 13, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

9. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right to be transferred 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-11188.
11. The proposed point of appropriation meets the requirements of ORS 540.531 and OAR 690-380-2130(2).
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Conclusions of Law

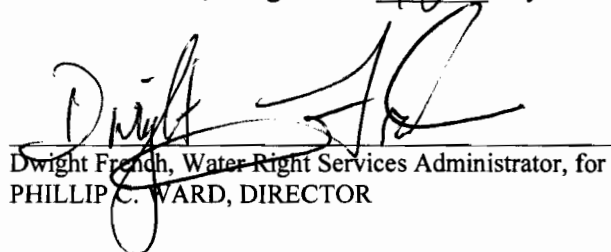
The change from a surface water point of diversion to a groundwater appropriation proposed in Transfer Application T-11188 is consistent with the requirements of ORS 540.505 to 540.580, OAR 690-380-2130 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change from a surface water point of diversion to a groundwater appropriation is approved.
2. 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 83602 and any related decree.
3. Water right certificate 83602 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of diversion.
5. The well from which the water is taken under this right shall be constructed so that the use of the well will affect the surface water source similarly to the use of the original authorized point of diversion.

6. The use of water under this right shall be subject to regulation consistent with other water rights from the surface water source and to all other applicable conditions and restrictions that existed at the original point of diversion.
7. The original point of diversion of surface water shall not be retained as an additional or supplemental point of diversion under the transferred portion of the right. However, if within five years after approval of the transfer, the Department receives a transfer application to return to the last authorized surface water point of diversion, the application shall be approved.
8. The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of appropriation. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
9. All applicable restrictions that existed at the original point of diversion shall apply to the proposed well.
10. The original date of priority shall be retained. 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 right.
11. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. A Claim of Beneficial Use prepared by a Certified Water Right 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.
12. When satisfactory proof of the completed change is received, a new certificate confirming the rights transferred will be issued.

Dated at Salem, Oregon this 18 day of October 2011.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: OCT 18 2011