

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

In the Matter of Transfer Application ) SUPERSEDING FINAL ORDER  
T-9919, Jackson County, Oregon ) APPROVING AN ADDITIONAL  
) POINT OF APPROPRIATION AND  
) CORRECTING A SCRIVENER'S  
) ERROR IN A PREVIOUS ORDER

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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**

James Miller  
P.O. Box 1088  
Ashland, Oregon 97520

**Findings of Fact**

1. On April 26, 2005, James Miller filed an application to add an additional point of appropriation under Certificate 67585. The Department assigned the application number T-9919.

2. The right to which the additional point of appropriation is to be added is as follows:

**Certificate:** 67585 in the name of James C. Miller (perfected under Permit G-10809)  
**Use:** General industrial uses associated with quarry operations to include washing of crushed rock, dust abatement for haul roads, and rock crusher, emission control for scrubbers at asphalt plant and production of concrete.  
**Priority Date:** April 13, 1988  
**Quantity:** 100 gallons per minute  
**Source:** A well in the Bear Creek Basin

**Authorized Point of Appropriation:**

Township		Range		Meridian	Sec	¼ ¼	Location
39	S	2	E	W.M.	7	SE NE	630 Feet South and & 794 Feet West from the NE corner of the SE ¼ NE ¼ of Section 7

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.

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼
39	S	2	E	W.M.	4	SW NW
39	S	2	E	W.M.	4	NE SW
39	S	2	E	W.M.	4	NW SW
39	S	2	E	W.M.	6	SE SW
39	S	2	E	W.M.	7	W ½ NE
39	S	2	E	W.M.	7	SE NE
39	S	2	E	W.M.	7	NE NW
39	S	2	E	W.M.	8	N ½ NW
39	S	2	E	W.M.	8	SW NW

3. Application T-9919 proposes to add an additional authorized point of appropriation approximately 1.4 miles NE from the existing point of appropriation in the Bear Creek basin to:

Township		Range		Meridian	Sec	¼ ¼	Location
39	S	2	E	W.M.	5	SE NE	23 Feet North and 202 Feet West from the East ¼ Corner of Section 5

4. In addition to the authorized use area listed in Finding #2 above, Permit G-10809 allowed use of water in the SE¼ NE¼, SE¼ SW¼, N½ SE¼ and SW¼ SE¼, all in Section 5 of Township 39 South, Range 2 East. The Claim of Beneficial Use and Site Map submitted for the permit on December 23, 1991 acknowledged these areas. The listing of the place of use in Certificate 67585 did not include the areas in Section 5, though no documentation is available to indicate that the omission was intentional.
5. On November 21, 2005, James Miller submitted a Correction Affidavit, requesting the Department to revise the certificate to include lands in the SE¼ NE¼, SE¼ SW¼, N½ SE¼ and SW¼ SE¼ of Section 5. On January 3, 2006 Larry J. Friar, CWRE #49, who had performed the original final proof survey and submitted the Claim of Beneficial Use and map for Permit G-10809, submitted an affidavit for correction of Certificate 67585, indicating that the following land should also have been listed as having a valid water right:

Township		Range		Meridian	Sec	¼ ¼
39	S	2	E	W.M.	5	SE NE
39	S	2	E	W.M.	5	SE SW
39	S	2	E	W.M.	5	N ½ SE
39	S	2	E	W.M.	5	SW SE

6. Certificate 67585 was issued on July 24, 1992 and the period for reconsideration has passed. However the Department has determined that the area listed in Finding of Fact #5 was inadvertently omitted from Certificate 67585 through a scrivener's error, and should be included in the place of use under the right.

7. 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.
8. On January 9, 2006, the Department issued a Preliminary Determination proposing to Approve Transfer T-9919 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 January 17, 2006, and in the Mail Tribune newspaper on January 25, and February 1 and 8, 2006, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
9. On March 17, 2006, the Department issued a Final Order Approving an Additional Point of Appropriation for the transfer, recorded at Special Order Volume 68, Pages 158 to 161. Following issuance of the order, the Department recognized a scrivener's error in the legal description in the location of the additional point of appropriation. The map accompanying the transfer application along with the groundwater review clearly depict the legal description as being 23 Feet North and 202 Feet West from the East ¼ Corner of Section 5.
10. This order is issued to supersede the previous order recorded at Special Order Volume 68, Pages 158 to 161.
11. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and loading system sufficient to use the full amount of water allowed under the existing right is present.
13. The proposed change would not result in enlargement of the right.
14. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**


The addition of a point of appropriation, proposed in application T-9919 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000, and the scrivener's error in Special Order Volume 68, Pages 158-161 should be corrected in the record. The place of use in Certificate 67585 contained a scrivener's error that shall be corrected.

### **Now, therefore, it is ORDERED:**

1. The order issued March 17, 2006, and recorded at Special Order Volume 68, pages 158 to 161 is of no further force or effect and is superseded by this order.
2. The addition of a point of diversion proposed in application T-9919 is approved.
3. Water right certificate 67585 is cancelled.

4. The right to use of the water is restricted to beneficial use at the place of use described, as corrected to include the lands described in Finding of Fact #5, and is subject to all other conditions and limitations contained in Certificate 67585 and any related decree.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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 changes and full beneficial use of the water.
7. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
8. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. 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.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued, which will correct the place of use will to include the lands described in Finding of Fact #5 above.

Dated at Salem, Oregon this 29 day of July, 2006.

  
Phillip C. Ward  
Director

Mailing date: JUL 30 2010