

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

In the Matter of Transfer Application) FINAL ORDER APPROVING
 T-9486, Linn County) CHANGES IN POINT OF DIVERSION
) AND PLACE OF USE

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 FORESTS, INC.
 ATTN: WALTER R. MILLER, PRESIDENT
 P.O. BOX 12395
 SALEM, OREGON 97309

Findings of Fact

Background

1. On June 30, 2003, Walter R. Miller of Miller Forests, Inc. filed an application to change the place of use and point of diversion under Certificate 75472. The Department assigned the application number T-9486.

2. The portion of the right to be transferred is as follows:
Certificate: 75472 in the name of HERMAN M. JOHNSTON (perfected under Permit S-20356)
Use: IRRIGATION of 11.0 ACRES
Priority Date: MAY 22, 1951
Rate: 0.14 CUBIC FOOT PER SECOND (cfs)
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre feet per acre per year
Source: THOMAS CREEK, tributary to the SANTIAM RIVER

Authorized Point of Diversion:

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

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	20	SE NE	11.0

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.

3. Transfer Application T-9486 proposes to move the authorized point of diversion approximately 0.9 mile upstream in Thomas Creek to the confluence of Sucker Slough, then 3.8 miles upstream in Sucker Slough to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
10 S	2 W	WM	2	SE SE	1120 FFET NORTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 2

4. Transfer Application T-9486 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
10 S	2 W	WM	11	NE SE	600	4.1
10 S	2 W	WM	11	NW SE	700	4.0
10 S	2 W	WM	12	NW SW	700	2.9
TOTAL:						11.0

5. Notice of the application for transfer was published on July 8, 2003, pursuant to 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.
6. On March 27, 2007, the Department mailed to the applicant a draft of the Preliminary Determination proposing to deny Transfer Application T-9486 because the application did not meet the requirements for completeness. The draft Preliminary Determination set forth a deadline of April 26, 2007, for the applicant to respond and complete the application. At the applicant's request, on April 6, 2007, the Department granted additional time through July 25, 2007, for the applicant to submit the requested information.
7. The applicant submitted the requested evidence of use affidavits and lot book report (report of ownership and lien information) on May 23, 2007, thus completing the transfer application and demonstrating that the applicant is authorized to pursue the transfer.
8. On October 3, 2007, the Department mailed a **revised** draft Preliminary Determination proposing to approve Transfer Application T-9486 to the applicant. The **revised** draft Preliminary Determination set forth a deadline of November 2, 2007, for the applicant to respond. The applicant requested on October 10, 2007, that the Department proceed with issuance of a Preliminary Determination.
9. On October 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-9486 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 23, 2007, and in the *Jefferson Review* newspaper on November 8, 15 and 22, 2007, 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)]

10. Water has been used within the five years prior to filing of the transfer application according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. 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 Application T-9486.
12. The proposed changes, as conditioned below, would not result in enlargement of the right.
13. While the proposed place of use change would not result in injury to other water rights, the proposed point of diversion change would reduce the flows available to an existing junior water right (Certificate 57883) diverting water at the same point as the proposed point of diversion on Sucker Slough, resulting in injury to that junior water right, if additional conditions are not placed upon the use. Therefore, as conditioned below, the proposed changes would not result in injury to any water rights.
14. On October 10, 2007, the applicant agreed to the conditions contained in the **revised** draft Preliminary Determination.

Conclusions of Law

The changes in place of use and point of diversion proposed in application T-9486, as conditioned, are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in place of use and point of diversion proposed in application T-9486 are approved.
2. Water right certificate 75472 is cancelled. A new certificate will be issued describing that portion of the right 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 Certificate 75472 and any related decree.
4. The transferred senior water right (Certificate 75472) shall be subordinate to a junior water right certificate (Certificate 57883) located at the same point of diversion on Sucker Slough.
5. The diversion of water under the transferred water right is restricted to Sucker Slough flows only. The diversion of out-of-basin Smallman Creek water (imported from the North Santiam River Basin into Sucker Slough) **is not** allowed.

6. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion. Furthermore, when the use of Smallman Creek water begins under Certificate 57883 due to a deficiency in the available supply from Sucker Slough, the use of Sucker Slough water at the proposed point of diversion under Certificate 75472 shall also cease.
7. The former place of use of the transferred right shall no longer receive water under the right.
8. Prior to diverting water, the water user shall install and maintain a headgate, 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 headgate and measuring device 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 a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device 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.
10. The approved changes 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 3 day of January 2008.


Phillip C. Ward, Director

Pa
Mailing date: JAN 07 2008