

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

In the Matter of Transfer Application                    )  
T-9538, Marion County                                    )  
                                                                          )  
                                                                          )     **FINAL ORDER**  
                                                                          )     **APPROVING CHANGES IN PLACE OF**  
                                                                          )     **USE AND CANCELLATION OF**  
                                                                          )     **WATER RIGHTS**

**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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

Miller Forests, Inc.  
P.O. Box 12395  
Salem, Oregon 97309

**Findings of Fact**

***Background***

1. On September 8, 2003, Miller Forests, Inc. filed an application to change the place of use under Transfer Application T-6816 and Permit S-52039. The Department assigned the application number T-9538.
2. On February 5, 2004, the applicant amended the transfer application to re-define the "from" and "to" acres.
3. On August 24, 2007, Water Right Certificates 83459 and 83460 were issued to confirm the changes approved under Transfer Application T-6816.
4. On August 24, 2007, Water Right Certificate 83472 was issued to confirm the right perfected under Water Right Permit S-52039.

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.

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

**Certificate:** 83459 in the name of Miller Forests (confirms the change under Transfer Application T-6816, approved by Special Order Volume 49, Page 381)  
**Use:** Irrigation of 0.74 acre  
**Priority Date:** April 18, 1941  
**Rate:** 0.009 cubic foot per second (cfs)  
**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Willamette River, a tributary of the Columbia River

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	31	NW SW	73	Original point of diversion – 1440 feet North and 660 feet East from the SW Corner of Section 31
7 S	3 W	WM	31	NW SW	73	New point of diversion (Well) – 200 feet North and 150 feet West from the NW Corner of DLC 74

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
7 S	3 W	WM	31	SE NE	74	0.29
7 S	3 W	WM	31	NE SE	74	0.41
7 S	3 W	WM	32	NW SW	74	0.04
Total						0.74

6. Application T-9538 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	0.74

7. The portion of the second right to be transferred is as follows:

**Certificate:** 83460 in the name of Miller Forests (confirms the change under Transfer Application T-6816, approved by Special Order Volume 49, Page 381)  
**Use:** Irrigation of 0.26 acre  
**Priority Date:** December 8, 1981  
**Rate:** 0.003 cubic foot per second (cfs)  
**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Willamette River, a tributary of the Columbia River

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	31	NW SW	73	Original point of diversion – 1440 feet North and 660 feet East from the SW Corner of Section 31
7 S	3 W	WM	31	NW SW	73	New point of diversion (Well) – 200 feet North and 150 feet West from the NW Corner of DLC 74

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	0.26

8. Application T-9538 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	0.26

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

**Certificate:** 83472 in the name of Miller Forests, Inc. (perfected under Permit S-52039)  
**Use:** Supplemental irrigation of 0.26 acre  
**Priority Date:** August 26, 1992  
**Rate:** 0.46 acre-foot  
**Limit/Duty:** Limited to 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Willamette Basin Project Reservoirs, constructed under Permit R-1625

**Authorized Points of Diversion from the river:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	31	NW SW	73	1440 feet North and 660 feet East from the SW Corner of Section 31
7 S	3 W	WM	31	NW SW	73	200 feet North and 150 feet West from the NW Corner of J. Townsend DLC 74

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	0.26

10. Application T-9538 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	0.26

11. Notice of the application for transfer was published on October 14, 2003, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On February 26, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9538 to the applicant. 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.

13. On April 2, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9538 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 April 8, 2008, 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)]***

14. 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.
15. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-9538.
16. The proposed change would not result in enlargement of the rights.
17. The proposed change would not result in injury to other water rights.

***Cancellation of Water Rights***

18. On February 21, 2008, affidavits certifying that two water rights have been abandoned and requesting cancellation of the rights was received from Miller Forests. The rights to be cancelled are as follows:

**Certificate:** 56059 in the name of Miller Forests (perfected under Permit S-46853)  
**Use:** Irrigation of 9.0 acres  
**Priority Date:** May 26, 1982  
**Rate:** 0.11 cubic foot per second (cfs)  
**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Pettijohn Creek, a tributary of the Willamette River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
8 S	3 W	WM	6	SE NE	47	1510 feet South and 1270 feet West from the NE Corner of Section 6

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	6	NE NE	47	4.7
8 S	3 W	WM	6	SE NE	47	4.3

**Certificate:** 56060 in the name of Miller Forests (perfected under Permit S-48251)  
**Use:** Irrigation of 8.5 acres  
**Priority Date:** December 9, 1983  
**Rate:** 0.11 cubic foot per second (cfs)  
**Limit/Duty:** One-eightieth of one cfs per acre, not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year  
**Source:** Pettijohn Creek, a tributary of the Willamette River; with any deficiency in the available supply may be made up by appropriation from the Willamette River, a tributary of the Columbia River

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
7 S	3 W	WM	31	NW SW	51	River - 1360 feet North and 610 feet East from the SW Corner of Section 31
8 S	3 W	WM	6	SE NE	47	Creek - 1510 feet South and 1270 feet West from the NE Corner of Section 6

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
8 S	3 W	WM	5	NW NW	47	6.0
8 S	3 W	WM	5	SW NW	47	0.2
8 S	3 W	WM	6	NE NE	47	2.3

**Conclusions of Law**

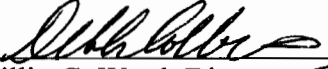
The changes in place of use proposed in application T-9538 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled.

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

1. The changes in place of use proposed in application T-9538 are approved. The rights that have been abandoned are cancelled.
2. Water right certificates 56059, 56060, 83459, 83460, and 83472 are cancelled. New certificates will be issued describing the portions of the rights described by Certificates 83459, 83460, and 83472, 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 83459, 83460, and 83472, and any related decree.
4. The former place of use of the transferred rights shall no longer receive water under the rights.

5. 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 changes and full beneficial use of the water.
6. When satisfactory proof of the completed change is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 9<sup>th</sup> day of May, 2008.

  
Phillip C. Ward, Director *PCW*

Mailing Date: MAY 15 2008