

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-7338, Marion County)	PROPOSING DENIAL OF CHANGES IN
)	POINTS OF DIVERSION (INCLUDING
)	SURFACE WATER POINTS OF DIVERSION
)	TO GROUND WATER POINTS OF
)	APPROPRIATION) 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 and Landowner (Tax Lots 300 & 400)

DOERFLER FARMS, INC.
12333 SILVER FALLS HWY.
AUMSVILLE, OR 97325

Landowners (Tax Lot 500)

RON WICKETT and JANICE PRIMUS
5836 COLGAN ROAD SE
TURNER, OR 97392

Purchasing on Contract from Doerfler Farms, Inc. (Tax Lots 300 & 400)

EDWARD AND GRACE BORN
15524 PLETZER ROAD
TURNER, OR 97392

Findings of Fact

Background

1. On March 30, 1995, Miller Forests, Inc. filed an application proposing a change in place of use and changes in points of diversion (including changing surface water points of diversion to ground water points of appropriation) under Certificate 9570. The Department assigned the application number T-7338.
2. Transfer Application T-7338 was assigned from Miller Forests, Inc. to Doerfler Farms, Inc. on September 25, 1997.
3. The right to be transferred is as follows:
Certificate: 9570 in the name of OTIS H. STORM (perfected under Permit S-8303)
Use: IRRIGATION of 55.5 ACRES
Priority Date: JANUARY 26, 1928
Rate: 0.62 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: ONE-EIGHTIETH of one cfs per acre

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.
--

Source: A BRANCH of the NORTH SANTIAM RIVER and EDGAR SLOUGH, tributaries to WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
9 S	2 W	WM	34	SE SW
10 S	2 W	WM	4	SW NW
10 S	2 W	WM	4	SE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	4	SW NW	22.0
10 S	2 W	WM	4	SE NW	29.5
10 S	2 W	WM	4	NE SW	4.0
TOTAL:					55.5

4. Certificate 9570 does not specify the source of water associated with each authorized point of diversion, however information is available from the original application map for Certificate 9570 that indicates the sources of water for the diversions are as follows:

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Source of Water
9 S	2 W	WM	34	SE SW	Unnamed Branch of North Santiam River
10 S	2 W	WM	4	SW NW	Edgar Slough
10 S	2 W	WM	4	SE NW	Edgar Slough

5. Application T-7338 proposes to move the authorized point of diversion from the Unnamed Branch of the North Santiam River approximately 1.0 mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
10 S	2 W	WM	4	SW NE	55	Channel - 960 FEET SOUTH AND 450 FEET WEST FROM THE NE CORNER OF DLC 55

6. Application T-7338 also proposes to change the authorized surface water points of diversion on Edgar Slough to two ground water points of appropriation (wells) located approximately 790 feet south of the surface water source:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
10 S	2 W	WM	4	SW NW	55	Well #1 - 470 FEET SOUTH AND 2810 FEET WEST FROM THE NE CORNER OF DLC 55
10 S	2 W	WM	4	SE NW	55	Well #2 - 920 FEET SOUTH AND 1610 FEET WEST FROM THE NE CORNER OF DLC 55

7. Additionally, Application T-7338 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	4	SW NE	5.5
10 S	2 W	WM	4	SW NW	14.0
10 S	2 W	WM	4	SE NW	25.1
10 S	2 W	WM	4	NE SW	4.5
10 S	2 W	WM	4	NW SE	6.4
TOTAL:					55.5

8. Notice of the application for transfer was published on April 5, 1995, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. The Oregon Department of Fish and Wildlife (ODFW) 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 not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
10. The Department's Ground Water Section determined on May 19, 2006, that it is not possible for the proposed wells to be hydraulically connected to the authorized surface water source, nor will the proposed wells affect the surface water source similarly to the authorized points of diversion as required by ORS 540.531.
11. On June 20, 2007, the Department contacted the Marion County Assessor's office to determine current ownership of the "from" lands involved in Transfer T-7338. Based upon information reported by the Assessor's office, the applicant does not own all of the land to which Certificate 9570 is appurtenant. Specifically, the portion of the water right located on tax lot 500 in the SE ¼ NW ¼ of Section 4, Township 10 South, Range 2 West, W.M., is currently owned by Ron G. Wickett and Janice Primus. The applicant has not provided a notarized statement from Ron G. Wickett and Janice Primus authorizing the changes proposed in Transfer Application T-7338.
12. On July 9, 2004, the Department received a copy of a Preliminary Title Report prepared by Ticor Title Insurance (dated August 10, 1998) for the property to which Certificate 9570 is appurtenant. The report indicates that Northwest Farm Credit Services is a lien holder and holds an interest in this property. The Department, however, has not received a notarized statement, required by OAR 690-15-060(12) which was in effect at the time of filing, from Northwest Farm Credit Services consenting to the change proposed in Transfer T-7338.
13. The transfer application did not include a map meeting current mapping standards or the standards which were in effect at the time the application was filed, being OAR 690-15-060(15). Specifically, the transfer map does not include the following required items: 1) identification of the authorized points of diversion under Certificate 9570; 2) identification of the land authorized under Certificate 9570 from which the place of use is proposed to move; 3) identification of the land authorized under Certificate 9570 that is to remain unchanged; and 4) an original signature of the Certified Water Rights Examiner who prepared the map.
14. A portion of Certificate 9570 is appurtenant to the same place of use as Ground Water Registration Application GR-3814 (Certificate of Registration GR-3475) for the irrigation of 26.0 acres and Ground Water Registration Application GR-3816 (Certificate of Registration GR-3477) for the irrigation of 8.0 acres. Therefore, Certificate 9570 is layered with the certificates of registration, and pursuant to OAR 690-380-2240, the change in place of use under Certificate 9570 proposed in Transfer T-7338 shall only be approved if concurrent approval for recognition of modifications to the certificates of registration is obtained.

Consistent with OAR 690-380-2240(2), the Department notified the applicant in the draft Preliminary Determination (dated July 18, 2007) that applications for concurrent changes have not been filed for Ground Water Registration Applications GR-3814 and GR-3816 (being Certificates of Registration GR-3475 and GR-3477, respectively). The applicant was also notified that the Department intended to **deny** Transfer T-7338 unless within 30 days of the date of the notification the applicant either: 1) submitted applications for concurrent changes to the certificates of registration; 2) submitted affidavits for voluntary cancellation of the certificates of registration; or 3) withdrew Transfer Application T-7338. No response from the applicant was received.

15. A portion of the proposed place of use under Transfer T-7338, being approximately 1.6 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$ and 5.2 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, Township 10 South, Range 2 West, W.M., is already covered by primary irrigation water right Certificate 40137 (priority date February 17, 1967) which appears to divert water from the same diversion point on the North Santiam River as proposed under Transfer T-7338. Since both Certificates 9570 and 40137 are from the same source, one cannot be supplemental to the other. The allowed rate under these rights shall not exceed a combined total of one-eightieth ($\frac{1}{80}$) of one cfs (or 0.0125 cfs) per acre. The right under Certificate 9570 (1928 priority) allows 0.0111 cfs per acre, or slightly less than the full rate. The right under Certificate 40137 (1967 priority) allows the full rate of 0.0125 cfs per acre.
16. A portion of the proposed place of use under Transfer T-7338, being approximately 0.13 acre in the SE $\frac{1}{4}$ NW $\frac{1}{4}$ and 0.87 acre in the NE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 4, Township 10 South, Range 2 West, W.M., is already covered by irrigation under Ground Water Registration Application GR-411 (Certificate of Registration GR-394, tentative priority date 1939). Because Certificate 9570 and Ground Water Registration Application GR-411 do not access water from the same source, one can be supplemental to the other. Based upon their dates of priority, Certificate 9570 would be considered primary irrigation while the ground water registration would be considered supplemental.
17. On July 18, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-7338 to the applicant and other involved parties. The draft Preliminary Determination set forth a deadline of August 17, 2007, for the applicant to respond. No response from the applicant was received.
18. Based upon Finding #10, Transfer T-7338 does not meet the requirements under OAR 690-380-2130 for a change from surface water points of diversion to ground water points of appropriation.
19. As identified in Findings #11 #12 and #13 above, the transfer application does not meet standards for completeness as per 540.520 and OAR Chapter 690, Division 15 which were in effect at the time of filing, nor does it meet OAR Chapter 690, Division 380 completeness standards currently in effect.

20. In addition to the application deficiencies and the application not meeting the criteria for a surface water point of diversion to ground water point of appropriation change, the proposed transfer is unable to move forward because the applicant has not resolved the issue of Certificate 9570 being layered with Certificates of Registration GR-3475 and GR-3477, as described in Finding #14 above.

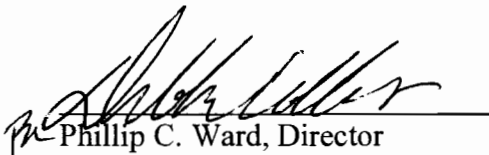
Transfer Review Criteria [OAR 690-380-4010(2)]

21. Aerial photographs of the land to which the right is appurtenant suggest that there has been an extended period of time during which a portion of the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
22. No information was submitted that would document whether or not 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-7338.
23. The proposed changes would not result in enlargement of the right.
24. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

Despite the downstream point of diversion change appearing to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, the change in place of use and the change in point of diversion from surface water source to a ground water source do **not** appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, and Transfer Application T-7338 does **not** meet the requirements of ORS 540, OAR 690-15-060 or OAR 690-380-3000 for completeness and cannot be processed. Due to these reasons, Transfer Application T-7338 will be **denied** unless the application is withdrawn or protests are filed.

Dated at Salem, Oregon this 11 day of September 2007.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Lisa Jaramillo. If you have any questions about the information in this document, you may reach at 503-986-0880 or Lisa.J.Jaramillo@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.