

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-11676, Harney County) CHANGE IN 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

JSM TRUST
JOHN MOON III & SUZANNE MOON, TRUSTEES
50629 ALTNOW BEULAH LANE
DREWSEY, OR 97904

Findings of Fact

1. On October 21, 2013, John and Suzanne Moon on behalf of JSM TRUST, filed an application to change the place of use under Certificates 6847, 26367 and 79377. The Department assigned the application number T-11676.
2. Notice of the application for transfer was published on October 29, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On March 19, 2014, the Department contacted the applicant's agent by written correspondence notifying the agent of deficiencies in the application. The Department requested that the deficiencies be resolved by April 21, 2014. On March 28, 2014, documents correcting the deficiencies were received by the Department.
4. On April 17, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11676 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of May 19, 2014, for the applicants to respond. The applicants 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.

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. On May 30, 2014, the Department issued a preliminary determination proposing to approve Transfer T-11676 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 June 3, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 6847 in the name of ALBERT ALTNOW (confirmed by Malheur River Decree)
Use: TRACT 1: IRRIGATION of 135.0 ACRES
 TRACT 2: IRRIGATION OF 110.0 ACRES
Priority Date: TRACT 1: JULY 5, 1883
 TRACT 2: MARCH 13, 1885
Rate: TRACT 1: 3.16 CUBIC FEET PER SECOND (cfs)
Limit/Duty: TRACT 2: 1.5 acre feet per acre in any 30-day period prior to June 1st. One acre foot per acre in any 30-day period after June 1st, of each year, or three acre feet per acre during any season diverted at a rate not to exceed ONE-TWENTIETH of a cubic foot per second per acre
Source: TRACT 1: WARM SPRING CREEK, a tributary of Malheur River
 TRACT 2: COTTONWOOD CREEK, a tributary of Malheur River

Authorized Place of Use:

IRRIGATION - TRACT 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	36 E	WM	4	SW NE	25.0
20 S	36 E	WM	4	SE NE	20.0
20 S	36 E	WM	4	SE SW	35.0
20 S	36 E	WM	4	NE SE	20.0
20 S	36 E	WM	4	NW SE	30.0
20 S	36 E	WM	4	SW SE	5.0
Total					135.0

IRRIGATION - TRACT 2					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	36 E	WM	4	NW NW	18.0
20 S	36 E	WM	4	SW NW	37.0
20 S	36 E	WM	4	SE NW	20.0
20 S	36 E	WM	4	SW SW	35.0
Total					110.0

7. Certificate 6847 does not describe the location of the point of diversion, however information is available from the Certified Water Rights Examiner (CWRE) indicating that the points of diversion are located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
20 S	36 E	WM	4	SE NE	TRACT 1: WARM SPRINGS CREEK – 930 FEET NORTH AND 430 FEET WEST FROM THE E ¼ CORNER OF SECTION 4
20 S	36 E	WM	28	NE NW	TRACT 2: COTTONWOOD CREEK – 210 FEET SOUTH AND 1660 FEET EAST FROM THE NW CORNER OF SECTION 28

8. Transfer Application T-11676 proposes to change the place of use of the right to:

IRRIGATION - TRACT 1					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	36 E	WM	3	NW SW	4.6
20 S	36 E	WM	3	SW SW	0.6
20 S	36 E	WM	4	SW NE	15.0
20 S	36 E	WM	4	SE NE	14.4
20 S	36 E	WM	4	SE NW	2.0
20 S	36 E	WM	4	SW SW	2.3
20 S	36 E	WM	4	SE SW	33.7
20 S	36 E	WM	4	NE SE	23.4
20 S	36 E	WM	4	NW SE	31.2
20 S	36 E	WM	4	SW SE	7.8
Total					135.0

IRRIGATION – TRACT 2						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	NW NW	4	10.0
20 S	36 E	WM	4	SW NW		17.2
20 S	36 E	WM	4	SE NW		35.4
20 S	36 E	WM	4	SW SW		27.9
20 S	36 E	WM	4	SE SW		0.5
20 S	36 E	WM	4	NE NW	3	18.0
20 S	36 E	WM	4	SW NE		1.0
Total						110.0

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

Certificate: 26367 in the name of JOS. W. ALTNOW OF A.H. ALTNOW & SON
(perfected under Permit U-176)

Use: PRIMARY IRRIGATION of 58.3 ACRES, and SUPPLEMENTAL IRRIGATION OF 71.4 ACRES

Priority Date: FEBRUARY 11, 1946

Rate: 2.43 CUBIC FEET PER SECOND

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-TWENTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be limited to a diversion of not to exceed 1.5 acre feet per acre for each acre irrigated in any 30-day period prior to June 1st, 1 acre foot per acre for each acre irrigated in any 30-day period after June 1st and shall be further limited to a total diversion

of not to exceed 3 acre feet per acre for each acre irrigated during any irrigation season.

Source: TWO WELLS

Authorized Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
20 S	36 E	WM	4	NW NE
20 S	36 E	WM	4	NE NW

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	36 E	WM	4	NW NE	11.4
20 S	36 E	WM	4	SW NE	1.1
20 S	36 E	WM	4	NE NW	32.4
20 S	36 E	WM	4	SW NW	0.8
20 S	36 E	WM	4	SE NW	12.6
Total					58.3

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	36 E	WM	4	NW NW	14.4
20 S	36 E	WM	4	SW NW	37.0
20 S	36 E	WM	4	SE NW	20.0
Total					71.4

10. The CWRE further describes the location of the points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
20 S	36 E	WM	4	NW NE	2	Well 1: 375 FEET SOUTH AND 200 FEET EAST FROM THE N ¼ CORNER OF SECTION 4
20 S	36 E	WM	4	NE NW	3	Well 2: 180 FEET SOUTH AND 500 FEET WEST FROM THE N ¼ CORNER OF SECTION 4

11. Transfer Application T-11676 proposes to change the place of use of the right to:

PRIMARY IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	NE NW	3	10.9
20 S	36 E	WM	4	SW NW		19.9
20 S	36 E	WM	4	SE NW		0.1
20 S	36 E	WM	4	NW NW	4	27.4
Total						58.3
SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	SW NW		17.0
20 S	36 E	WM	4	SE NW		35.4
20 S	36 E	WM	4	NE NW	3	18.0
20 S	36 E	WM	4	SW NE		1.0
Total						71.4

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

Certificate: 79377 in the name of OTIS VALLEY IRRIGATION COMPANY, INC.
(perfected under Permit S-31115)
Use: SUPPLEMENTAL IRRIGATION OF 125.0 ACRES
Priority Date: JUNE 8, 1959
Rate: 1.59 CUBIC FEET PER SECOND
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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow or storage.
Source: COTTONWOOD CREEK AND COTTONWOOD RESERVOIR
(constructed under Permit R-4699), a tributary of MIDDLE FORK MALHEUR RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
19 S	36 E	WM	9	SE SW	RESERVOIR: 1230 FEET NORTH AND 1900 FEET EAST FROM THE SW CORNER OF SECTION 9
19 S	36 E	WM	28	NE NW	ALTNOW COTTONWOOD DITCH: 210 FEET SOUTH AND 1660 FEET EAST FROM THE NW CORNER OF SECTION 28

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	SW NE		1.6
20 S	36 E	WM	4	NW NW	4	14.4
20 S	36 E	WM	4	SW NW		36.0
20 S	36 E	WM	4	SE NW		20.0
20 S	36 E	WM	4	NE SW		16.4
20 S	36 E	WM	4	SW SW		35.0
20 S	36 E	WM	4	SE SW		1.6
Total						125.0

13. Transfer Application T-11676 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	SW NE		1.0
20 S	36 E	WM	4	NW NW	4	10.0
20 S	36 E	WM	4	SW NW		17.2
20 S	36 E	WM	4	SE NW		35.4
20 S	36 E	WM	4	NE SW		15.0
20 S	36 E	WM	4	SW SW		27.9

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
20 S	36 E	WM	4	SE SW		0.5
20 S	36 E	WM	4	NE NW	3	18.0
Total						125.0

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 right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. Infrastructures, including pumps, pipelines, sprinklers, diversion structures, and ditch 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 Transfer Application T-11676.
16. The proposed changes would not result in enlargement of the rights.
17. The proposed changes would not result in injury to other water rights.

Conclusions of Law

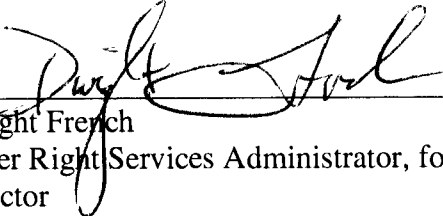
The change in place of use proposed in Transfer Application T-11676 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-11676 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 Certificates 6847, 26367, and 79377 and any related decree.
3. Water right Certificates 6847, 26367 and 79377 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
 - b. The water user shall maintain the meters or measuring devices in good working order.
 - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. The former place of use of the transferred rights shall no longer receive water under the rights.

6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2015**. 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.
7. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued. The certificate confirming the changes to Certificate 79377 shall be issued in the name of Otis Valley Irrigation Company, Inc.

Dated at Salem, Oregon this 14 day of July, 2014.



Dwight French
Water Right Services Administrator, for
Director
Oregon Water Resources Department

Mailing Date: JUL 21 2014