

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10117, Linn County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION, ADDITIONAL
	)	POINTS OF APPROPRIATION, AND
	)	CHANGES IN PLACES OF USE

**Authority**

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**

MOUNT JEFFERSON FARMS INC.  
BY WALTER R. MILLER AND SALLY N. MILLER  
P.O. BOX 12708  
SALEM, OR 97309

**Findings of Fact**

***Background***

1. On March 14, 2006, Mount Jefferson Farms Inc. filed an application to change the place of use of a portion under Certificate 46586. The Department assigned the application number T-10117.
2. On September 9, 2009, the applicant amended the transfer application to include a change in place of use and point of appropriation under Certificate 46586, additional points of appropriation under Certificate 57856, a change in place of use and a change from a surface water point of diversion to hydraulically connected ground water points of appropriation under Certificate 36903, and a change in place of use under Certificates 57883, 57884, and Permit G-15178.
3. On October 5, 2011, the applicant, via e-mail, amended the transfer application to remove the request for a change from a surface water point of diversion to hydraulically connected ground water points of appropriation under Certificate 36903.

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.
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4. The first right to be transferred is as follows:

**Certificate:** 46586 in the name of WALTER D. MILLER (perfected under Permit G-5678)  
**Use:** IRRIGATION OF 92.1 ACRES  
**Priority Date:** MARCH 29, 1973  
**Rate:** 1.15 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.  
**Source:** A WELL within the SMALLMAN CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	2 W	WM	2	NW NW	1	1970 FEET NORTH AND 1550 FEET EAST FROM THE WESTERLY NW CORNER OF SMALLMAN DLC 53

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
9 S	2 W	WM	34	SE SE	3	3.6
9 S	2 W	WM	35	SW SW		22.0
9 S	2 W	WM	35	SE SW	12	11.0
10 S	2 W	WM	2	NE NW	1	3.1
10 S	2 W	WM	2	NW NW	1	32.0
10 S	2 W	WM	2	SW NW	1	0.4
10 S	2 W	WM	3	NE NE	1	18.4
10 S	2 W	WM	3	SE NE	2	1.6
<b>Total</b>						<b>92.1</b>

5. Transfer Application T-10117 proposes to move the authorized point of appropriation approximately 3700 feet southwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	2 W	WM	3	NE SE	3	WELL 1 - 140 FEET NORTH AND 860 FEET WEST FROM THE NE CORNER OF DLC 54
10 S	2 W	WM	3	NW SE	4	WELL 2 - 350 FEET SOUTH AND 1450 FEET WEST FROM THE NE CORNER OF DLC 54

6. Transfer Application T-10117 also proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	11	NE NW	2		5.3
10 S	2 W	WM	11	SW NW	2		1.7
10 S	2 W	WM	11	SW NW		54	1.1
10 S	2 W	WM	11	SE NW		54	3.7
10 S	2 W	WM	11	SE NW	2		32.4
10 S	2 W	WM	11	NE SW			39.0
10 S	2 W	WM	11	NW SW	3		5.3
10 S	2 W	WM	11	NW SE			3.6
<b>Total</b>							<b>92.1</b>

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

**Certificate:** 57856 in the name of WALTER R. MILLER (perfected under Permit G-7109)

**Use:** IRRIGATION OF 34.5 ACRES

**Priority Date:** FEBRUARY 1, 1977

**Rate:** 0.43 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** A WELL within the SMALLMAN CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	2 W	WM	3	SE SE	54	450 FEET NORTH AND 450 FEET WEST FROM THE SE CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
10 S	2 W	WM	2	NW SW	54	0.1
10 S	2 W	WM	2	SW SW	54	2.5
10 S	2 W	WM	3	NE SE	54	4.3
10 S	2 W	WM	3	SW SE	54	2.0
10 S	2 W	WM	3	SE SE	54	25.6
<b>Total</b>						<b>34.5</b>

8. Transfer Application T-10117 proposes additional points of appropriation approximately 2000 feet northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
10 S	2 W	WM	3	NE SE	3	WELL 1 - 140 FEET NORTH AND 860 FEET WEST FROM THE NE CORNER OF DLC 54
10 S	2 W	WM	3	NW SE	4	WELL 2 - 350 FEET SOUTH AND 1450 FEET WEST FROM THE NW CORNER OF DLC 54

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

**Certificate:** 36903 in the name of VENUS STANDLEY, PEARL RICE, AND WILLIS D SIMS (perfected under Permit S-30830)

**Use:** IRRIGATION OF 11.0 ACRES

**Priority Date:** AUGUST 27, 1965

**Rate:** 0.14 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Source:** SMALLMAN CREEK, tributary to the NORTH SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	2 W	WM	3	NW SE	640 FEET SOUTH AND 910 FEET WEST FROM THE NW CORNER OF DLC 53

**Authorized Place of Use:**

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	3	NE SW	5		0.2
10 S	2 W	WM	3	NW SE	4		10.7
10 S	2 W	WM	3	SW SE	4		0.1
<b>Total</b>							<b>11.0</b>

10. Transfer Application T-10117 proposes to change the place of use to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
10 S	2 W	WM	3	NE SE		54	2.0
10 S	2 W	WM	3	NW SE	4		2.0
10 S	2 W	WM	3	SW SE		54	4.1
10 S	2 W	WM	3	SE SE		54	2.9
<b>Total</b>							<b>11.0</b>

11. The portion of the fourth right to be transferred is as follows:

**Certificate:** 57883 in the name of WALTER R. MILLER (perfected under Permit S-37753)

**Use:** IRRIGATION OF 19.7 ACRES

**Priority Date:** FEBRUARY 27, 1975

**Rate:** 0.25 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

**Sources:** SUCKER SLOUGH, tributary to THOMAS CREEK and SMALLMAN CREEK, tributary to the NORTH SANTIAM RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Measured Distances
9 S	2 W	WM	35	NW SE		61	SMALLMAN CREEK - 50 FEET SOUTH AND 100 FEET EAST FROM THE MOST WESTERLY NW CORNER OF DLC 61
10 S	2 W	WM	2	SE SE	2		SUCKER SLOUGH - 1120 FEET NORTH AND 650 FEET WEST FROM THE SE CORNER OF SECTION 2

**Authorized Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	2 W	WM	1	NW SW	3	11.8
10 S	2 W	WM	1	SW SW		4.3
10 S	2 W	WM	2	NE SE	2	2.1
10 S	2 W	WM	2	SE SE	2	1.5
<b>Total</b>						<b>19.7</b>

12. Transfer Application T-10117 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	11	NE SE	7.7
10 S	2 W	WM	11	NW SE	12.0
<b>Total</b>					<b>19.7</b>

13. The portion of the fifth right to be transferred is as follows:

**Certificate:** 57884 in the name of WALTER R. MILLER (perfected under Permit S-40260)  
**Use:** SUPPLEMENTAL IRRIGATION OF 19.7 ACRES  
**Priority Date:** MARCH 8, 1976  
**Rate:** 0.19 CUBIC FOOT 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-EIGHTIETH 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.  
**Source:** SMALLMAN CREEK, tributary to the NORTH SANTIAM RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
9 S	2 W	WM	35	NW SE	61	50 FEET SOUTH AND 100 FEET EAST FROM THE MOST WESTERLY NW CORNER OF DLC 61

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
10 S	2 W	WM	1	NW SW	3	11.8
10 S	2 W	WM	1	SW SW		4.3
10 S	2 W	WM	2	NE SE	2	2.1
10 S	2 W	WM	2	SE SE	2	1.5
<b>Total</b>						<b>19.7</b>

14. Transfer Application T-10117 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	11	NE SE	7.7
10 S	2 W	WM	11	NW SE	12.0
<b>Total</b>					<b>19.7</b>

15. The portion of a supplemental irrigation permit to be transferred with the primary irrigation is as follows:

**Permit:** G-15178 in the name of MOUNT JEFFERSON FARMS (perfected under Permit G-15178)  
**Use:** SUPPLEMENTAL IRRIGATION OF 19.7 ACRES  
**Priority Date:** APRIL 5, 2001  
**Rate:** 0.12 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre-feet for each acre irrigated during the irrigation season of each year.  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31  
**Source:** A WELL within the SUCKER SLOUGH BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
10 S	2 W	WM	1	NW SW	53	80 FEET SOUTH AND 160 FEET EAST FROM THE SE CORNER OF DLC 53

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	1	NW SW	11.8
10 S	2 W	WM	1	SW SW	4.3
10 S	2 W	WM	2	NE SE	2.1
10 S	2 W	WM	2	SE SE	1.5
<b>Total</b>					<b>19.7</b>

16. Transfer Application T-10117 proposes to change the place of use of a portion of the permit to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	2 W	WM	11	NE SE	7.7
10 S	2 W	WM	11	NW SE	12.0
<b>Total</b>					<b>19.7</b>

17. Notice of the application for transfer was published on March 21, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
18. On October 7, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10117 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 8, 2011, for the applicant to respond. 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.

***Transfer Review Criteria (OAR 690-380-4010)***

19. Water has been used within the last five years according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
20. 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 Transfer Application T-10117.
21. The Department's staff hydrogeologist has concluded that the proposed surface to groundwater change in point of diversion **does not** meet all the requirements of ORS 540.531, and estimated that pumping of the wells will actually cause approximately 10 percent stream depletion in less than 10 days, in accordance with OAR 690-380-2130(2)(c) and (11)(b).
22. On September 27, 2011, a letter was sent to the applicants informing them of the finding by the Department.
23. The proposed changes would not result in enlargement of the rights.
24. The proposed changes would not result in injury to other water rights.

**Determination and Proposed Action**

The change in point of appropriation, additional points of appropriation, and changes in place of use proposed in Transfer Application T-10117 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-10117 is approved, the final order will include the following:*

1. *The change in point of appropriation, additional points of appropriation, and changes in places of use proposed in Transfer Application T-10117 are 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 46586, 57856, 36903, 57883, 57884, and Permit G-15178, and any related decree.*
3. *Water Right Certificates 46586, 57856, 36903, 57883, and 57884 are cancelled. New certificates will be issued describing those portions of the rights described by Certificates 36903, 57883 and 57884 not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation under the water right described by Certificate 46586 shall not exceed the quantity of water lawfully available at the original point of appropriation.*



5. *The quantity of water diverted at the additional points 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 under the right described by Certificate 57856.*
6. *Water shall be acquired from the same aquifer (water source) as the original points of appropriation for the rights described by Certificates 46586 and 57856.*
7. *The former places of use of the transferred rights shall no longer receive water under the rights.*
8. *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 appropriation.*
  - 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.*
9. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.*
10. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 15 day of November, 2011.

  
Dwight French, Water Right Services Administrator, for  
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrds.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.*

