



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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May 29, 2014

JSM Trust
John Moon III and Suzanne Moon, Trustees
50629 Altnow Beulah Lane
Drewsey, OR 97904

SUBJECT: Water Right Transfer Application T-11676

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11676. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at Tracy.L.Fox@wrd.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11676
District 10 Watermaster (*via e-mail*)
John A. Short, Agent for the applicant (*via e-mail, johnshort@usa.com*)
Gary L. DeJarnett, CWRE #33

enclosure

5. 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

6. 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:

Authorized Points of Diversion:

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

7. 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

8. 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

9. 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

10. 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

11. 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

12. 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
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)]

13. 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.
14. 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.
15. The proposed changes would not result in enlargement of the rights.
16. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

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. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11676 is approved, the final order will include the following:

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 for Certificates 6847, 26367 and 79377 new certificates confirming the rights transferred will be issued. Certificate 79377 shall be issued in the name of Otis Valley Irrigation Company, Inc.*

Dated at Salem, Oregon this 30th day of May, 2014.



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

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may contact Tracy Fox at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

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