

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

In the Matter of Transfer Application	)	FINAL ORDER
T-11550, Union County	)	APPROVING A CHANGE IN POINT OF
	)	APPROPRIATION AND PARTIAL
	)	CANCELLATION OF A CERTAIN
	)	WATER RIGHT

**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.

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**

MDB FARMS LLC.  
STEVE DELASHMUTT, MANAGER  
3640 H STREET  
BAKER CITY, OR 97814

**Findings of Fact**

1. On March 18, 2013, Steve Delashmutt of MDB Farms, LLC, filed an application to change the point of appropriation under Certificate 87723. The Department assigned the application number T-11550.
2. Notice of the application for transfer was published on March 26, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 17, 2013, the Department sent out a letter to the applicant describing a layered situation with an existing water right on the authorized place of use. The applicant submitted a voluntary cancellation requesting to cancel the supplemental water right portion as described below in Finding of Fact No. 12.

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.

4. On October 24, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve transfer application T-11550 to the applicant. The draft Preliminary Determination set forth a deadline of November 25, 2013, for the applicant to respond. On November 25, 2013, 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.
5. On February 24, 2014, the Department issued a preliminary determination proposing to approve Transfer T-11550 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 February 25, 2014, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The right to be transferred is as follows:

**Certificate:** 87723 in the name of WILLIAM A. DELASHMUTT, WILLIAM R. DELASHMUTT, ETTA LOU DELASHMUTT, DONALD T. McCABE AND FERN McCABE BAY (perfected under Permit G-12951)

**Use:** IRRIGATION OF 314.6 ACRES

**Priority Date:** NOVEMBER 20, 1995

**Rate:** 2.52 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 a diversion of ONE-EIGHTIETH of one cubic foot per second, 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.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** A WELL within the GRANDE RONDE RIVER BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	38 E	WM	12	NE SE	2637 FEET NORTH AND 226 FEET WEST FROM THE SE CORNER OF SECTION 12

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	12	NE SE	39.1
3 S	38 E	WM	12	NW SE	40.0
3 S	38 E	WM	12	SW SE	39.1
3 S	38 E	WM	12	SE SE	38.2
3 S	39 E	WM	7	SW NW	39.1
3 S	39 E	WM	7	SE NW	40.0
3 S	39 E	WM	7	NE SW	40.0
3 S	39 E	WM	7	NW SW	39.1
TOTAL					314.6

7. Transfer Application T-11550 proposes to change the point of appropriation south approximately 200 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	38 E	WM	12	NE SE	2437 FEET NORTH AND 246 FEET WEST FROM THE SE CORNER OF SECTION 12

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

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11550 according to the terms and conditions of the right. Confirming Certificate 87723 was issued on August 28, 2013. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A well, 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 Transfer Application T-11550.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

***Partial Cancellation of a Water Right***

12. On October 24, 2013, Steve DeLashmutt, Manager of MDB Farms, LLC submitted an Affidavit for the Partial Cancellation of a Water Right Certificate appurtenant to Tax Lots 2600 and 2601, within Section 12, T 3 S, R 38 W, W.M. The portion of the right proposed to be cancelled is described as follows:

**Certificate:** 45112 in the name of McAlister Ditch Company (confirmed by the Grand Ronde River Decree)

**Use:** Irrigation of 60.0 acres

**Priority Date:** 1871

**Rate:** One-Fortieth of one cubic foot per second per acre, and 3.0 acre-feet per acre in any irrigation season

**Source:** Grande Ronde River, a tributary to the Snake River

**Authorized Place of Use to be Cancelled:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	12	NE SE	10.0
3 S	38 E	WM	12	NW SE	35.0
3 S	38 E	WM	12	SW SE	5.0
3 S	38 E	WM	12	SE SE	10.0
TOTAL					60.0

**Conclusions of Law**

The change in point of appropriation proposed in Transfer Application T-11550 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of water right Certificate 45112 should be cancelled.

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

1. The change in point of appropriation proposed in Transfer Application T-11550 is approved. The portion of Certificate 45112 that has been abandoned is cancelled.
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 Certificate 87723 and any related decree.
3. Water right Certificates 87723 and 45112 are cancelled. A new certificate will be issued describing that portion of Certificate 45112 not affected by this transfer and cancellation.
4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The approved change shall be completed and full beneficial use of the water shall be made 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 change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 27 day of March, 2014.

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

Mailing Date: APR 04 2014