

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-12591, Union County)	CHANGE IN POINT OF DIVERSION,
)	PLACE OF USE, AND A PARTIAL
)	DIMINUTION OF A WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

MDB FARMS LLC
STEVEN C DELASHMUTT, MANAGER
61070 PIERCE RD
LA GRANDE, OR 97850

Findings of Fact

1. On February 21, 2017, MDB FARMS LLC filed an application to change the point of diversion and to change the place of use under Certificates 41055 and 91415. The Department assigned the application number T-12591.
2. Notice of the application for transfer was published on June 27, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 1, 2017, the applicant submitted an amended application and map.
4. On February 8, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12591 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 8, 2018, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2023, and for 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 June 14, 2018, the applicant submitted an amended application and map.
6. On July 24, 2018, the applicant submitted an amended map.
7. On August 1, 2018, an affidavit certifying that a portion of a water right Certificate 31642 will be diminished was received from Steve Delashmutt.
8. On September 11, 2018, the Department sent a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-12591 to the applicant. 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.
9. On October 23, 2019, the Department issued a Preliminary Determination proposing to approve Transfer T-12591 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 October 29, 2019, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
10. The portion of the first right to be transferred is as follows:

Certificate: 41055 in the name of FRED KNAPE (perfected under Permit S-28560)
Use: IRRIGATION of 123.6 ACRES and SUPPLEMENTAL IRRIGATION OF 25.0 ACRES
Priority Date: OCTOBER 30, 1962
Rate: 0.99 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-FORTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year; provided further that the right to the use of the water is limited to the period when the flow of the Lower Grand Ronde River is more than 300 cubic feet per second at USGS Gage No. 3325 and more than 420 cubic feet per second at the Oregon-Washington border.
Source: GRANDE RONDE RIVER, a tributary of SNAKE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	39 E	WM	32	SE NW	POD #1 - 2380 FEET SOUTH AND 600 FEET WEST FROM THE N1/4 CORNER OF SECTION 32
2 S	39 E	WM	32	NW SW	POD #2 - 2780 FEET SOUTH AND 1400 FEET WEST FROM THE N1/4 CORNER OF SECTION 32

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	17.9
2 S	39 E	WM	32	NE SW	30.6

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NW SW	21.7
2 S	39 E	WM	32	SW SW	39.7
2 S	39 E	WM	32	SE SW	13.7
Total					148.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	5.0
2 S	39 E	WM	32	SE SW	20.0
Total					25.0

11. Transfer Application T-12591 proposes to move the authorized point of diversion approximately 450 feet upstream from POD #1 and approximately 485 feet downstream from POD #2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	39 E	WM	32	SE NW	PUMP SOUTH BANK - 2566 FEET SOUTH AND 1047 FEET WEST FROM THE N1/4 CORNER OF SECTION 32

12. Transfer Application T-12591 also proposes to change the place of use of the right for 7.1 acres to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	4.0
2 S	39 E	WM	32	SE SW	3.1
Total					7.1

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

Certificate: 91415 in the name of WILLIAM A. DELASHMUTT AND DONALD T. MCCABE (perfected under Permit G-13255)

Use: SUPPLEMENTAL IRRIGATION of 7.1 ACRES

Priority Date: JULY 26, 1996

Rate: 0.089 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 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL #6 in the GRANDE RONDE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	39 E	WM	6	NW NE	WELL #6 - 2166 FEET NORTH AND 2795 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 6

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	7.1

14. Transfer Application T-12591 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	4.0
2 S	39 E	WM	32	SE SW	3.1
Total					7.1

15. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

16. 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.
17. 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-12591.
18. The proposed changes would not result in enlargement of the rights.
19. The proposed changes would not result in injury to other water rights.

Partial Diminution of a Water Right

20. On August 1, 2018, an affidavit certifying that a portion of a water right Certificate 31642 will be diminished was received from Steve Delashmutt. The right to be diminished is as follows:

Certificate: 31642 in the name of STANLEY AND MAURICE WEISHAAR (perfected under Permit S-27217)

Use: IRRIGATION of 2.2 ACRES

Priority Date: FEBRUARY 24, 1961

Rate: 0.04 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, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL #6 in the GRANDE RONDE RIVER BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	39 E	WM	32	NW NE
3 S	39 E	WM	5	NE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	2.2

Conclusions of Law

The change in point of diversion and change in places of use proposed in Transfer Application T-12591 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

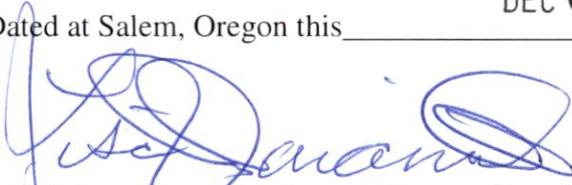
1. The change in point of diversion and change in places of use proposed in Transfer Application T-12591 are approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 41055 and 91415 and any related decree.
3. Water right Certificates 41055 and 91415 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. The quantity of water diverted at the new point of diversion (Pump South Bank), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and 2).
5. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

6. The former place of use of the transferred rights shall no longer receive water under the rights.

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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.
8. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this DEC 05 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: DEC 06 2019