

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10968, Lane County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION
	)	AND RE-DIVERSION, A CHANGE IN
	)	PLACE OF USE, A CHANGE IN
	)	CHARACTER OF USE, PARTIAL
	)	CANCELLATION OF A WATER
	)	RIGHT AND CANCELLATION OF AN
	)	ENTIRE WATER RIGHT

**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.

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**

MORSE BROS. INC.  
DBA KNIFE RIVER, AN MDU RESOURCES COMPANY  
ATTN: JEFF STEYAERT  
32260 OLD HWY 34  
TANGENT, OR 97389

**Findings of Fact**

**Background**

1. On October 21, 2009, MORSE BROS. INC., DBA KNIFE RIVER, AN MDU RESOURCES GROUP filed an application to change the point of diversion and re-diversion, place of use, and character of use under Certificate 35753. The Department assigned the application number T-10968.

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

**Certificate:** 35753 in the name of SPRINGFIELD SAND AND GRAVEL CO.  
(perfected under Permit S-29217)  
**Use:** MANUFACTURING (WASHING GRAVEL)  
**Priority Date:** OCTOBER 16, 1963  
**Rate:** 1.3 CUBIC FEET PER SECOND  
**Limit/Duty:** The right to use water is limited to the period when the flow of the Middle Fork Willamette River is more than 1025 cubic feet per second at its mouth. This right is subject to maintenance and use of adequate treatment facilities to remove the sediment before returning the water to the stream.  
**Source:** THE MIDDLE FORK WILLAMETTE RIVER THROUGH GEORGIA PACIFIC MILL RACE, tributary to the WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
18 S	2 W	WM	8	NW NW	50	RIVER - 1150 FEET SOUTH AND 400 FEET WEST FROM THE SW CORNER OF ARTHUR DLC 63
18 S	3 W	WM	1	NE NW	39	MILL RACE RE-DIVERSION - NORTH 38°3'55" EAST 3032.46 FEET FROM THE W¼ CORNER OF SECTION 1

**Authorized Place of Use:**

MANUFACTURING (WASHING GRAVEL)					
Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	3 W	WM	1	NE NW	11

3. Transfer Application T-10968 proposes to change the character of use to industrial and mining.

4. Transfer Application T-10968 proposes to move the authorized points of diversion approximately 1775 feet upstream on the river and 470 feet upstream on the re-diversion to:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
18 S	2 W	WM	8	NE NW	9	RIVER - 460 FEET SOUTH AND 70 FEET WEST FROM THE N¼ CORNER OF SECTION 8
18 S	3 W	WM	1	NE NW		MILL RACE RE-DIVERSION - 380 FEET SOUTH AND 2270 FEET EAST FROM THE NW CORNER OF SECTION 1

5. Transfer Application T-10968 proposes to change the place of use of the right to:

INDUSTRIAL AND MINING					
Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	3 W	WM	1	NW NE	
18 S	3 W	WM	1	NE NW	11
18 S	3 W	WM	1	NW NW	12
18 S	3 W	WM	1	SW NW	
18 S	3 W	WM	1	SE NW	10
18 S	3 W	WM	1	NE SW	3

INDUSTRIAL AND MINING					
Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	3 W	WM	1	NW SW	
18 S	3 W	WM	1	SW SW	4
18 S	3 W	WM	1	SE SW	3
18 S	3 W	WM	2	NE NE	10
18 S	3 W	WM	2	NW NE	9
18 S	3 W	WM	2	SW NE	
18 S	3 W	WM	2	SE NE	11
18 S	3 W	WM	2	NE SE	12

6. Notice of the application for transfer was published on October 27, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On November 17, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10968 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of December 20, 2010, 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.
8. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.

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

9. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. A pump and pipeline system sufficient to use the full amount of water allowed under the existing right was present within the five-year period prior to submittal of Transfer Application T-10968.
11. The proposed changes would not result in enlargement of the right.
12. The proposed changes would not result in injury to other water rights.

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

13. On October 21, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Jeff Steyaert of Morse Bros., Inc., DBA Knife River, and MDU Resource Co. The right to be cancelled is as follows:

**Certificate:** 35753 in the name of SPRINGFIELD SAND AND GRAVEL COMPANY (perfected under Permit S-29217)  
**Use:** IRRIGATION OF 34.7 ACRES  
**Priority Date:** OCTOBER 16, 1963  
**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:** MIDDLE FORK WILLAMETTE RIVER THROUGH GEORGIA PACIFIC MILL RACE, tributary to the WILLAMETTE RIVER

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
18 S	2 W	WM	8	NW NW	50	RIVER - 1150 FEET SOUTH AND 400 FEET WEST FROM THE SW CORNER OF ARTHUR DLC 63
18 S	3 W	WM	1	NE NW	39	MILL RACE RE-DIVERSION - NORTH 38°3'55" EAST 3032.46 FEET FROM THE W¼ CORNER OF SECTION 1

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

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
18 S	3 W	WM	1	NE NW	11	2.6
18 S	3 W	WM	1	NW NW	12	26.8
18 S	3 W	WM	1	SW NW		5.3

***Cancellation of an entire Water Right***

14. On October 21, 2009, an affidavit certifying that an entire water right has been abandoned and requesting cancellation of the right was received from Jeff Steyaert of Morse Bros., Inc., DBA Knife River, and MDU Resource Co. The right to be cancelled is as follows:

**Certificate:** 10813 in the name of PRATT HOLVERSON (perfected under Permit S-10859)  
**Use:** STOCK WATER  
**Priority Date:** APRIL 8, 1933  
**Rate:** 0.1 CUBIC FOOT PER SECOND

**Limit/Duty:** Limited to the water available at the proposed point of diversion, and does not carry with it the right to divert water from the stream from which the waste water is diverted nor the right to require the wasteful use of water by others

**Source:** OVERFLOW CHANNEL FROM BOOTH KELLY LUMBER COMPANY MILL RACE, tributary to the WILLAMETTE RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	3 W	WM	1	SE NW	10

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

LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	GLot
18 S	3 W	WM	1	SE NW	10

**Determination and Proposed Action**

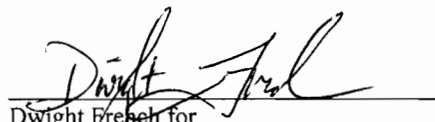
The changes in point of diversion and re-diversion, place of use, and character of use proposed in Transfer Application T-10968 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned rights will be cancelled.

*If Transfer Application T-10968 is approved, the final order will include the following:*

- 1. The changes in point of diversion and re-diversion, place of use, and character of use proposed in Transfer Application T-10968 are approved.*
- 2. The portion of the right described by Certificate 35753 that has been abandoned is cancelled.*
- 3. The right described by Certificate 10813 has been abandoned and is cancelled.*
- 4. 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 35753 and any related decree.*
- 5. Water right certificates 35753 and 10813 are cancelled.*
- 6. The quantity of water diverted at the new point of diversion shall not exceed the quantity of water lawfully available at the original point of diversion.*

7. *The Director may require the water user to install a totalizing flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
8. *When required by the Department, the water user shall install, maintain and operate a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.*
9. *Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.*
10. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. 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.*
11. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 13 day of December 2010.

  
Dwight French 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@wrд.state.or.us](mailto:Patrick.K.Starnes@wrд.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.