



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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April 12, 2013

Applicant

MADISON RANCHES LAND III LLC
29299 MADISON RD
ECHO, OR 97826

SUBJECT: Water Right Transfer Application T-11414

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11414. 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 and in the Hermiston Herald newspaper, 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 notice or 30 days after the last date of newspaper publication, whichever is later.

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 (503) 986-0890, or Dorothy.I.Pedersen@wr.d.state.or.us if I may be of assistance.

Sincerely,

Dorothy I. Pedersen
Transfer Program Advisor

cc: T-11414
Tony G. Justus, District 5 Watermaster (*via e-mail*)
Jason Melady, Agent for the applicant (*via e-mail: jmelady@gsiws.com*)

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-11414, Umatilla County) PROPOSING APPROVAL OF A CHANGE
) IN POINT OF APPROPRIATION

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.

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Agent

JASON MALADY, GSI SOLUTIONS
55 SW YAMHILL STREET, SUITE 400
PORTLAND, OR 97204

Findings of Fact

Background

1. On May 3, 2012, Kent R. Madison filed an application to change the point of appropriation under Certificate 87265. The Department assigned the application number T-11414.
2. Notice of the application for transfer was published on May 8, 2012, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On February 14, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11414 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 15, 2013, for the applicant to respond. On March 7, 2013, Jason Melady, agent for the applicant, requested via e-mail, for the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that she is authorized to pursue the transfer.
4. On February 18, 2013, the agent for the applicant clarified that the applicant proposes to have the option of using the proposed Windmill well in the months of January and February to meet his irrigation needs as further described in the table in Finding of Fact #8.

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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5. On March 20, 2013, the T-11414 transfer application was assigned from Ken Madison to Madison Ranches Land III LLC.

6. The right to be transferred is as follows:

Certificate: 87265 in the name of Kent R. Madison (perfected under Permit S-25159)

Use: IRRIGATION of 13.8 ACRES

Priority Date: SEPTEMBER 30, 1957

Rate: 0.28 CUBIC FOOT PER SECOND (cfs)

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-FIFTIETH 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 4.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: Irrigation season is JANUARY 1 through SEPTEMBER 1

Source: THE SOUTH SPRING WELL, tributary to BUTTER CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	30	NW SE	350 FEET SOUTH AND 2100 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 30

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
3 N	28 E	WM	30	NW SE	13.8

7. Transfer Application T-11414 proposes to change the point of appropriation (collector well) southwest approximately 4250 feet to the Windmill Well located:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
3 N	28 E	WM	31	SE NW	1620 FEET SOUTH AND 1060 FEET WEST FROM THE N ¹ / ₄ CORNER OF SECTION 31

8. On December 28, 2012, the applicant indicated in a phone conference, concurring with the Department that the production of the current source of water from the South Spring Well does indeed fall off in the later months of the growing season. The applicant has agreed to set the pump intake no lower than 23 feet below ground surface to ensure that water is appropriated only from the alluvial aquifer, and also to a limitation of flows, based on actual use and as conditioned in the table below, reflecting beneficial use thus far under Certificate 87265.

Certificate 87265 (Irr. Season: Jan 1 to Sept 1) = 243 days		
Month	Max Q = 0.28 cfs	Max Volume = 55.2 ac/ft
January	@100% = 0.28	@100% = 17.19 (31 days)
February	@100% = 0.28	@100% = 15.53 (28 days)
March	@100% = 0.28	@100% = 17.19 (31 days)

Certificate 87265 (Irr. Season: Jan 1 to Sept 1) = 243 days		
Month	Max Q = 0.28 cfs	Max Volume = 55.2 ac/ft
April	@100% = 0.28	@100% = 16.63 (30 days)
May	@100% = 0.28	@100% = 17.19 (31 days)
June	@ 95% = 0.27	@ 95% = 15.80 (30 days)
July	@ 50% = 0.14	@ 50% = 8.59 (31 days)
August	@ 5% = 0.014	@ 5% = 0.86 (31 days)
September	Outside irrigation season	
October	Outside irrigation season	
November	Outside irrigation season	
December	Outside irrigation season	

* Water right may be exercised at full rate and volume, if available at the original POD, except for the reductions in June, July, and August as noted above. Furthermore, the total overall maximum volume used cannot exceed 55.2 acre-feet for the season January 1 to September 1.

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

9. 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 right is subject to forfeiture under ORS 540.610.
10. A well, 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-11414.
11. The Department has determined that the proposed well, a collector well, appropriates the same source of water as the original well, and will affect the surface water source similarly to the use of the original authorized point of diversion.
12. The proposed change would not result in enlargement of the right.
13. The proposed change would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion proposed in Transfer Application T-11414 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-11414 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in application T-11414 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 Certificate 87265 and any related decree.*

3. *Water right certificate 87265 is cancelled.*
4. *The new point of diversion (collector well) shall be constructed so that the pump intake shall be set no deeper than 23 feet below ground surface to ensure that the quantity of water diverted shall not exceed the quantity of water lawfully available at the original point of diversion. In addition, the total quantity of water annually used under the right shall be limited to no more than the total duty described in the table above in Findings of Fact #6.*
5. *The water user shall maintain and operate the existing measurement device at the new point of appropriation and shall make such improvements as may be required by the Department.*
6. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2014**. 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. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 11 day of April, 2013.


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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@wr.state.or.us.

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.