



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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September 30, 2013

Applicant

DeARMOND FAMILY LLC
THOMAS DeARMOND
11463 BROADACRES RD NE
HUBBARD, OR 97032

Agent

DON E. KNAUER
P.O. BOX 5416
SALEM, OR 97304

SUBJECT: Water Right Transfer Application T-11569

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11569. 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 Woodburn Independent 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 last date of newspaper publication.

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 503-986-0858 or Susan.M.Douthit@ wrd.state.or.us if I may be of assistance.

Sincerely,

Susan Douthit
Transfer and Conservation Section

cc: File T-11569
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Donald E. Knauer, Agent for the applicant and CWRE # 75 (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11569, Marion County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF
)	APPROPRIATION

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.

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Findings of Fact

1. On April 9, 2013, DeArmond Family LLC filed an application for an additional point of appropriation under Certificate 42315. The Department assigned the application number T-11569.
2. Notice of the application for transfer was published on April 16, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On August 7, 2013, the Department contacted the applicant by written correspondence to notify the applicant and applicant's agent of deficiencies in the application pertaining to the number of acres requested for transfer.
4. On August 21, 2013, the applicant's agent submitted a revised map and a revised Page 6 of the transfer application, identifying 41.5 acres for transfer.

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 August 27, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11569 to the applicant and agent. The draft Preliminary Determination cover letter set forth a deadline of September 27, 2013, for the applicant to respond. The applicant's agent requested a completion date of October 1, 2015, in order to allow sufficient time for compliance with all conditions. The Department agrees this is reasonable, and granted that date for completion. The agent requested the Department to proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

6. On September 27, 2013, the applicant's agent submitted an amended transfer application and map revising the location of the proposed point of appropriation approximately 1000 feet northeast from the previous proposed location.

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

Certificate: 42315 in the name of KRAUS BROTHERS (perfected under Permit G-4710)

Use: IRRIGATION OF 41.5 ACRES

Priority Date: MARCH 10, 1970

Rate: 0.41 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: A WELL within the PUDDING RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	16	NE NE	46	620 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER OF SECTION 16

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	10	NE SW	46	7.2
4 S	1 W	WM	10	NW SW	46	5.8
4 S	1 W	WM	10	SW SW	46	17.2
4 S	1 W	WM	10	SE SW	46	11.3

8. Transfer Application T-11569 proposes an additional point of appropriation approximately 2,000 feet northwest from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
4 S	1 W	WM	10	SW SW	46	940 FEET NORTH AND 730 FEET WEST FROM THE SW CORNER OF SECTION 10

Transfer Review Criteria (OAR 690-380-4010)

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 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-11569.
11. The alluvial aquifer is the water source at the authorized point of appropriation. The proposed depth of water withdrawal at the proposed point of appropriation is predicted by the Department to intersect the basalt aquifer, which is a different source of water. Production of water from the basalt aquifer will not be allowed under this transfer.
12. The proposed change, as conditioned, would not result in enlargement of the right.
13. The proposed change, as conditioned, would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The additional point of appropriation proposed in Transfer Application T-11569 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-11569 is approved, the final order will include the following:

1. *The additional point of appropriation proposed in Transfer Application T-11569 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 42315 and any related decree.*
3. *Water right certificate 42315 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *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 new point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*

- c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation, by constructing the well so as to access the shallow alluvial aquifer only, excluding contribution from the underlying basalt aquifer.*
 7. *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 change and full beneficial use of the water.*
 8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 2 day of October 2013.


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 reach Susan Douthit at 503-986-0858 or Susan.M.Douthit@wrđ.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.