



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

February 25, 2014

Applicant

Oregon Department of Transportation
Attn – Jayne Randleman
3500 Stewart Parkway
Roseburg, OR 97470
Jayne.A.Randleman@odot.state.or.us

Receiving Landowners

Manta Investments, LLC
Attn – Mark DiRienzo
700 Mistletoe Road
Ashland, OR 97520
markd@mind.net

SUBJECT: Water Right Transfer Application T-11363

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11363. 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. 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.

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.

Please do not hesitate to contact me at 503-986-0886 or Patrick.K.Starnes@ wrd.state.or.us if I may be of assistance.

Sincerely,

Susan Douthit
Transfer and Conservation Section

cc: T-11363
Travis Kelly, District 13 Watermaster (via e-mail)
Harold Center, CWRE
Paul and Connie Foland, Commenters 500 Reiten Dr. Ashland, OR 97520
foland@userscorner.com

encs

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

In the Matter of Transfer Application)
T-11363, Jackson County)
)
)
)
)

**PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE OF PLACE OF USE AND
PARTIAL CANCELLATION OF A
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

Oregon Department of Transportation
Attn-Jayne Randleman
3500 Stewart Parkway
Roseburg, OR 97470
Jayne.A.Randleman@odot.state.or.us

Receiving Landowners

Manta Investments, LLC
Attn: Mark DiRienzo
700 Mistletoe Road
Ashland, OR 97520
markd@mind.net

Findings of Fact

Background

1. On February 28, 2012, Oregon Department of Transportation (ODOT) filed a transfer application to change the place of use under Certificate 82967. The Department assigned the application number T-11363.
2. Douglas K. and Nina M. Healy were identified as the receiving landowners on the transfer application. The receiving landowners are now identified as Manta Investments, LLC. The receiving landowners will be responsible for completion of the changes.
3. Certificate 82967 was superseded by Certificate 88873 by order of the Jackson County Circuit Court.
4. On December 20, 2013, the applicant amended the application to eliminate the change in point of diversion for a portion of Certificate 88873.

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.

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

Certificate: 88873 in the name of ADELBERT MOORE (confirmed by the Rogue River Decree)
Use: IRRIGATION of 16.45 acres, DOMESTIC, and LIVESTOCK
Priority Date: 1852
Rate: 0.09 CUBIC FOOT PER SECOND (cfs)
Source: NEIL CREEK, tributary to BEAR CREEK

Authorized Point of Diversion (POD):

Twp	Rng	Mer	Sec	POD Description
39 S	2 E	WM	31	Houck-Dunn-Holmes Ditch

Authorized Place of Use (POU):

IRRIGATION, DOMESTIC AND LIVESTOCK					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	1 E	WM	13	SW SW	0.30
39 S	1 E	WM	24	NE NW	8.83
39 S	1 E	WM	24	NW NW	1.60
39 S	1 E	WM	24	SE NW	5.72
Total:					16.45

6. Additional information regarding the location of the authorized point of diversion, provided by the Certified Water Rights Examiner is included in the following table:

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	POD Description
39 S	2 E	WM	31	SW NW	N42°08'16.8" West 122°38'08.0" World Geodetic System - 84 Datum

7. Transfer Application T-11363 proposes to change the place of use of the right to:

IRRIGATION, DOMESTIC AND LIVESTOCK						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	1 E	WM	24	NE NE	56	16.45

8. Notice of the application for transfer was published on March 6, 2012, pursuant to OAR 690-380-4000.
9. On December 26, 2013, the Department provided a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11363 to the applicants and the receiving landowners. The applicants 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.

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

10. The water right was included in Transfer Application T-7274 during the period between December 1994 to March 2, 2012. Pursuant to 540.610(2)(m) the time in which lands are involved in a transfer are not subject to forfeiture under ORS 540.610.

11. A diversion structure and ditch 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-11363.
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.

Partial Cancellation of a Water Right

14. On February 28, 2012, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Oregon Department of Transportation. The portion of the right to be cancelled is as follows:

Certificate: 88873 in the name of ADELBERT MOORE (confirmed by Rogue River Decree State Water Board)
Use: IRRIGATION of 2.13 ACRES
Priority Date: 1852
Source: NEIL CREEK, tributary to BEAR CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec
39 S	2 E	WM	31

Authorized Place of Use to be Cancelled:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
39 S	1 E	WM	24	SE NW	55	1.87
39 S	1 E	WM	24	NE SW	55	0.26
Total:						2.13

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11363 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11363 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11363 is approved. The portion of the right 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 88873 and any related decree.*

3. *Water right certificate 88873 is cancelled. A new certificate will be issued describing that portion of the right NOT affected by this transfer and cancellation.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the **receiving landowners** to the Department within one year after the deadline for completion of the change and full beneficial use of the water.*
6. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 24 day of February, 2014.



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

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