



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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February 21, 2014

MDB FARMS, LLC
ATTN: STEVE DeLASHMUTT
3640 H STREET
BAKER CITY, OR 97814
delash@eoni.com

VIA E-MAIL

SUBJECT: Water Right Transfer Application T-11550

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11550. 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 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.

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 503-986-0886 or Patrick.K.Starnes@wrp.state.or.us if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

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cc: Transfer Application file T-11550
Shad L. Hattan, District #6 Watermaster (*via e-mail*)
Gregory Blackman, CWRE #021, 126 Ridge Drive, LaGrande, OR 97850

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-11550, Union County)	PROPOSING APPROVAL OF A CHANGE
)	IN POINT OF APPROPRIATION AND
)	PARTIAL CANCELLATION OF A
)	CERTAIN WATER RIGHT

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.

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

MDB FARMS LLC.
STEVE DELASHMUTT, MANAGER
3640 H STREET
BAKER CITY, OR 97814

Findings of Fact

Background

1. On March 18, 2013, Steve Delashmutt of MDB Farms, LLC, filed an application to change the point of appropriation under Certificate 87723. The Department assigned the application number T-11550.
2. On September 17, 2013, the Department sent out a letter to the applicant describing a layered situation with an existing water right on the authorized place of use. The applicant submitted a voluntary cancellation requesting to cancel the supplemental water right portion as described below in Finding of Fact No. 12.

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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3. On October 24, 2013, the Department mailed a copy of the draft Preliminary Determination proposing to approve transfer application T-11550 to the applicant. The draft Preliminary Determination set forth a deadline of November 25, 2013, for the applicant to respond. On November 25, 2013, 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.
4. The right to be transferred is as follows:

Certificate: 87723 in the name of WILLIAM A. DELASHMUTT, WILLIAM R. DELASHMUTT, ETTA LOU DELASHMUTT, DONALD T. McCABE AND FERN McCABE BAY (perfected under Permit G-12951)

Use: IRRIGATION OF 314.6 ACRES

Priority Date: NOVEMBER 20, 1995

Rate: 2.52 CUBIC FEET 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, is limited to a diversion of ONE-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Period of Use: MARCH 1 THROUGH OCTOBER 31

Source: A WELL within the GRANDE RONDE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	38 E	WM	12	NE SE	2637 FEET NORTH AND 226 FEET WEST FROM THE SE CORNER OF SECTION 12

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	12	NE SE	39.1
3 S	38 E	WM	12	NW SE	40.0
3 S	38 E	WM	12	SW SE	39.1
3 S	38 E	WM	12	SE SE	38.2
3 S	39 E	WM	7	SW NW	39.1
3 S	39 E	WM	7	SE NW	40.0
3 S	39 E	WM	7	NE SW	40.0
3 S	39 E	WM	7	NW SW	39.1
TOTAL					314.6

5. Transfer Application T-11550 proposes to change the point of appropriation south approximately 200 feet to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	38 E	WM	12	NE SE	2437 FEET NORTH AND 246 FEET WEST FROM THE SE CORNER OF SECTION 12

6. Notice of the application for transfer was published on March 26, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

8. Water has been used within the last five years prior to the submittal of Transfer Application T-11550 according to the terms and conditions of the right. Confirming Certificate 87723 was issued on August 28, 2013. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
9. A well, 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-11550.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

12. On October 24, 2013, Steve DeLashmutt, Manager of MDB Farms, LLC submitted an Affidavit for the Partial Cancellation of a Water Right Certificate appurtenant to Tax Lots 2600 and 2601, within Section 12, T 3 S, R 38 W, W.M. The portion of the right proposed to be cancelled is described as follows:

Certificate: 45112 in the name of McAlister Ditch Company (confirmed by the Grand Ronde River Decree)
Use: Irrigation of 60.0 acres
Priority Date: 1871
Rate: One-Fortieth of one cubic foot per second per acre, and 3.0 acre-feet per acre in any irrigation season
Source: Grande Ronde River, a tributary to the Snake River

Authorized Place of Use to be Cancelled:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	38 E	WM	12	NE SE	10.0
3 S	38 E	WM	12	NW SE	35.0
3 S	38 E	WM	12	SW SE	5.0
3 S	38 E	WM	12	SE SE	10.0
TOTAL					60.0

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-11550 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the abandoned portion of water right Certificate 45112 should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved and the abandoned right will be cancelled.

If Transfer Application T-11550 is approved, the final order will include the following:

- 1. The change in point of appropriation proposed in Transfer Application T-11550 is approved. The portion of Certificate 45112 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 87723 and any related decree.*
- 3. Water right Certificates 87723 and 45112 are cancelled. A new certificate will be issued describing that portion of Certificate 45112 not affected by this transfer and cancellation.*
- 4. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.*
- 5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 6. The approved change shall be completed and full beneficial use of the water shall be made 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.*
- 7. When satisfactory proof of the completed change 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

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@ wrd.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.