

Water Resources Department

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

May <u>111</u>, 2014

DeARMOND FAMILY LLC ATTN: THOMAS H. DEARMOND 11463 BROADACRES RD NE HUBBARD, OR 97032

SUBJECT: Water Right Transfer Application T-11657

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11657. 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 503-986-0890 or <u>Sarah.A.Henderson@wrd.state.or.us</u> if I may be of assistance.

Sincerely,

Sarah Henderson

Transfer Specialist

Transfer and Conservation Section

Sana K. Kenderson

cc:

T-11657

Mike L. McCord, District 16 Watermaster (via e-mail)

Donald E. Knauer, Agent and CWRE for the applicant (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-11657, Marion County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN PLACE OF USE

## 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.

#### **Applicant**

Dearmond Family, LLC ATTN: THOMAS H. Dearmond 11463 BROADACRES RD NE HUBBARD, OR 97032

### **Findings of Fact**

- 1. On September 3, 2013, THOMAS H. DeARMOND for DeARMOND FAMILY, LLC filed an application to change the place of use under Certificate 88407. The Department assigned the application number T-11657.
- 2. Notice of the application for transfer was published on September 10, 2013, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. On January 31, 2014, the Department contacted Thomas DeArmond and Don Knauer, the applicant's agent, by written correspondence to notify the applicant and applicant's agent of the layered water rights present at the location of the lands being transferred in the application. The Department requested that the deficiencies be resolved by March 3, 2014. On February 25, 2014, the applicant's agent requested a two week extension of the deadline date; the Department extended the deadline to March 17, 2014.
- 4. On March 4, 2014, the applicant's agent submitted the documents resolving the deficiencies.
- 5. On March 20, 2014, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11657 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 21, 2014, for the applicant to respond. The applicant requested that the Department proceed with issuance of a

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.

Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

6. On April 4, 2014, the applicants' agent requested the deadline for the full beneficial use of the water be extended to October 1, 2020.

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

**Certificate:** 88407 in the name of THOMAS DeARMOND (perfected under

Permit G-16181)

Use: NURSERY USES on 38.7 ACRES

Priority Date: JANUARY 23, 2006

**Rate:** 0.90 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for nursery use is limited to a maximum

of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For the irrigation of **containerized nursery plants**, the amount of water diverted is limited to ONE-FORTIETH of one cubic foot per second (or its equivalent) and 5.0 acre feet per acre per year. For the irrigation of **in ground nursery plants** the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre per year. The use of water for **nursery operations** may be made at any time, during the period of allowed use above, that the use is beneficial. For the irrigation of any **other crop**, the amount of water diverted is limited to ONE-EIGHTIETH of one cubic foot per second (or its equivalent) and 2.5 acre feet per acre during the irrigation season of each year.

**Period of Use:** December 1 through May 31

**Source:** WELL 3 in the SENECAL CREEK BASIN

#### **Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	
4 S	1 W	WM	31	NE NE	59	220 FEET NORTH AND 400 FEET WEST FROM THE SE CORNER OF DLC 59	

#### **Authorized Place of Use:**

		NURS	ERY U	JSES		
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	1 W	WM	30	SW SE	59	4.6
4 S	1 W	WM	30	SE SE	59	27.0
4 S	1 W	WM	31	NW NE	59	7.1

8. Transfer Application T-11657 proposes to change the place of use of the right to:

NURSERY USES							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
4 S	1 W	WM	30	NE SW	59	0.1	
4 S	I W	WM	30	SE SW	59	3.3	
4 S	1 W	WM	30	NE SE	59	3.9	
4 S	1 W	WM	30	NW SE	59	12.3	

NURSERY USES								
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres		
4 S	1 W	WM	30	SW SE	59	16.0		
4 S	1 W	WM	30	SE SE	59	3.1		

### 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-11657.
- 11. The proposed change would not result in enlargement of the right.
- 12. The proposed change would not result in injury to other water rights.
- 13. All other application requirements are met.

#### **Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-11657 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-11657 is approved, the final order will include the following:* 

- 1. The change in place of use proposed in Transfer Application T-11657 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 88407 and any related decree.
- 3. Water right Certificate 88407 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 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, 2020**. 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.

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6. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 5 day of May, 2014.

Dwight French, Water Right Services Administrator, for

PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or <a href="mailto:Sarah.A.Henderson@wrd.state.or.us">Sarah.A.Henderson@wrd.state.or.us</a>.

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