

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12871, Umatilla County)	PROPOSING APPROVAL OF
)	ADDITIONAL POINTS OF
)	APPROPRIATION

Authority

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

LAMB WESTON, INC.
78153 WESTLAND RD.
HERMISTON, OR 97838

Agent

DR. PAUL WATTENBURGER, CWRE
IRZ CONSULTING
500 NORTH FIRST STREET
HERMISTON, OR 97838

Findings of Fact

1. On March 16, 2018, Lamb Weston Inc., filed an application for additional points of appropriation under Certificate 43934. The Department assigned the application number T-12871.
2. Notice of the application for transfer was published on March 27, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 26, 2018, the Department issued a draft Preliminary Determination proposing to approve Transfer Application T-12871. The draft Preliminary Determination cover letter set forth a deadline of October 26, 2018, for the applicant to respond. On November 12, 2018, the agent for the applicant agreed to the terms and conditions of the draft Preliminary Determination, requested the Department proceed with issuance of the Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the 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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4. The right to be transferred is as follows:

Certificate: 43934 in the name of LAMB WESTON, INC. (perfected under Permit G-4948)
Use: INDUSTRIAL (FOOD PROCESSING)
Priority Date: FEBRUARY 3, 1972
Rate: 3.02 CUBIC FEET PER SECOND (CFS)
Source: WELL No. 2 within the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	28 E	WM	19	NE SW	1680 FEET NORTH AND 1640 FEET EAST FROM THE SW CORNER OF SECTION 19

Authorized Place of Use:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
4 N	28 E	WM	19	SE SW
4 N	28 E	WM	30	NE NW

5. Transfer Application T-12871 proposes two additional points of appropriation approximately 1000 feet northeast to Well No. 1 and 2500 feet south to Well No. 3 located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	28 E	WM	19	NE SW	WELL No. 1 - 2430 FEET NORTH AND 2340 FEET EAST FROM THE SW CORNER OF SECTION 19
4 N	28 E	WM	30	NE NW	WELL No. 3 - 776.5 FEET SOUTH AND 2141.5 FEET EAST FROM THE NW CORNER OF SECTION 30

6. The Department reviewed whether the proposed additional points of appropriation would lead to enlargement of the right, or cause injury to nearby existing rights. The Department has determined the magnitude of pumping is not expected to prevent nearby wells from accessing their usual and accustomed amount of water. It has also determined there will not be injury to existing downstream water rights, considering the water right subject to transfer has been used for over 30 years and is subject to all terms and conditions of the Ordinance Critical Ground Water Area. Stream depletion impacts from Well 2 are already equilibrated, therefore the proposed additional wells will not change the net stream depletion as conditioned herein.
7. The Department finds, based on the information provided, that the proposed (existing) points of appropriation, Well No. 1 (UMAT 2403) and Well No. 3 (UMAT 2601) develop the same (source) aquifer as that of the original authorized Well No. 2 (UMAT 2402) and comply with the Department's administrative rule under OAR 690-380-2110 (2) and OAR 690-380-4010(2)(e).

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-12871 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.
9. A well, pump, pipeline, and delivery 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-12871.
10. The proposed change, as conditioned herein, would not result in enlargement of the right, as long as the use of two additional points of appropriation (Well Nos. 1 and 3), used together with authorized Well No. 2, are limited to a maximum combined total instantaneous rate of 3.02 cfs (1355.6 gallons per minute) under this right at any one time and does not exceed the maximum annual duty allowed for the original use, being 2182.6 acre-feet per year.
11. The proposed change would not result in injury to other water rights.
12. All other application requirements are met.

Determination and Proposed Action

The additional points of appropriation proposed in Transfer Application T-12871 appear 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-12871 is approved, the final order will include the following:

1. *The additional points of appropriation proposed in Transfer Application T-12871 are 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 43934 and any related decree.*
3. *Water right Certificate 43934 is cancelled.*
4. *The quantity of water diverted at the new additional points 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. *The amount of water diverted from Well No. 2, Martin Well No. 1 and Well No. 3 for year round industrial use under this right is limited to a maximum combined total instantaneous rate of not to exceed 3.02 cfs at any one time from the wells and is further restricted to a maximum total annual duty of 2182.6 acre-feet per year.*

6. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install totalizing flow meters, or, with prior approval of the Director, another suitable measuring device at each point of appropriation (new and existing).*
 - b. *The water user shall maintain the meters or measuring devices in good working order.*
 - c. *The water user shall allow the Watermaster access to the meters or measuring device(s); provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.*
7. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
8. *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.*
9. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 4th day of April, 2019.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

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@oregon.gov.

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>



Oregon

Kate Brown, Governor

Water Resources Department

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April 2, 2019

Applicant

LAMB WESTON INC
78153 WESTLAND ROAD
HERMISTON OR 97838

Agent

DR. PAUL WATTENBURGER CWRE
IRZ CONSULTING
500 NORTH FIRST STREET
HERMINSTON OR 97838

SUBJECT: Water Right Transfer Application T-12871

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12871. 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 East Oregonian 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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: Transfer Application file T-12871
Gregory M. Silbernagel, Watermaster District 5 *(via e-mail)*
Paul Wattenburger, CWRE/Agent for applicant *(via e-mail)*

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