

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12591, Union County)	PROPOSING APPROVAL OF A
)	CHANGE IN POINT OF DIVERSION,
)	PLACE OF USE, AND A PARTIAL
)	DIMINUTION OF A WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

MDB FARMS LLC
STEVEN C DELASHMUTT, MANAGER
61070 PIERCE RD
LA GRANDE, OR 97850

Findings of Fact

1. On February 21, 2017, MDB FARMS LLC filed an application to change the point of diversion and to change the place of use under Certificates 41055 and 91415. The Department assigned the application number T-12591.
2. Notice of the application for transfer was published on June 27, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On June 1, 2017, the applicant submitted an amended application and map.
4. On February 8, 2018, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12591 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 8, 2018, for the applicant to respond. The applicant requested that the completion date be extended to October 1, 2023 and for 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.
5. On June 14, 2018, the applicant submitted an amended application and map.

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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6. On July 24, 2018, the applicant submitted an amended map.
7. On August 1, 2018, an affidavit certifying that a portion of a water right Certificate 31642 will be diminished was received from Steve Delashmutt.
8. On September 11, 2018, the Department sent a revised copy of the draft Preliminary Determination proposing to approve Transfer Application T-12591 to the applicant. 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.

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

Certificate: 41055 in the name of FRED KNAPE (perfected under Permit S-28560)
Use: IRRIGATION of 123.6 ACRES and SUPPLEMENTAL IRRIGATION OF 25.0 ACRES
Priority Date: OCTOBER 30, 1962
Rate: 0.99 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-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated, and shall be 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; provided further that the right to the use of the water is limited to the period when the flow of the Lower Grand Ronde River is more than 300 cubic feet per second at USGS Gage No. 3325 and more than 420 cubic feet per second at the Oregon-Washington border.
Source: GRANDE RONDE RIVER, a tributary of SNAKE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	39 E	WM	32	SE NW	POD #1 - 2380 FEET SOUTH AND 600 FEET WEST FROM THE N1/4 CORNER OF SECTION 32
2 S	39 E	WM	32	NW SW	POD #2 - 2780 FEET SOUTH AND 1400 FEET WEST FROM THE N1/4 CORNER OF SECTION 32

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	17.9
2 S	39 E	WM	32	NE SW	30.6
2 S	39 E	WM	32	NW SW	21.7
2 S	39 E	WM	32	SW SW	39.7
2 S	39 E	WM	32	SE SW	13.7
Total					148.6

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	5.0
2 S	39 E	WM	32	SE SW	20.0
Total					25.0

10. Transfer Application T-12591 proposes to move the authorized point of diversion approximately 450 feet upstream from POD #1 and approximately 485 feet downstream from POD #2 to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	39 E	WM	32	SE NW	PUMP SOUTH BANK - 2566 FEET SOUTH AND 1047 FEET WEST FROM THE N1/4 CORNER OF SECTION 32

11. Transfer Application T-12591 also proposes to change the place of use of the right for 7.1 acres to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	4.0
2 S	39 E	WM	32	SE SW	3.1
Total					7.1

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

Certificate: 91415 in the name of WILLIAM A. DELASHMUTT AND DONALD T. MCCABE (perfected under Permit G-13255)

Use: SUPPLEMENTAL IRRIGATION of 7.1 ACRES

Priority Date: JULY 26, 1996

Rate: 0.089 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation under this right, 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) and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

Source: WELL #6 in the GRANDE RONDE RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	39 E	WM	6	NW NE	WELL #6 - 2166 FEET NORTH AND 2795 FEET EAST FROM THE WEST 1/4 CORNER OF SECTION 6

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	7.1

13. Transfer Application T-12591 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	NE SW	4.0
2 S	39 E	WM	32	SE SW	3.1
Total					7.1

14. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is not currently equipped with an appropriate fish screen. This diversion may be eligible for screening cost-share funds.

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

15. 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 rights are subject to forfeiture under ORS 540.610.
16. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12591.
17. The proposed changes would not result in enlargement of the rights.
18. The proposed changes would not result in injury to other water rights.

Partial Diminution of a Water Right

19. On August 1, 2018, an affidavit certifying that a portion of a water right Certificate 31642 will be diminished was received from Steve Delashmutt. The right to be diminished is as follows:

Certificate: 31642 in the name of STANLEY AND MAURICE WEISHAAR (perfected under Permit S-27217)

Use: IRRIGATION of 2.2 ACRES

Priority Date: FEBRUARY 24, 1961

Rate: 0.04 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for irrigation under this right, 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: WELL #6 in the GRANDE RONDE RIVER BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
2 S	39 E	WM	32	NW NE
3 S	39 E	WM	5	NE NW

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	39 E	WM	32	SE NW	2.2

Determination and Proposed Action

The change in point of diversion and change in places of use proposed in Transfer Application T-12591 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-12591 is approved, the final order will include the following:

- 1. The change in point of diversion and change in places of use proposed in Transfer Application T-12591 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 Certificates 41055 and 91415 and any related decree.*
- 3. Water right Certificates 41055 and 91415 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.*
- 4. The quantity of water diverted at the new point of diversion (Pump South Bank), shall not exceed the quantity of water lawfully available at the original points of diversion (POD 1 and 2).*
- 5. Prior to diverting water, the water user shall install an approved fish screen at the new point of diversion and shall provide to the OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.*

The water user shall operate and maintain the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

- 6. The former place of use of the transferred rights shall no longer receive water under the rights.*
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2024**. 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 changes and full beneficial use of the water.*

8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this October 23, 2019.



Lisa J. Jaramillo, Transfer and Conservation Section Manager for
THOMAS M. BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@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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October 23, 2019

MDB FARMS LLC
c/o STEVEN C DELASHMUTT, MANAGER
61070 PIERCE RD
LA GRANDE, OR 97850

SUBJECT: Water Right Transfer Application T-12591

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12591. 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12591
Shad L. Hattan, District 6 Watermaster (*via e-mail*)
Gregory T. Blackman, Agent / CWRE for the applicant (*via e-mail*)

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