



Oregon Water Resources Department
 725 Summer Street NE, Suite A
 Salem, Oregon 97301
 (503) 986-0900
 www.wrd.state.or.us

Request for Assignment

RECEIVED

JUN 27 2012

WATER RESOURCES DEPT
 SALEM, OREGON

If for multiple rights, a separate form and fee for each right will be required.

I, Bear Mountain Cherries, LLC
 (Name of Applicant / Permit / Transfer Holder / License Holder/GR Certificate of Registration)

1321 Alameda Road Hood River OR 97031 541-386-2183
 (Mailing Address) (City) (State) (Zip) (Phone #)

- hereby assign all my interest in and to application/permit/transfer/license/GR Certificate of Registration;
- hereby assign all my interest in and to a portion of application/permit/transfer/license/GR Certificate of Registration; (You must include a map showing the portion of the application/permit/transfer/license/GR Certificate of Registration to be assigned.)
- hereby assign a portion of my interest in and to the entire application/permit/transfer/license/GR Certificate of Registration: (subject to attached addendum)

Application # G-15705; Permit # G-15223; Transfer # _____
 .OR-

License # _____; GR Statement # _____; GR Certificate of Registration # _____

As filed in the office of the Water Resources Director, to:

Rabo AgriFinance, Inc.
 (Name of New Owner)

12443 Olive Blvd., Suite 50 St. Louis MO 63141 314-317-8000
 (Mailing Address) (City) (State) (Zip) (Phone #)

Note: If there are other owners of the property described in the Application, Permit, Transfer, License, or GR Certificate of Registration, you must provide a list of all other owners' names and mailing addresses and attach it to this form.

I hereby certify that I have notified all other owners of the property described in this Application, Permit, Transfer, License, or GR Certificate of Registration of this Request for Assignment

Witness my hand this 8th day of June, 2012.

Applicant/Permit Holder Bear Mountain Cherries, LLC
 By: [Signature]

Kathryn Klein, Member

DO NOT WRITE IN THIS BOX

- This certifies assignment and record change at Oregon Water Resources Department effective 8:00a.m. on date of receipt at Salem, Oregon.
- Fee receipt # 10665
- For Director by Jerry Sauter, Program Analyst in Water Rights Division

By: Bradley Fowler Bradley Fowler, Member

The completed "Request for Assignment" form must be submitted to the Department along with the recording fee of \$75.

ASSIGNMENT
 2/15/12/12
 6/7/2012

**ADDENDUM TO
REQUEST FOR ASSIGNMENT OF WATER RIGHT**

Assignor: Bear Mountain Cherries, LLC (Bear Mountain)
1321 Alameda Road
Hood River, OR 97031

Assignee: Rabo AgriFinance, Inc. (Rabo)
12443 Olive Blvd., Suite 50
St. Louis, MO 63141

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This Addendum is executed in conjunction with a Request for Assignment to be submitted to the Oregon Water Resources Department (OWRD) of even date herewith between the above referenced parties and is hereby incorporated therein by reference. The Request for Assignment by Bear Mountain in favor of Rabo is for security purposes only consistent with that certain Security Agreement dated March 28, 2012 wherein Bear Mountain is one of the grantors and Rabo is the lender and one of the secured parties (Security Agreement), as well as that certain Deed of Trust also dated March 28, 2012 and recorded in the Deed Records of Hood River County, Oregon as microfilm number 2012-01031 (Trust Deed) wherein Bear Mountain is one of the grantors and Rabo is the beneficiary. In consideration of Bear Mountain's obligations to Rabo according to the terms of said Trust Deed and Security Agreement, Bear Mountain has executed the Request for Assignment of its water rights associated with real property owned by Bear Mountain located in Hood River County, Oregon as described in the Trust Deed (the Property).

At such time as Bear Mountain satisfies all of its obligations to Rabo according to the terms of the Trust Deed, Security Agreement and other relevant related agreements between the parties, Rabo agrees to promptly execute an OWRD form request for assignment of its interest in the water rights in favor of Bear Mountain and deliver the same to Bear Mountain for filing with OWRD. Bear Mountain acknowledges that if Rabo initiates foreclosure of its Trust Deed, Rabo will be entitled to the appointment of a receiver to operate the farm located on the Property and said receiver or designee will be entitled to utilize the water rights for that operation. In the event of Bear Mountain's default according to the terms of the Security Agreement, Trust Deed and other relevant related documents, and Rabo's foreclosure of Rabo's interest in the Property and water rights, Rabo shall be entitled to file with OWRD a "Request for Assignment By Proof of Ownership (If Water Right Holder is Not Available) thus obtaining full entitlement to the water rights for use on the real property.

Bear Mountain agrees to maintain its water rights for so long as it owes an obligation to Rabo. Rabo agrees to cooperate with Bear Mountain to sign any documents

associated with the expansion or perfection of Bear Mountain's existing water rights permit including a Claim of Beneficial Use.

All notices and communications in connection with this Addendum must be given in writing and will be transmitted by certified or registered mail, return receipt requested, to the appropriate party at its address set forth above. Any notice so transmitted will be deemed effective on the date it is placed in the United States mail, postage prepaid. Either party may, by written notice, designate a different address for purposes of this Addendum.

Rabo and Bear Mountain agree and direct that this Addendum shall remain affixed to the Request for Assignment between the parties and duly filed of record with the OWRD.

This Addendum is effective upon the date of full execution.

Bear Mountain Cherries, LLC

By: 
Kathryn Klein, Member

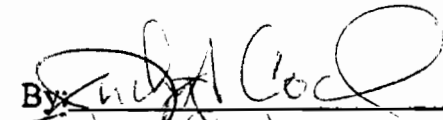
Date signed: June 8, 2012

By: 

Bradley Fowler, Member

Date signed: June 8, 2012

Rabo AgriFinance, Inc.

By: 
Jichun Chen, Title AVP

Date signed: 6/19/2012

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SALEM, OREGON

PHILLIPS REYNIER SUMERFIELD & CLINE, LLP
ATTORNEYS AT LAW

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All licensed in Oregon and Washington

May 1, 2012

Garey D. Fritz, Senior Relationship Manager
Rabo AgriFinance, Inc.
660 Hawthorne Ave. SE, Suite 150 **VIA E-MAIL**
Salem, OR 97301

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SALEM, OREGON

Dear Mr. Fritz:

We are the attorneys for Bear Mountain Cherries, LLC (Bear Mountain Cherries) and Hood River Cherry Company with regard to the unsigned Request for Assignment of Bear Mountain Cherries' water rights. I have reviewed the various loan documents signed by my clients in favor of Rabo AgriFinance, Inc. (Rabo). The Deed of Trust, Assignment of Rents and Security Agreement (Trust Deed) which is a recorded document, specifically provides that Bear Mountain Cherries conveys the water rights to the trustee under the Trust Deed as security for its obligations. As such, any prospective purchaser or assignee of the water rights would be on at least constructive notice, if not actual notice, of Rabo's security interest in the water rights. Further, water rights are appurtenant to the land where used. ORS 540.510. So, in the unlikely event that our clients fail to pay their obligations according to the terms of the loan documents and Rabo proceeds with a foreclosure of Rabo's interest in the real estate pursuant to the trust deed, the appurtenant water rights will remain with the real estate.

My clients are understandably concerned that the Request for Assignment document, on its face, appears to be an outright assignment rather than an assignment solely for security purposes. In the unlikely event that Rabo forecloses its interest in the real estate, it will acquire the water rights associated with the real estate. Hence, the Request for Assignment document is unnecessary and could create an expensive problem for my clients if it were inadvertently delivered to the Oregon Water Resources Department.

The purpose of this letter is to request that Rabo reconsider its request that Bear Mountain Cherries sign the Request for Assignment of water rights and deliver it to Rabo. If the same will be required, regardless of the contents of this letter, my clients will

Garey D. Fritz, Senior Relationship Manager

May 1, 2012

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request that Rabo sign a document to be prepared by me which will remain attached to the Request for Assignment document stating that the Request for Assignment document should only be delivered to the Oregon Water Resources Department in the event of a default by Bear Mountain Cherries according to the terms of the Trust Deed.

Thank you for your consideration of the issues raised in this letter.

Very Truly Yours,

PHILLIPS REYNIER SUMERFIELD & CLINE, LLP

Deborah M. Phillips, P.C.

DMP/rsw

cc: Bear Mountain Cherries, LLC

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SALEM, OREGON

Thank you for your patience as my client and I have researched Rabo AgriFinance, Inc.'s (Rabo) proposed assignment of Bear Mountain's water right.

I have learned that neither Bear Mountain nor its predecessor have filed a claim of beneficial use with regard to its water right permit and hence the water right is not considered appurtenant to the real property. However, the water right cannot be utilized on any property other than the Bear Mountain property.

Bear Mountain is willing to assign a portion of its interest in the entire application/permit/transfer/license/GR certificate of registration as per the attachment and addendum. A partial assignment protects both Bear Mountain and Rabo. It protects Bear Mountain because it alleviates the concern that the full assignment form you initially proposed might be inadvertently filed with the Oregon Water Resources Department (OWRD). It protects Rabo in that its security interest in the water right will be formally of record with the OWRD. I understand that this is a fairly standard methodology in consultation with Larry Toll, who is a former Watermaster for this part of the state and long time employee of the OWRD. I have worded the addendum in a manner to allow Rabo to file a Request for Assignment By Proof of Ownership (If Water Right Holder is Not Available) in the unlikely event that Rabo forecloses its trust deed.

I look forward to your thoughts with regard to this proposal. Thank you in advance for your consideration.

Very Truly Yours,

PHILLIPS REYNIER SUMERFIELD & CLINE, LLP

Deborah M. Phillips, P.C.

DMP/rsw

cc: Bear Mountain Cherries, LLC

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