



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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January 21, 2015

ROMAINE'S PRODUCE AND BAKERY, LLC
JACK ROMAINE
14601 ARNDT ROAD
AURORA, OR 97002

SUBJECT: Water Right Transfer Application T-11812

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11812. 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 Canby Harold 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 503-986-0890 or Sarah.A.Henderson@wr.d.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: T-11812
Joel Plahn, District 16 Watermaster (*via e-mail*)
Doann Hamilton, 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-11812, Clackamas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF DIVERSION
	)	AND PLACE OF USE

Authority

Oregon Revised Statute (ORS) 540.505 to 540.580 establishes 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 Rule (OAR) Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

ROMAINE'S PRODUCE AND BAKERY, LLC
JACK ROMANE
14601 ARNDT ROAD
AURORA, OR 97002

Findings of Fact

1. On May 9, 2014, JACK ROMANE of ROMANE'S PRODUCE AND BAKERY, LLC filed an application to change the point of diversion and place of use under Certificate 42290. The Department assigned the application number T-11812.
2. Notice of the application for transfer was published on May 20, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On December 23, 2014, the Department mailed a copy of the draft Preliminary Determination (DPD) proposing to approve Transfer Application T-11812 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 22, 2015, for the applicant to respond. 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 and ask to correct an scrivener's error in the DPD.
4. The right to be transferred is as follows:

Certificate: 42290 in the name of EDWARD G. STRITZKE (perfected under Permit S-30098)

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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Use: IRRIGATION of 22.3 ACRES
Priority Date: OCTOBER 20, 1964
Rate: 0.28 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-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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: UNNAMED STREAM, tributary of PUDDING RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	36	NE SW	1590 FEET NORTH AND 220 FEET WEST FROM THE S1/4 CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	36	NE SW	1.2
3 S	1 W	WM	36	SE SW	17.7
3 S	1 W	WM	36	NW SE	0.4
3 S	1 W	WM	36	SW SE	3.0
Total					22.3

5. Transfer Application T-11812 proposes to move the authorized point of diversion approximately 0.4 mile upstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
3 S	1 W	WM	36	SW SW	220 FEET NORTH AND 1450 FEET WEST FROM THE S1/4 CORNER OF SECTION 36

6. Transfer Application T-11812 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
3 S	1 W	WM	36	NE SW	0.7
3 S	1 W	WM	36	SE SW	17.7
3 S	1 W	WM	36	NW SE	0.4
3 S	1 W	WM	36	SW SE	3.5
Total					22.3

7. The Oregon Department of Fish and Wildlife has determined that the diversion is not currently equipped with an appropriate fish screen, but a fish screen may be required in the future at the new point of diversion to prevent fish from entering the diversion.

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

8. 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.

9. 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-11812.
10. The proposed changes would not result in enlargement of the right.
11. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

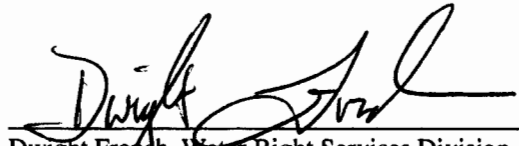
The change in point of diversion and change in place of use proposed in Transfer Application T-11812 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-11812 is approved, the final order will include the following:

1. *The change in point of diversion and change in place of use proposed in Transfer Application T-11812 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 42290 and any related decree.*
3. *Water right Certificate 42290 is cancelled.*
4. *The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.*
5. *The Oregon Department of Fish and Wildlife (ODFW) may require the water user to install an approved fish screen at the new point of diversion within one year after receiving written notification that a fish screen is required. Once installed the water user shall maintain and operate the fish screen at the new point of diversion according to 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 right shall no longer receive water under the right.*
7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 26 day of January, 2015.



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

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 Sarah.A.Henderson@ wrd.state.or.us.

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