



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

December 22, 2015

VIA E-MAIL

TROUTNER FARMS, LLC
10770 SE 362ND AVE
BORING, OR 97009

SUBJECT: Water Right Transfer Application T-12167

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12167. 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.

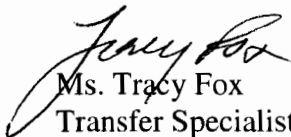
A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing 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 Tracy.L.Fox@wrд.state.or.us or 503-986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-12167
Amy J. Kim, District 20 Watermaster (*via e-mail*)
Dale L. Hult, CWRE # 276, and Agent for the applicant (*via e-mail*)

enclosures

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12167, Clackamas County	)	PROPOSING APPROVAL OF A
	)	CHANGE IN POINT OF
	)	APPROPRIATION

Authority

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

Applicant

TROUTNER FARMS, LLC
10770 SE 362ND AVE
BORING, OR 97009

Findings of Fact

1. On September 25, 2015, TROUTNER FARMS, LLC filed an application to change add an additional point of appropriation and to change the place of use under Certificate 89675. The Department assigned the application number T-12167.
2. Notice of the application for transfer was published on October 6, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On November 9, 2015, the applicant submitted a completed Evidence of Use Affidavit and supporting documentation, and the well log for the authorized point of appropriation.
4. On November 30, 2015, the applicant submitted the approved Land Use Information Form.
5. On December 8, 2015, the Department contacted the applicant's agent by telephone to clarify the intent of the transfer. After discussion, the agent confirmed that this a change in point of appropriation and not an additional point of appropriation and change in place of use.

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.
--

6. On December 8, 2015, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12167 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 11, 2016, 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.
7. The portion of the right to be transferred is as follows:

Certificate: 89675 in the name of EVERETT WRAY, SANDRA WRAY and TROUTNER FARMS, LLC (perfected under Permit G-12968)

Use: AGRICULTURE USE and IRRIGATION of 19.40 ACRES

Priority Date: APRIL 17, 1995

Rate: 0.116 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water used for NURSERY OPERATIONS is limited to 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 anytime of the year 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.

Source: A WELL in the NORTH FORK DEEP CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 E	WM	35	NW NW	1270 FEET SOUTH AND 30 FEET EAST FROM THE NW CORNER OF SECTION 35

Authorized Place of Use:

AGRICULTURE USE AND IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	4 E	WM	35	NE NW	9.71
1 S	4 E	WM	35	NW NW	9.69
Total:					19.40

8. Transfer Application T-12167 proposes to move the authorized point of appropriation approximately 1,180 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	4 E	WM	35	NW NW	330 FEET SOUTH AND 730 FEET EAST FROM THE NW CORNER OF SECTION 35

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-12167.
11. The proposed change would not result in enlargement of the right.
12. The proposed change, as conditioned, would not result in injury to other water rights.
13. All other application requirements are met.

Determination and Proposed Action

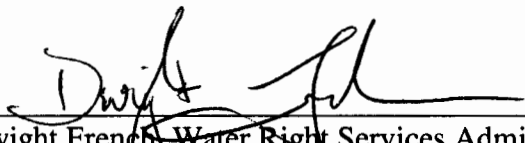
The change in point of appropriation proposed in Transfer Application T-12167 appears to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If Transfer Application T-12167 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-12167 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 89675 and any related decree.*
3. *Water right Certificate 89675 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The quantity of water diverted at the new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
5. *Water use measurement conditions:*
 - a. *Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device at each new point of appropriation.*
 - b. *The water user shall maintain the meter or measuring device in good working order.*
 - c. *The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device are located within a private structure, the Watermaster shall request access upon reasonable notice.*

6. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
7. *The proposed well shall be open to a single aquifer in the deep Troutdale Formation aquifer and shall meet applicable well construction standards (OAR 690-200 and OAR 690-210).*
8. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2017**. 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 22 day of December, 2015.



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

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266