



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
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November 15, 2016

Dave Demaris
50857 Umapine Rd
Milton Freewater, OR 97862

SUBJECT: Water Right Transfer Application T-12451

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12451. 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 503-986-0892 or Joan.M.Smith@wrdd.state.or.us if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-12451
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)
Dale Van Schoiack, Agent 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-12451, Umatilla County) **PROPOSING APPROVAL OF A**
) **CHANGE IN POINT 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

DAVE DEMARIS
50857 UMAPINE ROAD
MILTON FREEWATER, OR 97862

Findings of Fact

1. On July 29, 2016, Dave Demaris filed an application to change the point of appropriation under Certificate 31112. The Department assigned the application number T-12451.
2. Notice of the application for transfer was published on August 9, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On October 17, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12451 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 17, 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. The applicant also requested additional time to complete the changes.
4. The portion of the right to be transferred is as follows:
Certificate: 31112 in the name of J. L. RALEY (perfected under Permit G-828)
Use: SUPPLEMENTAL IRRIGATION of 14.0 ACRES
Priority Date: APRIL 2, 1958
Rate: 0.179 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, is limited to ONE-

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.

EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 3 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: A WELL within the PINE CREEK BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	24	SE SW	300 FEET NORTH AND 92 FEET WEST FROM THE S 1/4 CORNER OF SECTION 24

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	34 E	WM	24	SE SW	14.0

- Transfer Application T-12451 proposes to move the authorized point of appropriation approximately 150 feet from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	34 E	WM	24	SE SW	450 FEET NORTH AND 92 FEET WEST FROM THE S 1/4 CORNER OF SECTION 24

Transfer Review Criteria (OAR 690-380-4010)

- Water has been used within the last five years prior to the submittal of Transfer Application T-12451 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.
- 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-12451.
- The proposed change would not result in enlargement of the right.
- The proposed change would not result in injury to other water rights.
- All other application requirements are met.

Determination and Proposed Action

The change in point of appropriation proposed in Transfer Application T-12451 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-12451 is approved, the final order will include the following:

1. *The change in point of appropriation proposed in Transfer Application T-12451 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 31112 and any related decree.*
3. *Water right Certificate 31112 is canceled. A new certificate will be issued describing the 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 the 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 is 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. *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.*
8. *After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 14 day of November 2016



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

This Preliminary Determination was prepared by Reimbursement Authority Contractor and reviewed by Department Staff if you have questions with regard to this document please contact me at Joan.M.SMITH@wr.d.state.or.us or call 503-986-0892

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>