

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

In the Matter of Ground Water)	FINAL ORDER
Registration Modification Applications)	APPROVING RECOGNITION OF A
T-10564 and T-10565, Linn County)	MODIFICATION IN POINTS OF
)	APPROPRIATION

Authority

ORS 537.610, 537.705 and 540.505 to 540.580 establish the process in which the holder of a certificate of registration may submit a request for recognition of modifications to the place of use, character of use or point of appropriation under a ground water certificate of registration.

OAR Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating ground water registration modification applications.

Applicants

GARY AND GOLDIE BURTON
4980 MATNEY ROAD
MONMOUTH, OR 97361

Findings of Fact

Background

1. On March 20, 2008, Gary and Goldie Burton filed two ground water registration modification applications to modify the points of appropriation under Registration Application GR-2960 (Certificate of Registration GR-2777) and Registration Application GR-2961 (Certificate of Registration GR-2778). The Department assigned the applications numbers T-10564 and T-10565, respectively.
2. On March 24, 2008, Certificates of Registration GR-2960 and GR 2961 were assigned from Charles Leroy Jones to Gary Burton and Goldie Burton.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

3. The ground water registration to be modified under T-10564 is as follows:

Registration: Application GR-2960 (Certificate of Registration GR-2977), in the name of CHARLES LEROY JONES (*assigned to GARY BURTON AND GOLDIE BURTON*)

Use: IRRIGATION OF 9.0 ACRES

Tentative

Priority Date: MAY, 1948

Quantity: 140 GALLONS PER MINUTE

Source: PUMP WELL NO. 1 within CROOKS CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	3 W	WM	8	SE NW	2000 FEET SOUTH AND 1650 FEET EAST FROM THE NORTHWEST CORNER OF SECTION 8

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	3 W	WM	8	SE NW	9.0

4. Ground Water Registration Modification Application T-10564 proposes to modify the location of the original point of appropriation approximately 550 feet north from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	3 W	WM	8	NE NW	1430 FEET SOUTH AND 840 FEET WEST FROM THE NORTHWEST CORNER OF SECTION 8

5. The ground water registration to be modified under T-10565 is as follows:

Registration: Application GR-2961 (Certificate of Registration GR-2978), in the name of CHARLES LEROY JONES (*assigned to GARY BURTON AND GOLDIE BURTON*)

Use: IRRIGATION OF 13.0 ACRES

Tentative

Priority Date: 1955

Quantity: 230 GALLONS PER MINUTE

Source: PUMP WELL NO. 2 within CROOKS CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	3 W	WM	8	NE SW	25 FEET SOUTH AND 950 FEET WEST FROM THE C ¹ / ₄ CORNER OF SECTION 8

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
10 S	3 W	WM	8	SE NW	11.0
10 S	3 W	WM	8	NE SW	2.0

6. Ground Water Registration Modification Application T-10565 proposes to modify the location of the original point of appropriation approximately 1200 feet north from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
10 S	3 W	WM	8	NE NW	1430 FEET SOUTH AND 840 FEET WEST FROM THE NORTHWEST CORNER OF SECTION 8

7. Notice of the application for ground water registration modification was published on April 1, 2008, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
8. On October 19, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Ground Water Registration Modification Applications T-10564 and T-10565 to the applicants. The cover letter for the draft Preliminary Determination set forth a deadline of November 16, 2009, for the applicants to respond. The applicants 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 modification.
9. On November 19, 2009, the Department issued a Preliminary Determination proposing to approve Ground Water Registration Modification Applications T-10564 and T-10565 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the modification application was published on the Department's weekly notice on November 24, 2009 pursuant to ORS 537.610(4) and OAR 690-382-0800. No protests were filed in response to the notice.

Review Criteria for Ground Water Registration Modification Applications [OAR 690-382-0700(2)]

10. The proposed modifications would not result in enlargement of the ground water registrations.
11. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which stream flows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.
12. The proposed modifications would not result in injury to other water rights.

Conclusions of Law

The modification in points of appropriation proposed in Ground Water Registration Modifications T-10564 and T-10565 are consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000.

Now, therefore, it is ORDERED:

1. The modification to Registration Application GR-2960 (Certificate of Registration GR-2977 proposed in Ground Water Registration Modification Application T-10564 is recognized. Recognition of the modification shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.
2. The modification to Registration Application GR-2961 (Certificate of Registration GR-2978 proposed in Ground Water Registration Modification Application T-10565 is recognized. Recognition of the modification shall not be construed as a final determination of the right to appropriate ground water under the certificate of registration or modification. Such a determination will occur in an adjudication proceeding under ORS 537.670 to 537.695.
3. 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 Registration Application GR-2960 (Certificate of Registration GR-2777) and Registration Application GR-2961 (Certificate of Registration GR-2778), and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.
5. Water shall no longer be appropriated from the original points of appropriation as part of these ground water certificates of registration.
6. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original points of appropriation.
7. When required by the Department, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

Dated at Salem, Oregon this 29th day of December 2009.



RF Phillip C. Ward, Director

Mailing Date: JAN 04 2010