

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

In the Matter of Groundwater)	FINAL ORDER APPROVING
Registration Modification Application)	RECOGNITION OF MODIFICATIONS
T-13299, Linn County)	IN POINT OF APPROPRIATION AND
)	PLACE OF USE AND PARITAL
)	CANCELLATION OF A WATER
)	RIGHT

Authority

Oregon Revised Statutes (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 groundwater certificate of registration.

Oregon Administrative Rules (OAR) Chapter 690, Divisions 382 and 380 implement the statutes and provide the Department's procedures and criteria for evaluating groundwater registration modification applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

STEPHEN DEMERGASSO
30946 WYATT DR
HARRISBURG, OR 97446

Findings of Fact

1. On December 6, 2019, DEMERGASSO FAMILY MARITAL DEDUCTION SHARE TRUST UAD 3/22/2009, filed a groundwater registration modification application to modify the point of appropriation and place of use under Registration Application GR-1629 (Certificate of Registration GR-1593), and to partially cancel a portion of water right Certificate 42195. The Department assigned the application number T-13299.

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.

2. On August 16, 2016, Registration Application GR-1629 (Certificate of Registration GR-1593) was assigned from GERALD AND MARIE DETERING to STEPHEN YATES-DEMERGASSO.
3. On December 6, 2019, the Department received an Affidavit of Consent by Deeded Landowner from Stephen J. Yates-Demergasso, granting consent to modify Registration Application GR-1629 (Certificate of Registration GR-1593).
4. Notice of the application for groundwater registration modification was published on December 17, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
5. On June 11, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department determined that GR-1629 is layered with 3.2 acres under Certificate 30889. The Department requested that the deficiency be resolved by July 13, 2020.
6. On December 6, 2019, the Department received an Affidavit for the Voluntary Cancellation of a Portion of Water Right Certificate 42195, partially resolving the deficiency.
7. On June 30, 2020, the Department received an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate, resolving the deficiency.
8. On July 23, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13299 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 24, 2020, 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.
9. On August 6, 2020, the applicant requested to update the mailing address to Stephen Demergasso, 30946 Hyatt Dr., Harrisburg, OR 97446.
10. On October 14, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-13299 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 20, 2020, and in the Tribune New (Junction City) newspaper on October 18 and 25, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
11. The portion of the groundwater registration to be modified is as follows:

Registration: Application GR-1629 (Certificate of Registration GR-1593), in the name of GERALD AND MARIE DETERING (*assigned to* STEPHEN YATES-DEMERGASSO)

Use: IRRIGATION of 12.8 ACRES

Tentative

Priority Date: MARCH 1945

Quantity: 111.1 GALLONS PER MINUTE; 32.0 ACRE FEET PER YEAR
Source: PUMP WELL NO. 1

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	4 W	WM	35	SW SE	PUMP WELL NO. 1 - 660 FEET SOUTH AND 580 FEET EAST FROM THE NW CORNER OF THE SWSE CORNER OF SECTION 35

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	4 W	WM	35	SW SE	12.8

12. Groundwater Registration Modification Application T-13299 proposes to modify the location of the original point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in miles (mi.)
16 S	4 W	WM	2	NW NW	WELL 1 - 460 FEET SOUTH AND 890 FEET EAST FROM THE NW CORNER OF SECTION 2	0.5 mi.
16 S	4 W	WM	2	SW NW	WELL 2 - SOUTH 37 DEGREES 19 MINUTES EAST, 29.3 CHAINS FROM THE NW CORNER OF SECTION 2	0.5 mi.
16 S	4 W	WM	2	SW NW	WELL 3 - 2080 FEET SOUTH AND 900 FEET EAST FROM THE NW CORNER OF SECTION 2	0.7 mi.

13. Groundwater Registration Modification Application T-13299 proposes to modify the place of use under the groundwater registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	4 W	WM	2	NE NW	6.5
16 S	4 W	WM	2	NW NW	6.3
Total					12.8

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

14. The proposed modifications would not result in enlargement of the groundwater registration.
15. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which streamflows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.
16. The proposed modifications would not result in injury to other water rights.

Partial Cancellation of a Water Right

17. On December 6, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen J. Yates-Demergasso. The right to be cancelled is as follows:

Certificate: 42195 in the name of ESTATE OF GERALD W. DETERING and MARIE DETERING (perfected under Permit G-2636)
Use: IRRIGATION of 0.8 ACRE and SUPPLEMENTAL IRRIGATION of 3.2 ACRES
Priority Date: APRIL 20, 1964
Rate: 0.05 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: WELL NO. 4, a tributary of AN UNNAMED SLOUGH (WILLAMETTE RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
16 S	4 W	WM	2	NW NE	52	WELL NO. 4 – 180 FEET SOUTH AND 3810 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	0.8

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	3.2

18. On June 30, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen J. Yates-Demergasso. The right to be cancelled is as follows:

Certificate: 30889 in the name of GERALD W. and MARIE DETERING (perfected under Permit S-22026)
Use: IRRIGATION and SUPPLEMENTAL IRRIGATION of 3.2 ACRES
Priority Date: JANUARY 12, 1953
Rate: 0.03 CUBIC FOOT PER SECOND (CFS), BEING 0.015 CFS FROM EACH SLOUGH
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: TWO SLOUGHS, WHICH ARE HIGH WATER CHANNELS OF THE WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC
15 S	4 W	WM	35	SW SW	
15 S	4 W	WM	35	SE SW	
16 S	4 W	WM	1	NW NW	52

Authorized Place of Use:

IRRIGATION AND SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	3.2

Conclusions of Law

The modification in point of appropriation and modification in place of use proposed in Groundwater Registration Modification T-13299 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000 and the abandoned rights should be cancelled.

Now, therefore, it is ORDERED:

1. The modifications to Registration Application GR-1629 (Certificate of Registration GR-1593) proposed in Groundwater Registration Modification Application T-13299 are recognized and the abandoned rights are cancelled. Recognition of the modifications shall not be construed as a final determination of the right to appropriate groundwater 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 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-1629 (Certificate of Registration GR-1593) and any related decree.
3. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
4. Water shall no longer be appropriated from the original point of appropriation for the modified place of use, as part of this groundwater certificate of registration.
5. The quantity of water diverted at the new points of appropriation (Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Pump Well No. 1).

6. The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.
7. 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 meters or measuring devices in good working order.
8. c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.

Dated in Salem, Oregon on **DEC 24 2020**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

Mailing date: ~~_____ DEC 27 2020 _____~~