

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

In the Matter of Ground Water)	FINAL ORDER APPROVING THE
Registration Modification Application)	RECOGNITION OF A MODIFICATION
T-11925, Marion County)	OF AN ADDITIONAL POINT OF
)	APPROPRIATION

Authority

Oregon Revised Statute (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.

Oregon Administrative Rule (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.

Applicant

GARDEN SCAPE NURSERY INC
PAUL KUSCHNICK
7811 STRATFORD DR NE
SALEM, OR 97305

Findings of Fact

1. On November 25, 2014, PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC filed a ground water registration modification application to modify the point of appropriation under Registration Application GR-124 Certificate of Registration GR-115 The Department assigned the application number T-11925
2. On November 25, 2014, Registration Application GR-124 (Certificate of Registration GR-115) was assigned from ALBERT J PRANTL to PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC.
3. Notice of the application for ground water registration modification was published on December 2, 2014, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On April 14, 2015, the applicant's agent provided the Department with an amended application page which correctly describes the change as an additional point of appropriation.

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.

5. On April 28, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11925 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 28, 2015, for the applicant to respond. The applicant did not respond by the deadline. However, on March 30, 2016, the applicants' agent 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.
6. On May 24, 2016, the Department issued a Preliminary Determination proposing to approve Groundwater Registration Modification Application T-11925 and sent a copy to the applicant. Additionally, notice of the Preliminary Determination for the Groundwater Registration Modification application was published on the Department's weekly notice on May 31, 2016, pursuant to ORS 540.520 and OAR 690-380-4020. (No) protests were filed in response to the notice.
7. The portion of the ground water registration to be modified is as follows:

Registration: Application T -11925 Registration Application GR-124 (Certificate of Registration GR-115), in the name of ALBERT J PRANTL (*assigned to* PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC)

Use: IRRIGATION of 37.8 ACRES

Tentative

Priority Date: MARCH 1, 1952

Quantity: 400 GALLONS PER MINUTE

Source: A WELL within the FARMERS CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	787 FEET NORTH AND 383 FEET EAST FROM THE SW CORNER OF NESE OF SECTION 36

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	2 W	WM	36	NE SE	37.8

8. The applicant provided a more accurate description of the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	WELL 1- (MARI 2881) 2140 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 36

9. Ground Water Registration Modification Application T-11925 proposes an additional point of appropriation approximately 50 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	WELL 2- 2090 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 36

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

10. The proposed modification would not result in enlargement of the ground water registration.
11. 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.
12. The proposed modification would not result in injury to other water rights.

Conclusions of Law

The additional point of appropriation proposed in Ground Water Registration Modification T-11925 is 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 modifications to Registration Application GR-124 (Certificate of Registration GR-115) proposed in Ground Water Registration Modification Application T-11925 is recognized. Recognition of the modifications 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 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-124 (Certificate of Registration GR-115) and any related decree.
3. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
4. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Dated at Salem, Oregon this 5 day of July, 2016.



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

JUL 08 2016

Mailing date: _____