

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

In the Matter of Ground Water)	FINAL ORDER APPROVING
Registration Modification Application)	RECOGNITION OF AN ADDITIONAL
T-10736, Yamhill County)	POINT OF APPROPRIATION AND
)	RE-DESCRIPTION OF PLACE OF USE

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.

Applicant:

CARLTON NURSERY CO., LLC
PO BOX 398
DAYTON, OR 97114-0398

Agent:

PACIFIC HYDRO-GEOLOGY INC.
18487 S VALLEY VISTA RD
MULINO, OR 97042

Findings of Fact

Background

1. On November 25, 2008, CARLTON PLANTS NURSERY COMPANY LLC filed a ground water registration modification application to modify the point of appropriation under Registration Application GR-26 (Certificate of Registration GR-22). The Department assigned the application number T-10736.
2. On February 15, 2010, the agent submitted a map changing the location of the new point of appropriation.
3. On May 6, 2010, the agent, on behalf of the applicant, modified the application from a change in point of appropriation to an additional point of appropriation.

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

4. The ground water registration to be modified is as follows:

Registration: Application GR-26 (Certificate of Registration GR-22), in the name of V.H. Thompson (*assigned to CARLTON NURSERY COMPANY LLC*)

Use: IRRIGATION of 55 ACRES

Tentative

Priority Date: JULY 1, 1952

Quantity: 300 GALLONS PER MINUTE

Source: A WELL within the PALMER CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	21	SW SE	16.5 FEET NORTH AND 1914 FEET WEST FROM THE SE CORNER OF GOODRICH DLC 49

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	3 W	WM	21	SW NE	5.0
4 S	3 W	WM	21	SE NW	5.0
4 S	3 W	WM	21	NE SW	20.0
4 S	3 W	WM	21	SE SW	2.0
4 S	3 W	WM	21	NW SE	20.0
4 S	3 W	WM	21	SW SE	3.0

5. Ground Water Registration Modification Application T-10736 proposes an additional point of appropriation approximately 60 feet west from the original well to a well located as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	21	SW SE	DAYTON 3 - 75 FEET NORTH AND 1435 FEET WEST FROM THE NE CORNER OF DLC 50

6. On February 15, 2010, the agent submitted a map correcting the location of the additional point of appropriation to a location approximately 190 feet from the original well:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	3 W	WM	21	SW SE	DAYTON 3 - 75 FEET NORTH AND 1500 FEET WEST FROM THE NE CORNER OF DLC 50

7. The Department approved Application S-73278 and issued a permit (Permit S-51672) on November 22, 1995, for irrigation of 3.8 acres in the SW $\frac{1}{4}$ NE $\frac{1}{4}$, 8.9 acres in the SE $\frac{1}{4}$ NW $\frac{1}{4}$, 25.8 acres in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, 1.3 acres in the SE $\frac{1}{4}$ SW $\frac{1}{4}$, 20.3 acres in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, 0.8 acres in the SW $\frac{1}{4}$ SE $\frac{1}{4}$.

8. On August 5, 2008, the Department received a Claim of Beneficial Use for Permit S-51672 and it addressed the irrigation footprint for Registration Application GR-26 (Certificate of Registration GR-22). The Certified Water Right Examiner explained that the irrigation footprint has not changed, but the projection of the map has changed to reflect the best reconciliation of quarter-quarter lines with the tax lot map, aerial photography, and government lot survey maps.
9. On January 13, 2010, the applicant submitted a letter confirming that the place of use has not changed from when the Registration Application was filed and requested the place of use be re-described.
10. The following table lists the place of use as described in existing Registration Application GR-26 (Certificate of Registration GR-22) and a proposed re-description based on the above findings:

Original Description of Place of Use under Registration Application GR-26 (Certificate of Registration GR-22)		Proposed Re-Description of Place of Use		
$\frac{1}{4}$ - $\frac{1}{4}$	Acres	$\frac{1}{4}$ - $\frac{1}{4}$	Acres	Current Tax Lot
SW NE	5.0	SW NE	5.4	2402
SE NW	5.0	SE NW	8.0	2402
NE SW	20.0	NE SW	22.3	2402
SE SW	2.0	SE SW	0.9	2402
NW SE	20.0	NW SE	17.4	2402
SW SE	3.0	SW SE	1.0	2402
TOTAL=55.0		TOTAL =55.0		

11. Notice of the application for ground water registration modification was published on December 2, 2008, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
12. On January 14, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve recognition of Ground Water Registration Modification Application T-10736 to the applicant. The draft Preliminary Determination set forth a deadline of February 13, 2010, 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 modification.

13. On March 31, 2010, the Department issued a Preliminary Determination proposing to approve recognition of Ground Water Registration Modification Application T-10736 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the ground water modification application was published on the Department's weekly notice on April 6, 2010, pursuant to ORS 540.520 and OAR 690-382-0800. No protests were filed in response to the notice. On May 6, 2010, the agent, on behalf of the applicant, requested to modify Transfer Application T-10736 from a change in point of appropriation to an additional point of appropriation.

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

14. The proposed modification would not result in enlargement of the ground water registration.
15. The proposed modification 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 modification would not result in injury to other water rights.

Conclusions of Law

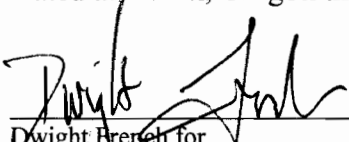
The modification for an additional point of appropriation and redescription of place of use proposed in Ground Water Registration Modification T-10736 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000.

Now, therefore, it is ORDERED:

1. The modifications to Registration Application GR-26 (Certificate of Registration GR-22) proposed in Ground Water Registration Modification Application T-10736 are 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-26 (Certificate of Registration GR-22) 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.

5. Prior to diverting water at the new point of appropriation, 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 11 day of March, 2011.



Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing Date: MAR 17 2011