



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

North Mall Office Building
725 Summer St. NE, Suite A
Salem, OR 97301
Phone: 503-986-0900
FAX: 503-986-0904
www.oregon.gov/owrd

April 26, 2013

Applicant

KURTIS T. LOEN (THATCHER) AND BRENDA L. LOEN
6803 KINNS LANE NE
WOODBURN, OR 97071

SUBJECT: Ground Water Registration Modification T-11456

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11456. This document is an intermediate step in the approval process; water may not be used legally as proposed in the ground water registration modification 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) 986-0890 or Dorothy.I.Pedersen@wrds.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: GR Modification T-11456
Mike L. McCord, District 16 Watermaster *(via e-mail)*
Gregory E. Kupillas, 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 Ground Water)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-11456, Marion County)	RECOGNITION OF AN ADDITIONAL
)	POINT 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.

Applicant

LOEN NURSERY, INC.
ATTN: KURTIS T. LOEN (THATCHER) & BRENDA L. LOEN
6803 KINNS RD NE
WOODBURN, OR 97071

Findings of Fact

Background

1. On August 2, 2012, LOEN NURSERY INC. filed a ground water registration modification application for an additional point of appropriation and to modify the place of use under Registration Application GR-337 (Certificate of Registration GR-322). The Department assigned the application number T-11456.
2. Notice of the application for ground water registration modification was published on August 7, 2012, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
3. On October 5, 2012, the applicant's agent clarified that the modification was for an additional point of appropriation and re-description of the place of use to more accurately identify the place of use according to current survey data, including tax assessor's maps and a 2009 orthographically corrected aerial photo.
4. On January 8, 2013, revised pages of the application and revised maps were submitted, limiting the T-11456 modification request to an additional point of appropriation, but

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.

including a supplemental map to be considered later for possible re-description during adjudication of the GR claim.

5. On February 20, 2013, the Department sent a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-11456 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 22, 2013, for the applicant to respond. The applicant provided the necessary information to demonstrate that the applicant is authorized to pursue the Groundwater Registration Modification, and revised maps were submitted March 25, 2013, to correct the distribution of acres.
6. On April 1, 2013, Brooke Geffen-Pratt of Pacific Hydro Geology (PHG), on behalf of the client, stated that the applicant agreed with all findings and conditions except for Condition #4, and requested that Condition #4 be replaced with two conditions that are commonly included in new permits. PHG stated the opinion that Condition #4 confounds two separate regulatory issues, being 1) authorized rate associated with the original point of diversion and 2) water availability. OWRD, however, maintains, after communication with the applicant's agent, that no amending is needed, since this is a standard condition, added to transfers as a condition of approval under OAR 690-382-1000(1)(a) to avoid enlargement of an existing right, pursuant to OAR 690-382-0100(d). Transfer statutes and rules do not give the Department authority to add new conditions to an existing right beyond what is necessary to avoid enlargement of the transferred right or injury to other rights that would not have occurred without the modifications.
7. On April 9, 2013, Brenda L. Loen was assigned to Groundwater Registration Modification Application T-11456 as a second applicant.
8. The portion of the ground water registration to be modified is as follows:

Registration: Application GR-337 (Certificate of Registration GR-322), in the name of LOEN NURSERY INC.

Use: IRRIGATION of 43.9 ACRES

Tentative

Priority Date: MARCH 4, 1955

Quantity: 180 GALLONS PER MINUTE

Source: WELL 1 within the WEST CHAMPOEG CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 W	WM	34	NE NW	880 FEET SOUTH AND 2000 FEET EAST FROM THE NE CORNER OF SECTION 34

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 S	2 W	WM	27	SW SE	9.0
4 S	2 W	WM	34	NW NE	7.5
4 S	2 W	WM	34	NE NW	27.2
4 S	2 W	WM	34	SE NW	0.2
Total					43.9

9. Information is available from the map submitted with the application for modification, indicating that the point of diversion location may alternatively be described as follows:

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 W	WM	34	NE NW	830 FEET SOUTH AND 560 FEET WEST FROM THE N ¼ CORNER OF SECTION 34

10. Ground Water Registration Modification Application T-11456 proposes an additional point of appropriation approximately 30 feet from the original well at the following location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 W	WM	34	NE NW	800 FEET SOUTH AND 550 FEET WEST FROM THE N ¼ CORNER OF SECTION 34

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

11. The proposed modification would not result in enlargement of the ground water registration, as conditioned below.
12. 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.
13. The proposed modification would not result in injury to other water rights, as conditioned below.

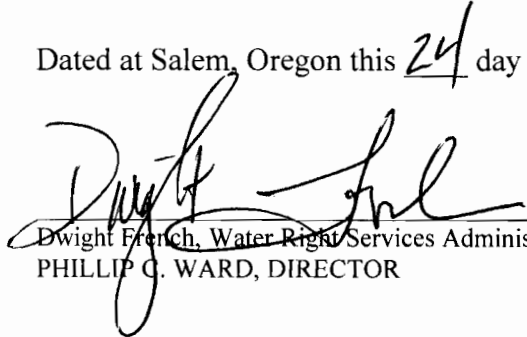
Determination and Proposed Action

The additional point of appropriation proposed in Ground Water Registration Modification T-11456, as conditioned below, appears to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. If protests are not filed pursuant to OAR 690-380-4030, the modification will be approved.

If Ground Water Registration Modification T-11456 is approved, the final order will include the following:

- 1. The modification to Registration Application GR-337 (Certificate of Registration GR-322) proposed in Ground Water Registration Modification Application T-11456 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 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-337 (Certificate of Registration GR-322) 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. 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.*

Dated at Salem, Oregon this 24 day of April, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP G. WARD, DIRECTOR

This Preliminary Determination was prepared by Dorothy Pedersen. If you have questions about the information in this document, you may reach me at 503-986-0890 or Dorothy.I.Pedersen@ wrd.state.or.us .

Protests should be addressed to the attention of Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.