



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.wrd.state.or.us

June 7, 2013

Applicant

CARLTON NURSERY CO. LLC
ALLAN ELLIOTT
PO BOX 398
DAYTON, OR 97114

SUBJECT: Ground Water Registration Modification T-11400

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11400. 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 and in the McMinnville News Register newspaper, 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 or 30 days after the last date of newspaper publication, whichever is later.

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@wrd.state.or.us if I may be of assistance.

Sincerely,

Dorothy Pedersen
Transfer Program Advisor

cc: GR Modification T-11400
Mike L. McCord, District 16 Watermaster (*via e-mail*)
Malia R. Kupillas, agent for the applicant (*via e-mail*)

enc



**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-11400, Yamhill County)	RECOGNITION OF MODIFICATIONS
)	IN POINT OF APPROPRIATION AND
)	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
(ALLAN ELLIOTT)
PO BOX 398
DAYTON, OR 97114

Findings of Fact

Background

1. On April 12, 2012, Carlton Nursery Co. LLC filed a ground water registration modification application to modify the point of appropriation and place of use under Registration Application GR-2034 (Certificate of Registration GR-1960). The Department assigned the application number T-11400.
2. Notice of the application for ground water registration modification was published on April 17, 2012, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
3. On December 17, 2012, the Department sent a copy of the draft Preliminary Determination (DPD) proposing to approve Groundwater Registration Modification Application T-11400 to the applicant, but identifying a few deficiencies that needed to be resolved. The draft Preliminary Determination cover letter set forth a deadline of January 17, 2013, for the applicant to respond. The applicant's agent clarified that the applicant intends to permanently layer Application GR-2034/Certificate of Registration

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.

GR-1960 with Certificates 3484, 83485 and 83487. The agent identified a scrivener's error in the pumping rate stated in the DPD, and provided the necessary information to demonstrate that the applicant is authorized to pursue the Groundwater Registration Modification.

4. On January 2 and 22, and on March 6 and 11, 2013, revised maps and application pages were submitted. This document reflects the modifications to the application.
5. On May 21, 2013, the Department e-mailed a copy of a revised draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-11400 to the applicant and agent. The applicant's agent identified a few minor corrections that were needed, and requested that the Department proceed with issuance of a Preliminary Determination.
6. The portion of the ground water registration to be modified is as follows:

Registration: Registration Application GR-2034 (Certificate of Registration GR-1960) in the name of U.S. ALDERMAN (*assigned to CARLTON NURSERY CO. LLC*)

Use: IRRIGATION of 116.2 ACRES

Tentative

Priority Date: AUGUST, 1944

Quantity: 322 GALLONS PER MINUTE [0.72 cubic foot per second]

Duty: 139.5 ACRE-FEET

Source: WELL 6 [YAMH 6363] within the LAMBERT SLOUGH BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	3	SW SW	730 FEET NORTH 5 DEGREES 12 MINUTES EAST FROM THE SW CORNER OF SECTION 3

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	3 W	WM	3	SW SW	12.6
5 S	3 W	WM	4	NE SW	19.5
5 S	3 W	WM	4	SE SW	18.2
5 S	3 W	WM	4	NW SE	1.3
5 S	3 W	WM	4	SW SE	19.0
5 S	3 W	WM	4	SE SE	14.1
5 S	3 W	WM	9	NE NE	14.0
5 S	3 W	WM	10	NW NW	17.5
Total:					116.2

7. Information is available from the modification application and CWRE map indicating that the point of appropriation location map also be described as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	3 W	WM	3	SW SW	53	740 FEET NORTH AND 225 FEET EAST FROM THE SW CORNER OF SECTION 3

8. Ground Water Registration Modification Application T-11400 proposes to modify the original point of appropriation for the above portion of Application GR-2034 (Certificate of Registration GR-1960) to five new points of appropriation approximately 1.6 mile to Kuhn Well, and approximately 5 miles to Smith Well 1 and Smith Well 2, 0.78 mile to Holbrook Well 1 and 1.2 miles to Holbrook Well 2; all from the original well, located as follows:

Well	Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
HOLBROOK WELL 1 YAMH 6439	5 S	3 W	WM	9	NW SW	51	1880 FEET NORTH AND 920 FEET EAST FROM THE SW CORNER OF SECTION 9
HOLBROOK WELL 2 YAMH 55649	5 S	3 W	WM	9	SW NW	53	3335 FEET NORTH AND 2285 FEET EAST FROM THE SW CORNER OF SECTION 9
KUHN WELL YAMH 6501	5 S	3 W	WM	16	SE NW	56	1890 FEET SOUTH AND 2230 FEET EAST FROM THE NW CORNER OF DLC 56
SMITH WELL 1 YAMH 55313	5 S	3 W	WM	28	SE SW	38	1200 FEET NORTH AND 265 FEET EAST FROM THE NE CORNER OF DLC 60
SMITH WELL 2 (not drilled)	5 S	3 W	WM	33	NW NE	38	200 FEET NORTH AND 1880 FEET EAST FROM THE NE CORNER OF DLC 60

9. Ground Water Registration Modification Application T-11400 also proposes to modify the above place of use for the ground water registration to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Wells
5 S	3 W	WM	4	NE SW	52	18.2	Holbrook 1 & 2
5 S	3 W	WM	4	SE SW	52	2.2	Holbrook 1 & 2
5 S	3 W	WM	4	SE SW	53	16.0	Holbrook 1 & 2
5 S	3 W	WM	4	NW SE	52	2.6	Holbrook 1 & 2
5 S	3 W	WM	4	SW SE	52	18.9	Holbrook 1 & 2
5 S	3 W	WM	4	SW SE	52	0.1	Holbrook 1 & 2
5 S	3 W	WM	4	SE SE	53	1.6	Holbrook 1 & 2
5 S	3 W	WM	16	NE NW	56	3.3	Kuhn
5 S	3 W	WM	16	NW NW	56	0.6	Kuhn
5 S	3 W	WM	16	SW NW	56	4.7	Kuhn
5 S	3 W	WM	16	SE NW	56	16.8	Kuhn
5 S	3 W	WM	16	NE SW	56	1.9	Kuhn
5 S	3 W	WM	16	NW SW	56	0.6	Kuhn
5 S	3 W	WM	27	SW SW	38	3.6	Smith 1 & 2
5 S	3 W	WM	28	SW SW	38	2.0	Smith 1 & 2
5 S	3 W	WM	28	SE SE	38	10.1	Smith 1 & 2
5 S	3 W	WM	33	NE NE	38	7.1	Smith 1 & 2

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Wells
5 S	3 W	WM	34	NW NW	38	5.9	Smith 1 & 2
Total:						116.2	

10. Certificates 83484 (primary irrigation), 83485 (supplemental irrigation), 83487 (primary irrigation) and 85677 (primary irrigation) exist on some of the lands in Sections 33 and 34 to which GR-2034 is proposed to be moved. If T-11400 is approved as submitted, these rights will become layered with GR-2034 (as per OAR 690-380-2240), and will be tied to it in future transactions that change the place of use or character of use of the rights.

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

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

Determination and Proposed Action

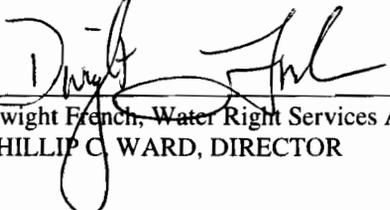
The modification in point of appropriation and modification in place of use proposed in Ground Water Registration Modification T-11400 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. If protests are not filed pursuant to OAR 690-380-4030, the modification will be approved.

If Ground Water Registration Modification T-11400 is approved, the final order will include the following:

1. *The modifications to Registration Application GR-2034 (Certificate of Registration GR-1960) proposed in Ground Water Registration Modification Application T-11400 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-2034 (Certificate of Registration GR-1960) 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 lands described in this modification.*
5. *The quantity of water diverted at the new points of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*
6. *The former place of use of the modified portion of the ground water registration from which the water has been moved shall no longer receive water as part of the ground water 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.*
 - 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 at Salem, Oregon this 7 day of June, 2013.


Dwight French, Water Right Services Administrator, for
PHILLIP C. 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.