



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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July 16, 2014

J FRANK SCHMIDT III  
13529 SE LEANN CT  
BORING, OR 97009

SUBJECT: Ground Water Registration Modification T-11678

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11678. 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.

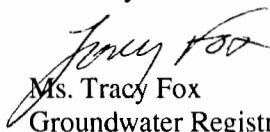
A public notice is being published in the Department's weekly publication and in the Sandy Post newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the 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 Tracy.L.Fox@wr.d.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,



Ms. Tracy Fox  
Groundwater Registration Modification Specialist  
Transfer and Conservation Section

cc: T-11678  
Amy Kim, District 20 Watermaster (*via e-mail*)  
Gregory Kupillas, CWRE and Agent for the applicant (*via e-mail*)

enclosures

**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-11678, Clackamas 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**

J FRANK SCHMIDT III  
13529 SE LEANN CT  
BORING, OR 97009

**Findings of Fact**

1. On October 23, 2013, J FRANK SCHMIDT III filed a ground water registration modification application to modify the point of appropriation and place of use under Registration Application GR-1490 (Certificate of Registration GR-1440). The Department assigned the application number T-11678.
2. Notice of the application for ground water registration modification was published on October 29, 2013, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
3. On February 18, 2014, the Department contacted the applicant and Gregory Kupillas, the applicant's agent and CWRE, by written correspondence to notify them of deficiencies in the application. The deficiencies being that the Groundwater Registration Modification Transfer Application was not in the same name as the Groundwater Registration File and that a portion of the application map had certificates that were not addressed in the application. The Department requested that the deficiencies be resolved by March 18, 2014. Gregory Kupillas requested additional time to address the deficiencies, these were granted. On May 1, 2014, the Department received an amended application map that did not include the land that had overlapping certificates.

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.

4. On April 30, 2014, Registration Application GR-1490 (Certificate of Registration GR-1440) was partially assigned from HC COMPTON to J. FRANK SCHMIDT III.
5. On May 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-11678 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 12, 2014, 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 Groundwater Registration Modification.
6. The Groundwater Registration to be modified is as follows:

**Registration:** Application GR-1490 (Certificate of Registration GR-1440), in the name of J. FRANK SCHMIDT III; as modified by Special Order Volume 81, Page 422

**Use:** IRRIGATION OF 20.0 ACRES

**Tentative Priority Date:** APRIL 1939

**Quantity:** 150 GALLONS PER MINUTE

**Source:** A WELL

**Original Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	4	NW NW	300 FEET SOUTH AND 400 FEET EAST FROM THE NW CORNER OF SECTION 4

**Original Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	4	NW NW	10.0
2 S	4 E	WM	4	SW NW	10.0

7. Ground Water Registration Modification Application T-11678 proposes to modify the location of the original point of appropriation approximately 1800 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	4 E	WM	5	SE NE	1975 FEET SOUTH AND 250 FEET WEST FROM THE NE CORNER OF SECTION 5

8. Ground Water Registration Modification Application T-11678 also proposes to modify the place of use under the ground water registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	4 E	WM	5	SE NE	20.0

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

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

**Determination and Proposed Action**

The modification in point of appropriation and place of use proposed in Ground Water Registration Modification T-11678 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-11678 is approved, the final order will include the following:*

1. *The modifications to Registration Application GR-1490 (Certificate of Registration GR-1440) proposed in Ground Water Registration Modification Application T-11678 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-1490 (Certificate of Registration GR-1440) 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 as part of this ground water certificate of registration.*
5. *The quantity of water diverted at the new point 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 ground water registration 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 at each 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 16 day of July, 2014.

  
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Dwight French  
Water Right Services Administrator, for  
Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Tracy Fox. If you have questions about the information in this document, you may reach me at 503 986-0827 or Tracy.L.Fox@ wrd.state.or.us.

Protests should be addressed to the Water Rights Services Division, Oregon Water Resources Department, 725 Summer Street, Suite A, Salem, OR 97301-1266.