



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department

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December 17, 2014

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

SUBJECT: Water Right Transfer Application T-11783

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11783. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer 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 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 Tracy.L.Fox@wr.d.state.or.us or 503 986-0827 if I may be of assistance.

Sincerely,

Ms. Tracy Fox
Transfer Specialist
Transfer and Conservation Section

cc: T-11783
Joel Plahn, District 16 Watermaster (*via e-mail*)
Greg Kupillas, Malia R. Kupillas, CWRE and Agent for the applicant (*via e-mail*)
Palmer Creek Water District Improvement Company

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-11783, Yamhill 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

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

Findings of Fact

1. On April 10, 2014, CARLTON NURSERY CO. LLC, C/O ALLAN ELLIOTT, filed a ground water registration modification application to add an additional point of appropriation under Registration Application GR-1648 (Certificate of Registration GR-3797). The Department assigned the application number T-11783.
2. Notice of the application for ground water registration modification was published on April 22, 2014, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
3. On November 4, 2014, Registration Application GR-1648 (Certificate of Registration GR-3797) was assigned from JACOB H. TOMPKINS to CARLTON NURSERY CO. LLC, C/O ALLAN ELLIOTT.
4. On November 12, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-11783 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 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.

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

Registration: Application GR-1648 (Certificate of Registration GR-3797), in the name of JACOB H. TOMPKINS (*assigned to* CARLTON NURSERY CO. LLC C/O ALLAN ELLIOTT)
Use: IRRIGATION of 35.0 ACRES
Tentative Priority Date: JULY 31, 1955
Quantity: 500 GALLONS PER MINUTE
Source: A WELL within the WILLAMETTE RIVER BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	22	SW NE	WELL 1: 1350 FEET SOUTH AND 2490 FEET WEST FROM THE NE CORNER OF SECTION 22

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	3 W	WM	22	SW NE	35.0

6. Ground Water Registration Modification Application T-11783 proposes an additional point of appropriation approximately 1140 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	3 W	WM	22	SW NE	WELL 2: 790 FEET NORTH AND 1260 FEET EAST FROM THE CENTER 1/4 CORNER OF SECTION 22

7. Ground Water Registration Modification Application T-11783 is located within the Eola Hills Ground Water Limited Area (OAR 690-502-0200).

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

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

Determination and Proposed Action

The additional point of appropriation proposed in Ground Water Registration Modification T-11783 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-11783 is approved, the final order will include the following:

- 1. The modification to Registration Application GR-1648 (Certificate of Registration GR-3797) proposed in Ground Water Registration Modification Application T-11783 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-1648 (Certificate of Registration GR-3797) 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 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 18 day of December, 2014.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, 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.