



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

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August ~~25~~, 2015

VIA E-MAIL

JAMES BURKEY  
3502 CHELAN DR  
WEST LINN, OR 97068

SUBJECT: Water Right Transfer Application T-11977

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11977. 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 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 503-986-0892 or [Joan.M.Smith@wrd.state.or.us](mailto:Joan.M.Smith@wrd.state.or.us) if I may be of assistance.

Sincerely,

Joan Smith  
Transfer Specialist  
Transfer and Conservation Section

cc: T-11977

Joel M. Plahn, District 16 Watermaster (via e-mail)  
encs

**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-11977, Clackamas County	)	RECOGNITION OF A MODIFICATION
	)	IN POINT OF APPROPRIATION

**Authority**

Oregon Revised Statute (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.

Oregon Administrative Rule (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**

JAMES BURKEY  
3502 CHELAN DR  
WEST LINN, OR 97068

**Findings of Fact**

1. On February 5, 2015, James Burkey filed a ground water registration modification application to modify the point of appropriation under Registration Application GR-995 (Certificate of Registration GR-963). The Department assigned the application number T-11977
2. On February 5, 2015, Registration Application GR-995 (Certificate of Registration GR-963) was partially assigned from GEORGE E. BOND to JAMES BURKEY.
3. Notice of the application for ground water registration modification was published on February 17, 2015, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On July 27, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11977 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 27, 2015, 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 transfer.

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.

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

**Registration:** Application GR-995 (Certificate of Registration GR-963), in the name of GEORGE E. BOND (*partially assigned to JAMES BURKEY*)

**Use:** IRRIGATION of 21.4 ACRES

**Tentative**

**Priority Date:** SEPTEMBER 1950

**Quantity:** 0.11 CUBIC FOOT PER SECOND

**Source:** WELL 1 within the DRESCHER CREEK BASIN

**Original Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	30	NE NW	770 FEET SOUTH AND 350 FEET WEST FROM NORTH 1/4 CORNER OF SECTION 30

**Original Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	30	NW NE	8.4
5 S	1 E	WM	30	NE NW	13.0
Total					21.4

6. The applicant provided a more accurate description of point of diversion as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	30	NE NW	750 FEET SOUTH AND 475 FEET WEST FROM NORTH 1/4 CORNER OF SECTION 30

7. Ground Water Registration Modification Application T-11977 proposes to modify the location of the original point of appropriation approximately 110 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	1 E	WM	30	NE NW	750 FEET SOUTH AND 370 FEET WEST FROM NORTH 1/4 CORNER OF SECTION 30

***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.

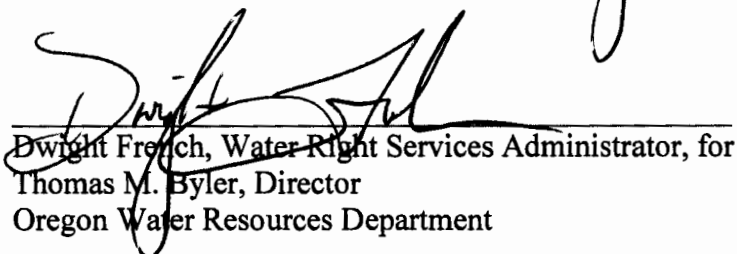
**Determination and Proposed Action**

The modification in point of appropriation proposed in Ground Water Registration Modification T-11977 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 690-382-0900, the modification will be approved.

*If Ground Water Registration Modification T-11977 is approved, the final order will include the following:*

- 1. The modification to Registration Application GR-995 (Certificate of Registration GR-963) proposed in Ground Water Registration Modification Application T-11977 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-995 (Certificate of Registration GR-963) 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 new point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.*

Dated at Salem, Oregon this 25 day of August 2015.

  
Dwight French, Water Right Services Administrator, for  
Thomas M. Byler, Director  
Oregon Water Resources Department

This Preliminary Determination was prepared by Joan Smith. If you have questions about the information in this document, you may reach me at 503-986-0892 or [Joan.M.Smith@ wrd.state.or.us](mailto:Joan.M.Smith@ wrd.state.or.us)

*Protests should be addressed to the attention of Water Rights Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266*