



Oregon
Kate Brown, Governor

Water Resources Department
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Salem, OR 97301
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May 26, 2016

PAUL KUSCHNICK
7811 STRATFORD DR NE
SALEM, OR 97305

SUBJECT: Water Right Transfer Application T-11925

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11925. 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 if I may be of assistance.

Sincerely,

Joan Smith
Transfer Specialist
Transfer and Conservation Section

cc: T-11925
Joel Plahn, 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-11925, Marion County)	RECOGNITION OF A MODIFICATION
)	OF AN ADDITIONAL 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

GARDEN SCAPE NURSERY INC
PAUL KUSCHNICK
7811 STRATFORD DR NE
SALEM, OR 97305

Findings of Fact

1. On November 25, 2014, PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC filed a ground water registration modification application to modify the point of appropriation under Registration Application GR-124 Certificate of Registration GR-115 The Department assigned the application number T-11925
2. On November 25, 2014, Registration Application GR-124 (Certificate of Registration GR-115) was assigned from ALBERT J PRANTL to PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC.
3. Notice of the application for ground water registration modification was published on December 2, 2014, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On April 14, 2015, the applicant's agent provided the Department with an amended application page which correctly describes the change as an additional point of appropriation.

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. On April 28, 2015, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11925 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 28, 2015, for the applicant to respond. The applicant did not respond by the deadline. However, on March 30, 2016, the applicants' agent 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.

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

Registration: Application T -11925 Registration Application GR-124 (Certificate of Registration GR-115), in the name of ALBERT J PRANTL (*assigned to PAUL KUSCHNICK, GARDEN SCAPE NURSERY INC*)

Use: IRRIGATION of 37.8 ACRES

Tentative

Priority Date: MARCH 1, 1952

Quantity: 400 GALLONS PER MINUTE

Source: A WELL within the FARMERS CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	787 FEET NORTH AND 383 FEET EAST FROM THE SW CORNER OF NESE OF SECTION 36

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	2 W	WM	36	NE SE	37.8

7. The applicant provided a more accurate description of the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	WELL 1- (MARI 2881) 2140 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 36

8. Ground Water Registration Modification Application T-11925 proposes an additional point of appropriation approximately 50 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	36	NE SE	WELL 2- 2090 FEET NORTH AND 990 FEET WEST FROM THE SE CORNER OF SECTION 36

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

9. The proposed modification 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 additional point of appropriation proposed in Ground Water Registration Modification T-11925 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-11925 is approved, the final order will include the following:

1. *The modifications to Registration Application GR-124 (Certificate of Registration GR-115) proposed in Ground Water Registration Modification Application T-11925 is 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-124 (Certificate of Registration GR-115) 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.*

Dated at Salem, Oregon this 24 day of MAY 2016.



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

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

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act, 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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@wrд.state.or.us