



Oregon

John A. Kitzhaber, MD, Governor

Water Resources Department
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September 25, 2017

CAYUSE VINEYARDS, LLC
ATTN: CHRISTOPHE BARON
P.O. BOX 1602
WALLA WALLA WA 99362

SUBJECT: Ground Water Registration Modification T-12610

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12610. 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 Valley Herald 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.

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 503-986-0886 or Patrick.K.Starnes@oregon.gov if I may be of assistance.

Sincerely,

Kelly Starnes
Transfer Program Analyst
Transfer and Conservation Section

cc: GR Modification application T-12610
Greg Silbernagel, District 5 Watermaster

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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-12610, Umatilla County)	RECOGNITION OF AN ADDITIONAL
)	POINT OF APPROPRIATION, A
)	MODIFICATION OF CHARACTER OF USE
)	AND PARTIAL CANCELLATION OF TWO
)	WATER RIGHTS

Authority

Oregon Revised Statutes (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 Rules (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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

CAYUSE VINEYARDS LLC
ATTN: CHRISTOPHE BARON
PO BOX 1602
WALLA WALLA, WA 99362

Findings of Fact

1. On March 16, 2017, Cayuse Vineyards, LLC, filed a ground water registration modification application for an additional point of appropriation and to modify the character of use under Registration Application GR-1167 (Certificate of Registration GR-1128). The Department assigned the application number T-12610.
2. On March 17, 2017, Registration Application GR-1167 (Certificate of Registration GR-1128) was assigned from Bertha E. Bline to Cayuse Vineyards, LLC.

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.

3. Notice of the application for ground water registration modification was published on March 21, 2017, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On August 21, 2017, the applicant requested the partial cancellation of two layered (underlying) primary water right Certificates 92789 and 92559. The Walla Walla River Irrigation District agreed to the cancellation of these layered portions of Certificates 92789 and 92559, provided written consent for the partial cancellations and are described below in Finding Nos. 14 and 15.
5. On August 25, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-12610 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 26, 2017, for the applicant to respond. On August 28, 2017, 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.
6. The portion of the ground water registration to be modified is as follows:

Registration: Application GR-1167 (Certificate of Registration GR-1128), in the name of Cayuse Vineyards, LLC

Use: SUPPLEMENTAL IRRIGATION OF 20.0 ACRES

Tentative

Priority Date: APRIL 1, 1918

Quantity: 425 GALLONS PER MINUTE (GPM)

Duty: 342.0 ACRE-FEET

Source: A WELL within the MIDDLE BRANCH MUD CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	27	SE SW	40 FEET NORTH AND 35 FEET WEST FROM THE S¼ CORNER OF SECTION 27

Original Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	APOA only acres	ΔUSE and APOA acres
6 N	35 E	WM	27	SE SW	17.2	2.8

7. Ground Water Registration Modification Application T-12610 proposes an additional point of appropriation located:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	27	SE SW	175 FEET NORTH AND 205 FEET WEST FROM SE CORNER OF SECTION 27

8. Ground Water Registration Modification Application T-12610 also proposes to modify the character of use of 2.8 acres to Commercial and Industrial uses associated with a wine making facility, located as follows:

COMMERCIAL AND INDUSTRIAL USE ASSOCIATED WITH A WINE MAKING FACILITY				
Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	27	SE SW

9. The season of delivery and use of water under the existing primary rights from the Walla Walla River Irrigation District is the irrigation season, being April 1 to October 1 of each year for the rights in the Pine Creek basin of the Walla Walla River system. The modification of a character of use to Commercial and Industrial uses associated with a wine making facility shall be limited to a rate of 59.5 gallons per minute and a total duty of water of 47.88 acre-feet during the irrigation season only.

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

10. The proposed modifications would not result in enlargement of the ground water registration. Consistent with OAR 690-382-0200 (2) regarding layered water rights, the applicant was notified of the existence of underlying primary irrigation water right Certificates 92789 and 92559. Certificates 92789 and 92559 are irrigation district water rights and the Walla Walla River Irrigation District has agreed to the cancellation of these portions of the rights, which would allow the unlayering of the rights from the 2.8 acres involved in the modification of character of use under GR-1167. The partial cancellations are further described in Finding Nos. 14 and 15.
11. 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.
12. The proposed modifications would not result in injury to other water rights.

Partial Cancellation of Water Rights

13. As described above in Finding of Fact No. 10, pursuant to OAR 690-382-0200(3)(b) and 382-0200 (4)(a), the Department determined that there are two layered primary water rights existing on the same lands as the groundwater registration right proposed for modification and notified the applicant. The irrigation district that assesses and delivers the water under Certificates 92789 and 92559 has agreed to the voluntary cancellation of portions of these layered rights, allowing for the proposed 2.8 acres of groundwater registration to become a primary right and therefore subject to modification for a character of use change. On August 21, 2017, Christophe Baron of Cayuse Vineyards, LLC, submitted two voluntary cancellation affidavits meeting the requirements of ORS 540.621 for partial cancellation of a water right. These water rights also contain a supplemental irrigation component to each acre that is requested to be cancelled as well.
14. The portion of the first right proposed to be cancelled is for the use of 0.0289 cfs from the Little Walla Walla River for primary irrigation of 2.3 acres, and 0.0577 cfs for supplemental irrigation of 2.3 acres under a portion of Certificate 92559. The portions to be cancelled are located as follows:

Certificate: 92559, in the name of CAYUSE WINERY, LLC (perfected under Permits E-170, S-1216 and S-26001)

Use: IRRIGATION OF 2.3 ACRES AND SUPPLEMENTAL IRRIGATION OF 2.3 ACRES

Priority Date: MAY 3, 1913 FOR PRIMARY IRRIGATION AND JANUARY 16, 1959 FOR SUPPLEMENTAL IRRIGATION

Rate: 0.0289 CUBIC FOOT PER SECOND (CFS) FOR PRIMARY IRRIGATION OF 2.3 ACRES AND 0.0577 CFS FOR SUPPLEMENTAL IRRIGATION OF 2.3 ACRES

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, for IRRIGATION is limited to ONE-EIGHTIETH (1/80) of one cfs per acre, and for SUPPLEMENTAL IRRIGATION is limited to 0.0375 cfs (3/80) per acre, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Place of Use to be Cancelled:

PRIMARY IRRIGATION (IR)							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acres
6 N	35 E	WM	27	SE SW	1400	5/3/1913	2.3

SUPPLEMENTAL IRRIGATION (IS)							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acres
6 N	35 E	WM	27	SE SW	1400	1/16/1959	2.3

15. The portion of the second right proposed to be cancelled is for the use of 0.0064 cfs from the Little Walla Walla River for primary irrigation of 0.5 acres, and 0.0127 cfs for supplemental irrigation of 0.5 acres under a portion of Certificate 92559. The portions to be cancelled are located as follows:

Certificate: 92789, in the name of CAYUSE VINEYARDS, LLC (perfected under Permits E-170, S-1216 and S-26001)

Use: IRRIGATION OF 0.5 ACRES AND SUPPLEMENTAL IRRIGATION OF 0.5 ACRES

Priority Date: MAY 3, 1913 for PRIMARY IRRIGATION AND JANUARY 16, 1959 FOR SUPPLEMENTAL IRRIGATION

Rate: 0.0064 CUBIC FOOT PER SECOND (CFS) FOR PRIMARY IRRIGATION OF 0.5 ACRE AND 0.0127 CFS FOR SUPPLEMENTAL IRRIGATION OF 0.5 ACRE

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH (1/80) of one cfs per acre for IRRIGATION, and is limited to 0.0375 cfs (3/80) per acre for SUPPLEMENTAL IRRIGATION, or its equivalent for each acre irrigated during the irrigation season of each year.

Source: LITTLE WALLA WALLA RIVER, tributary to the WALLA WALLA RIVER

Authorized Place of Use to be Cancelled:

PRIMARY IRRIGATION (IR)							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acre
6 N	35 E	WM	27	SE SW	1400	5 3 1913	0.5

SUPPLEMENTAL IRRIGATION (IR)							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Priority	Acre
6 N	35 E	WM	27	SE SW	1400*	1 16 1959	0.5

*Note: Certificate 92789 contained a scrivener's error describing the Tax Lot number. The above described lands are located in Tax Lot #1400, not Tax Lot #1300.

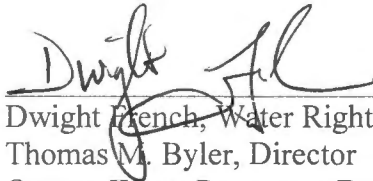
Determination and Proposed Action

The additional point of appropriation and modification in character of use proposed in Ground Water Registration Modification T-12610 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000 and the abandoned portions of the underlying primary water rights. Certificates 92789 and 92559, be cancelled. If protests are not filed pursuant to OAR 690-382-0900, the modification will be approved and the abandoned rights will be cancelled.

If Ground Water Registration Modification T-12610 is approved, the final order will include the following:

- 1. The modifications to Registration Application GR-1167 (Certificate of Registration GR-1128) proposed in Ground Water Registration Modification Application T-12610 are recognized and the abandoned portions of Water Right Certificates 92789 and 92559 are cancelled. 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 537.69.*
- 2. The portions of Water Right Certificates 92559 and 92789 appurtenant to the lands described in Finding of Fact Nos. 14 and 15 are cancelled. The Department shall issue new certificates describing those portions of the rights not affected by the cancellation.*
- 3. 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-1167 (Certificate of Registration GR-1128) and any related decree.*
- 4. The use of water described by Registration Application GR-1167 (Certificate of Registration GR-1128) for the proposed uses of Commercial/Industrial within a wine making facility shall be limited to a rate of diversion of not to exceed 59.5 gallons per minute and further limited to a total quantity of water of 47.88 acre-feet during the irrigation season March 1 through October 31.*
- 5. Water from the proposed additional point of appropriation shall be acquired from the same alluvial aquifer (water source) as the original point of appropriation. The new well construction shall be completed into the alluvial aquifer and shall not appropriate the underlying basalt aquifer.*
- 6. The quantity of water diverted at the proposed 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.*
- 7. Before water use may begin under this order, the water user shall install a totalizing flow meter on **each**, new and existing point of appropriation, or, with prior approval of the Director, another suitable measuring device, at each additional point of appropriation. 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.*
- 8. Water shall no longer be appropriated for the former character of use as part of this ground water certificate of registration.*
- 9. 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 except as modified above.*

Dated at Salem, Oregon this 28 day of September, 2017.



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

This Preliminary Determination was prepared by Ken Dowden. If you have questions about the information in this document, you may reach me at 541-278-5456 or Ken.D.Dowden@oregon.gov

Protests should be addressed to the attention of Water Rights Services 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>