

**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-12429, Benton County	)	RECOGNITION OF A MODIFICATION
	)	IN POINT OF APPROPRIATION AND
	)	MODIFICATION IN PLACE OF USE

**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.

**Applicant**

CLARENCE AND ROSETTA VENELL  
30742 VENELL PLACE  
CORVALLIS, OR 97333

**Findings of Fact**

1. On September 15, 1959, the Department issued Registration Application GR-3998 (Certificate of Registration GR-3605), in the name of Myrl P. Mulkey.
2. On October 30, 1969, the Department entered into the record for Application G-3064, Permit G-2873, a statement which read, "Plat cards show this to be supplemental to GR, but GR appears to be located wrong. Registration Application GR-3998 (Certificate of Registration GR-3605) should apparently be in the E1/2 NW1/4."
3. On October 21, 1970, the Department issued Certificate 36960 in the name of R. Derwood Smith for irrigation of 40.0 acres. The place of use (POU) for Certificate 36960 was located within the same POU as Registration Application GR-3998 (Certificate of Registration GR-3605).

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 October 21, 1970, the Department entered into the record for Registration Application GR-3998 (Certificate of Registration GR-3605) a statement which read, "This land appears to be located mainly in the E1/2 NW1/4 instead of W1/2 NW1/4, Section 7, T13S, R4W. See Application G-3064 (Certificate 36960) for reference."
5. On July 13, 2016, CLARENCE AND ROSETTA VENELL filed a ground water registration modification application to modify the point of appropriation and place of use under Registration Application GR-3998 (Certificate of Registration GR-3605). The Department assigned the application number T-12429.
6. On July 14, 2016, Registration Application GR-3998 (Certificate of Registration GR-3605) was assigned from Myrl Mulkey to Clarence Venell and Rosetta Venell.
7. Notice of the application for ground water registration modification was published on July 19, 2016, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
8. On May 1, 2018, the Department contacted the Benton County Assessor's office to determine current ownership of the lands involved in Transfer T-12429. The Assessor's office reported that Nancy L. Smith, Trustee, Loren J. Smith, Jr., Trustee, Nancy L. Smith, Living Trust, Loren J. Smith, Jr., Living Trust, and Daniel L. Smith are the current owners of record for the land appurtenant to the location that was incorrectly mapped in Registration Application GR-3998 (Certificate of Registration GR-3605) ("from " land - Tax Lot 300, NW¼ NW¼ of Section 7, Township 13 S, Range 4 W, W.M.), and Walter Van Smith is the current owner of record for the land appurtenant to the location that was incorrectly mapped in Registration Application GR-3998 (Certificate of Registration GR-3605) ("from " land - Tax Lot 400, SW¼ NW¼ of Section 7, Township 13 S, Range 4 W, W.M.) and Clarence and Rosetta Venell are the current owners of record for the land to which the transfer proposes to move the place of use ("to" land - Tax Lot 200, NE¼ and SE ¼ NE¼, Section 7, Township 13 S, Range 4 W, W.M.).
9. On May 1, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent they would need to submit signed, notarized statements from all landowners indicating that they consent to the proposed changes to Registration Application GR-3998 (Certificate of Registration GR-3605). The Department requested that the deficiencies be resolved by June 4, 2018.
10. On May 17, 2018, the applicant contacted the Department by telephone to discuss an amendment to the application which would include a change in character of use.
11. On May 18, 2018, the Department informed the applicant of the portions of the application that would need to be amended to cover the change in character of use.
12. On June 5, 2018, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent they would need to submit signed, notarized statements from all landowners indicating that they consent to the proposed changes to Registration Application GR-3998 (Certificate of Registration GR-3605), and inquired if a



change in character of use was still being pursued. The Department requested that the deficiencies be resolved by July 20, 2018.

13. On June 15, 2018, it was determined a change in character of use would not be requested.
14. On June 21, 2018, the Department received a signed and notarized Affidavit of Loren Smith, Jr., in which he swears or affirms that:
  - He is the owner of Loren Smith Farms, LLC, located in Benton County, Oregon;
  - He has lived at 30361 Loren Lane since 1942;
  - He owns the Derwood Smith property;
  - The water in question has never been used on the Derwood Smith property, being NW ¼ and SW ¼ NW ¼, T13S, R4W, WM; and
  - The water in question has always been used on the Mulkey property, being NE ¼ and SE ¼ NW ¼, T13S, R4W, WM.
15. On June 21, 2018, the Department determined that Certificate 36960 and Registration Application GR-3998 (Certificate of Registration GR-3605) are not layered, and that the applicant is authorized to pursue a modification of Registration Application GR-3998 (Certificate of Registration GR-3605) to correctly describe the POU.
16. On July 10, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12429 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 8, 2018, 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
17. The ground water registration to be modified is as follows:

**Registration:** APPLICATION GR-3998 (CERTIFICATE of REGISTRATION GR-3605),  
in the name of MYRL P. MULKEY (*assigned to CLARENCE and ROSETTA VENELL*)

**Use:** IRRIGATION of 80.0 ACRES

**Tentative**

**Priority Date:** FEBRUARY, 1950

**Quantity:** 400 GALLONS PER MINUTE; 160.0 ACRE FEET PER YEAR

**Source:** PUMP WELL #1

**Original Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	4 W	WM	7	SW NW	120 FEET 45 DEGREE ANGLE FROM THE SE CORNER OF SW1/4 OF SECTION 7

**Original Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	4 W	WM	7	NW NW	40.0
13 S	4 W	WM	7	SW NW	40.0
Total					80.0

18. The Department received information from the applicant that better describes the location of the authorized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
13 S	4 W	WM	7	SE SW	9	WELL 1 - 2650 FEET SOUTH AND 1900 FEET EAST FROM THE NW CORNER OF SECTION 7

19. Ground Water Registration Modification Application T-12429 proposes to modify the location of the original point of appropriation approximately 318.9 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
13 S	4 W	WM	7	NE SW	76	WELL 2 - 2760 FEET SOUTH AND 1600 FEET EAST FROM THE NW CORNER OF SECTION 7

20. Ground Water Registration Modification Application T-12429 proposes to modify the place of use under the ground water registration to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
13 S	4 W	WM	7	NW NE	7	4.5
13 S	4 W	WM	7	SW NE	6	4.7
13 S	4 W	WM	7	NE NW	8	23.5
13 S	4 W	WM	7	NE NW		12.0
13 S	4 W	WM	7	SE NW		11.8
13 S	4 W	WM	7	SE NW	9	23.5
Total						80.0

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

21. The proposed modifications would not result in enlargement of the ground water registration.
22. 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.
23. The proposed modifications would not result in injury to other water rights.

## Determination and Proposed Action

The modifications in point of appropriation and modification in place of use proposed in Ground Water Registration Modification T-12429 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 690-382-0900, the modification will be approved.

*If Ground Water Registration Modification T-12429 is approved, the final order will include the following:*

- 1. The modifications to Registration Application GR-3998 (Certificate of Registration GR-3605) proposed in Ground Water Registration Modification Application T-12429 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-3998 (Certificate of Registration GR-3605) 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.*

**JUL 30 2018**

Dated at Salem, Oregon this \_\_\_\_\_.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@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>