

**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-12919, Washington County |) | RECOGNITION OF MODIFICATIONS |
| |) | IN POINT OF APPROPRIATION AND |
| |) | 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

JOHN A. BIERLY
LEWIS BIERLY
SUSAN THOMPSON
CHRISTINE CULLEN
CAROL BAUMGARTEL
PHILIP BIERLY
12160 SW KOBBE DR
BEAVERTON, OR 97007

Findings of Fact

1. On May 7, 2018, JOHN A. BIERLY, LEWIS BIERLY, SUSAN THOMPSON, CHRISTINE CULLEN, CAROL BAUMGARTEL, AND PHILIP BIERLY filed a ground water registration modification application to modify the point of appropriation and place of use under Registration Application GR-2954 (Certificate of Registration GR-2772). The Department assigned the application number T-12919.

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.

2. On August 13, 2014, Registration Application GR-2954 (Certificate of Registration GR-2772) was partially assigned from ORVILLE BIERLY to LEWIS BEIRLY, JOHN BIERLY, SUSAN THOMPSON, CHRISTINE CULLEN, CAROL BAUMGARTEL, AND PHILIP BIERLY.
3. Notice of the application for ground water registration modification was published on May 15, 2018, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On July 2, 2018, the Department contacted the applicant's agent by email regarding a few discrepancies in the application with regards to table 1 and 2 of the application.
5. On July 10, 2018, the applicant's agent submitted a revised table 1 and 2 of the application.
6. On July 24, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12919 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of August 23, 2018, for the applicants to respond. The applicants 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.
7. The portion of the ground water registration to be modified is as follows:

Registration: Application GR-2954 (Certificate of Registration GR-2772), in the name of Orville L. and Hubert F. Bierly (*partially assigned to Lewis Bierly, John Bierly, Susan Thompson, Christine Cullen, Carol Baumgartel, and Philip Bierly*) as modified by Special Order Volume 95, Page 433.

Use: IRRIGATION OF 63.0 ACRES

Tentative

Priority Date: APRIL, 1950

Quantity: 366.0 GALLONS PER MINUTE

Duty: 151.0 ACRE-FEET PER YEAR

Source: PUMP WELL

Original Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 2 S | 2 W | WM | 1 | NE SE | 2840 FEET SOUTH AND 1000 FEET WEST FROM THE NE CORNER OF SECTION 1 |

Original Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 2 S | 2 W | WM | 1 | NE NE | 16.0 |
| 2 S | 2 W | WM | 1 | NW NE | 6.0 |
| 2 S | 2 W | WM | 1 | SW NE | 6.0 |
| 2 S | 2 W | WM | 1 | SE NE | 35.0 |
| TOTAL | | | | | 63.0 |

7. Ground Water Registration Modification Application T-12919 proposes to modify the location of the recognized point of appropriation, approximately 1.7 miles from the recognized well to:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|--|
| 1 S | 2 W | WM | 35 | SE SW | 1600 FEET EAST AND 650 FEET NORTH FROM THE SW CORNER OF SECTION 35 |

8. Ground Water Registration Modification Application T-12919 proposes to modify the place of use under the ground water registration to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 1 S | 2 W | WM | 35 | SW NW | 3.0 |
| 1 S | 2 W | WM | 35 | SE NW | 7.0 |
| 1 S | 2 W | WM | 35 | NE SW | 26.0 |
| 1 S | 2 W | WM | 35 | NW SW | 7.0 |
| 1 S | 2 W | WM | 35 | SW SW | 4.0 |
| 1 S | 2 W | WM | 35 | SE SW | 16.0 |
| TOTAL | | | | | 63.0 |

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

9. The proposed modifications 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 modifications would not result in injury to other water rights.

Determination and Proposed Action

The modifications in point of appropriation and place of use proposed in Ground Water Registration Modification T-12919 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 modifications will be approved.

If Ground Water Registration Modification T-12919 is approved, the final order will include the following:

1. *The modifications to Registration Application GR-2954 (Certificate of Registration GR-2772) proposed in Ground Water Registration Modification Application T-12919 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-2954 (Certificate of Registration GR-2772) 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 recognized 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.*
6. *The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.*

The water user shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on the analysis of other water level data. The Director may require the user to obtain and report additional water levels each year if more data is needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. *Associate each measurement with an owner's well name or number and a Department well log ID; and*
- B. *Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and*
- C. *Specify the method of measurement; and*
- D. *Certify the accuracy of all measurements and calculations reported to the Department.*

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

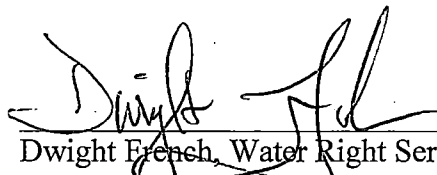
- A. *Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or*

- B. *Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or*
- C. *Annual water-level measurements reveal a water-level decline of 25 or more feet; or*
- D. *Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.*

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

- 7. *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 device 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.*
- 8. *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.*

Dated at Salem, Oregon, SEP 28 2018.



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.

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>



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

September 28, 2018

JOHN A. BIERLY
LEWIS BIERLY
SUSAN THOMPSON
CHRISTINE CULLEN
CAROL BAUMGARTEL
PHILIP BIERLY
12160 SW KOBBE DR
BEAVERTON, OR 97007

SUBJECT: Water Right Transfer Application T-12919

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12919. 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 and in the Oregonian 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 corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,



Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12919
Jacob W. Constans, District 18 Watermaster (*via e-mail*)
Corey Woodruff, Stuntzner Engineering, Agent for the applicant (*via e-mail*)

encs