

**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-13088, Marion County	)	RECOGNITION OF MODIFICATIONS
	)	IN POINT OF APPROPRIATION,
	)	ADDITIONAL 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**

THE SCOTTS CO. LLC  
7644 KEENE RD NE  
GERVAIS, OR 97026

**Applicant**

TSW NURSERY SALES, INC.  
c/o TODD WILLIAMS  
PO BOX 1217  
WILSONVILLE, OR 97070-1217

**Findings of Fact**

1. On December 28, 2018, THE SCOTTS CO. LLC and TSW NURSERY SALES, INC. filed a ground water registration modification application for an additional point of appropriation, to modify the point of appropriation and place of use under Registration Application GR-898 (Certificate of Registration GR-873). The Department assigned the application number T-13088
2. On November 8, 1977, Registration Application GR-898 (Certificate of Registration GR-873) was assigned from Frank P. Adelman to O. M. Scott and Sons Company.

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.
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3. On December 28, 2018, Registration Application GR-898 (Certificate of Registration GR-873) was partially assigned from O. M. Scott and Sons Company to The Scotts Company LLC.
4. On January 23, 2019, Registration Application GR-898 (Certificate of Registration GR-873) was partially assigned from O. M. Scott and Sons Company to The Scotts Company LLC and TSW Nursery Sales, Inc., c/o Todd Williams.
5. Notice of the application for ground water registration modification was published on January 8, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
6. On March 19, 2019, the Department contacted the applicant's agent by written correspondence to notify the applicant and the applicant's agent of the deficiencies in the application. The Department requested that the deficiencies be resolved by April 17, 2019.
7. On March 19, 2019, the applicant's agent submitted revised tables and a map, resolving the deficiencies.
8. On March 28, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13088 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of April 26, 2019, 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.
9. The ground water registration to be modified is as follows:

**Registration:** Application GR-898 (Certificate of Registration GR-873), in the name of FRANK P. ADELMAN Jr. (*assigned to THE SCOTTS COMPANY LLC AND TSW NURSERY SALES, INC., C/O TODD WILLIAMS*)

**Use:** IRRIGATION of 57.1 ACRES

**Tentative**

**Priority Date:** SEPTEMBER 1, 1951

**Quantity:** 200 GALLONS PER MINUTE AND 2.5 ACRE-FEET PER ACRE

**Source:** PUMP WELL

**Original Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
5 S	2 W	WM	35	SW NW	84	NORTH 1 DEGREE 15 MINUTES EAST 2840 FEET FROM THE SE CORNER OF SECTION 34

**Original Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
5 S	2 W	WM	34	SE NE	84	34.8
5 S	2 W	WM	34	NE SE	84	9.5
5 S	2 W	WM	35	SW NW	84	11.5
5 S	2 W	WM	35	NW SW	84	1.3
Total						57.1

10. The Department received information from the applicant that better describes the location of the original point of appropriation for Registration Application GR-898 (Certificate of Registration GR-873) as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 S	2 W	WM	35	SW NW	EAST WELL 1 - 2685 FEET NORTH AND 115 FEET EAST FROM THE SE CORNER OF SECTION 34

11. Ground Water Registration Modification Application T-13088 proposes to modify the location of the original point of appropriation and add an additional point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximate distance from the original point of appropriation in feet (ft.)
5 S	2 W	WM	34	SE NE	84	EAST WELL 2 - 2170 FEET SOUTH AND 515 FEET WEST FROM THE NE CORNER OF SECTION 34	627.5 ft. NW
5 S	2 W	WM	34	SE NE	84	WEST WELL 1 - 2170 FEET SOUTH AND 1100 FEET WEST FROM THE NE CORNER OF SECTION 34	1162.8 ft. NW
5 S	2 W	WM	34	SW NE	84	WEST WELL 3 - 2085 FEET SOUTH AND 1465 FEET WEST FROM THE NE CORNER OF SECTION 34	1537.3 ft. NW
5 S	2 W	WM	34	NE SE	84	WEST WELL 2 - 2320 FEET NORTH AND 995 FEET WEST FROM THE SE CORNER OF SECTION 34	1177.9 ft. NW

12. Ground Water Registration Modification Application T-13088 proposes to modify the place of use under the ground water registration to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	Proposed Well
5 S	2 W	WM	34	SE NE	84	15.4	EAST WELLS 1 AND 2
5 S	2 W	WM	34	SE NE	84	15.6	WEST WELLS 1, 2, AND 3
5 S	2 W	WM	34	SW NE	84	0.5	WEST WELLS 1, 2, AND 3
5 S	2 W	WM	34	NE SE	84	7.8	EAST WELLS 1 AND 2
5 S	2 W	WM	34	NE SE	84	5.1	WEST WELLS 1, 2, AND 3
5 S	2 W	WM	34	NW SE	84	0.2	WEST WELLS 1, 2, AND 3
5 S	2 W	WM	35	SW NW	84	9.2	EAST WELLS 1 AND 2
5 S	2 W	WM	35	NW SW	84	3.3	EAST WELLS 1 AND 2
						Total	57.1

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

13. The proposed modifications would not result in enlargement of the ground water registration.
14. 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.
15. The proposed modifications would not result in injury to other water rights.

**Determination and Proposed Action**

The additional point of appropriation, modifications in point of appropriation, and modification in place of use proposed in Ground Water Registration Modification T-13088 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-13088 is approved, the final order will include the following:*

1. *The modifications to Registration Application GR-898 (Certificate of Registration GR-873) proposed in Ground Water Registration Modification Application T-13088 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-898 (Certificate of Registration GR-873) 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 (East Well 2), 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 (East Well 1).*
5. *The quantity of water diverted at the new points of appropriation (West Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (East Well 1).*
6. *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 this     MAY 31 2019    .



Lisa J. Jaramillo, Transfer and Conservation Section Manager, 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 Servicemembers 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

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May 31, 2019

THE SCOTTS CO. LLC  
7644 KEENE RD NE  
GERVAIS, OR 97026

TSW NURSERY SALES, INC.  
c/o TODD WILLIAMS  
PO BOX 1217  
WILSONVILLE, OR 97070-1217

SUBJECT: Water Right Transfer Application T-13088

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13088. 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 [corey.a.courchane@oregon.gov](mailto: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-13088  
Joel M. Plahn, District 16 Watermaster (via e-mail)  
Doann Hamilton, Agent for the applicant (via e-mail)

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