

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-12958, Jackson County)	RECOGNITION OF A MODIFICATION
)	IN PLACE OF USE AND POINT OF
)	APPROPRIATION

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

BGE PROPERTIES, LLC
1 WEST MAIN STREET, SUITE 401
MEDFORD, OR 97504

Agent

MIKE MONTERO
DBA: MONTERO & ASSOCIATES, LLC
4497 BROWNRIDGE TRRRACE, SUITE 202
MEDFORD, OR 97504

Findings of Fact

1. On June 28, 2018, Martin Farms Properties, LLC, filed a groundwater registration modification application to modify the place of use under Registration Application GR-2241 (Certificate of Registration GR-2142). The Department assigned the application number T-12958.
2. Previous groundwater registration modification application T-11880 was approved and assigned the groundwater registration in the name of BGE Properties, LLC. No assignment is needed to satisfy OAR 690-382-0300.
3. Transfer T-12959 (also BGE Properties, LLC), also proposes to change the place of use of the underlying primary water right Certificate 93676 along with supplemental water right Certificate 93678 and should be processed together simultaneously.

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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4. Notice of the application for ground water registration modification was published on July 3, 2018, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
5. On February 8, 2019, the agent for the applicant submitted a revised application to include a modification in point of appropriation. The agent also submitted a new amended application and map to reflect the changes.
6. On July 9, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12958 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 8, 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.

7. The groundwater registration to be modified is as follows:

Registration: Application GR-2241 (Certificate of Registration GR-2142), in the name of Martin Farms Properties, LLC
Use: SUPPLEMENTAL IRRIGATION of 8.0 ACRES
Tentative
Priority Date: 1953
Quantity: 20 GALLONS PER MINUTE
Source: PUMP WELL within the BEAR CREEK WATERSHED

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
37 S	2 W	WM	33	NW SW	19 FEET SOUTH AND 1221 FEET EAST FROM THE NW CORNER OF DLC 95

Original Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
37 S	2 W	WM	33	SW SW	8.0

8. The original place of use under GR-2441 prior to the approval of T-11880, which modified only the character of use, initially described supplemental irrigation of 8.0 acres within the SW¹/₄ SW¹/₄ of Section 33, T37S, R2W, WM. The Department's map for the groundwater registration claim is poor but is acknowledged as being supplemental irrigation to the existing primary water right Permit S-15772, originally Certificate 15308. The subsequent, associated companion transfer application T-11881 (2014) was also approved for changes in a point of diversion and character of use for once Certificate 15308 (Permit S-15772) and its layered supplemental water right Certificate 15239 (Permit S-17066). The claim of beneficial use and final proof map submitted with these transfers established and clarified the place of use under both water right certificates and, this layered, groundwater registration GR-2441 for supplemental irrigation.
 - a) The original transfer applications T-11880 and T-11881 maps depict the place of use layout under Certificates 15308 and 15239 as being fairly consistent with the

“footprint” of the groundwater registration map, but is projected a couple of hundred feet to the northeast, closer to South Stage Road. The Department has determined that the application map is consistent with the assessor’s map in its portrayal of property lines and the layout of roads in the area. To better describe the location of the portion of the groundwater registration in use today, the Department is lead to conclude that the land to which the water right has always been appurtenant should be re-described, and is described in the table below.

- b) The following table lists the place of use as described in the existing groundwater registration map and those same 8.0 acres based on the Claim of Beneficial Use and map for the associated T-11881 and subsequently issued Certificates 93676 and 93678. The proposed re-description based on the above findings is as follows:

Orig. Description of Place of Use GR-2241 (Cert. of Reg./GR-2142)				Proposed Re-description of Place of Use GR-2241 (Cert. of Registration GR-2142)			
Q - Q	DLC	Sec	Acres	Q - Q	DLC	Estimated Acres	Current Tax Lot(s)
SW SW	95	33	8.0	NE SW	95	0.80	37S 2W 33 - TL 1300
				NW SW	95	1.80	37S 2W 33 - TL 1300 & 1308
				SW SW	95	4.70	37S 2W 33 - TL 1300, 1306 & 1307
				SE SW	95	0.70	37S 2W 33 - TL 1300, 1306 & 1307
TOTAL: 8.0 acres				TOTAL: 8.0 acres			
Township 37 South, Range 2 West, W.M., Section 33							

9. Thus, a re-description by approval and issuance of subsequent Certificates 93676 and 93678 suggest that today’s location of the 8.0 acres under Registration Application GR-2241 (Certificate of Registration GR-2142) for supplemental irrigation are located as follows:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
37 S	2 W	WM	33	NE SW	95	0.8
37 S	2 W	WM	33	NW SW	95	1.8
37 S	2 W	WM	33	SW SW	95	4.7
37 S	2 W	WM	33	SE SW	95	0.7
Total:						8.0

10. Transfer Application T-12958 proposes to modify the place of use under the groundwater registration to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	DLC	Acres
37 S	2 W	WM	33	NE SW	95	0.91
37 S	2 W	WM	33	NW SW	91	1.33
37 S	2 W	WM	33	NW SW	95	3.32
37 S	2 W	WM	33	SW SW	95	2.01
37 S	2 W	WM	33	SE SW	95	0.43
Total:						8.00

11. The Groundwater Registration Modification under Application T-12858 also proposes to modify the point of appropriation under the groundwater registration by changing the existing well to a new point of appropriation located approximately 100 feet north from the original point of appropriation. The new (existing) well is located as follows:

Proposed Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
37 S	2 W	WM	33	SW SW	91	73 FEET NORTH AND 1135 FEET EAST FROM THE NW CORNER OF DLC 95

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

12. The proposed modification would not result in enlargement of the groundwater registration.
13. 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.
14. The proposed modification would not result in injury to other water rights.

Determination and Proposed Action

The modifications in place of use and point of appropriation proposed in Groundwater Registration Modification T-12958 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.

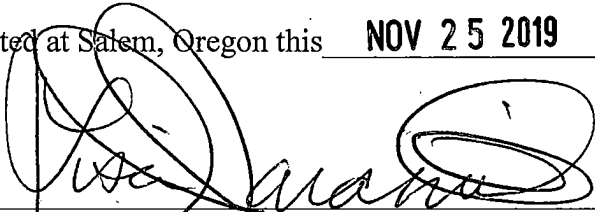
If Groundwater Registration Modification T-12958 is approved, the final order will include the following:

1. *The modification to Registration Application GR-2241 (Certificate of Registration GR-2142) proposed in Groundwater Registration Modification Application T-12958 is recognized. Recognition of the modification 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-2241 (Certificate of Registration GR-2142) and any related decree.*

3. *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 point of diversion (new and existing).*
- b. *The water user shall maintain the meters or measuring devices in good working order.*
- c. *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.*

Dated at Salem, Oregon this NOV 25 2019.



Lisa Jaramillo, Manager, Transfers and Conservation Section, 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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

November 25, 2019

BGE PROPERTIES, LLC
1 WEST MAIN STREET, SUITE 401
MEDFORD, OR 97504

SUBJECT: Groundwater Registration Modification T-12958

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12958. This document is an intermediate step in the approval process; water may not be used legally as proposed in the groundwater 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, 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, whichever is later.

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-12958
Shavon Haynes, District 13 Watermaster (via e-mail)
Mike Montero, Agent for the applicant (via e-mail)

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