

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

In the Matter of Groundwater	)	PRELIMINARY DETERMINATION
Registration Modification Application	)	PROPOSING APPROVAL OF
T-13135, Marion 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 groundwater 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 groundwater registration modification applications.

**Applicant**

TSW NURSERY SALES INC.  
C/O TODD WILLIAMS  
P.O. BOX 1217  
WILSONVILLE, OR 97070-1217

**Findings of Fact**

1. On March 1, 2019, TSW NURSERY SALES INC., C/O TODD WILLIAMS filed a groundwater registration modification application to modify the point of appropriation and place of use under Registration Application GR-2053 (Certificate of Registration GR-1979). The Department assigned the application number T-13135.
2. On March 4, 2019, Registration Application GR-2053 (Certificate of Registration GR-1979) was partially assigned from WARD C. RUSSELL to LOY RUSSELL.
3. Notice of the application for groundwater registration modification was published on March 5, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. On March 1, 2019, the Department received an Application for Water Right Transfer Consent by Deeded Landowner from Loy Russell, granting consent to the applicant to

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.

pursue the modification of Registration Application GR-2053 (Certificate of Registration GR-1979).

5. On November 5, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13135 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of December 4, 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.
6. The portion of the groundwater registration to be modified is as follows:

**Registration:** Application GR-2053 (Certificate of Registration GR-1979), in the name of WARD C. RUSSELL (*partially assigned to LOY RUSSELL*)  
**Use:** IRRIGATION of 19.9 ACRES  
**Tentative**  
**Priority Date:** SEPTEMBER 5, 1946  
**Quantity:** 63.2 GALLONS PER MINUTE  
**Source:** PUMP WELL

**Original Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	1 W	WM	11	NE NW	AUTHORIZED WELL - 1260 FEET SOUTH AND 125 FEET WEST FROM THE N1/4 CORNER OF SECTION 11

**Original Place of Use:**

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Proposed point of appropriation
4 S	1 W	WM	11	NE NW	6.0	TSW WELL 1 AND 2
4 S	1 W	WM	11	NE NW	5.0	RUSSELL WELL
4 S	1 W	WM	11	SE NW	8.9	RUSSELL WELL
Total					19.9	

7. Groundwater Registration Modification Application T-13135 proposes to modify the location of the original point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in feet (ft.)
4 S	1 W	WM	11	NE NW	RUSSELL WELL - 1230 FEET SOUTH AND 450 FEET WEST FROM THE N1/4 CORNER OF SECTION 11	326.4 ft.
4 S	1 W	WM	11	NE NW	TSW WELL 1 - 960 FEET SOUTH AND 205 FEET WEST FROM THE N1/4 CORNER OF SECTION 11	310.8 ft.
4 S	1 W	WM	11	NE NW	TSW WELL 2 - 755 FEET SOUTH AND 745 FEET WEST FROM THE N1/4 CORNER OF SECTION 11	799.4 ft.

8. Groundwater Registration Modification Application T-13135 proposes to modify the place of use under the ground water registration to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	POA.
4 S	1 W	WM	11	NE NW	6.0	TSW WELL 1 AND 2

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

9. The proposed modifications would not result in enlargement of the groundwater 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**

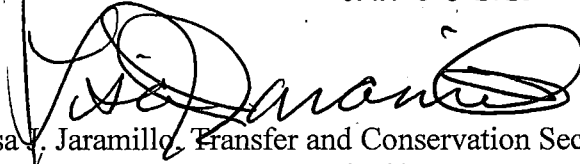
The modification in point of appropriation and modification in place of use proposed in Groundwater Registration Modification T-13135 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. If protests are not filed pursuant to OAR 690-382-0900, the modification will be approved.

*If Groundwater Registration Modification T-13135 is approved, the final order will include the following:*

1. *The modifications to Registration Application GR-2053 (Certificate of Registration GR-1979) proposed in Groundwater Registration Modification Application T-13135 are recognized. Recognition of the modifications shall not be construed as a final determination of the right to appropriate groundwater 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-2053 (Certificate of Registration GR-1979) 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 new points of appropriation (Russell Well, TSW Well 1 and 2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Authorized Well).*

5. *The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*
6. *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 appropriation (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 in Salem, Oregon on **JAN 08 2020**

  
Lisa V. 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 servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



# Oregon

Kate Brown, Governor

**Water Resources Department**

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

January 8, 2020

TSW NURSERY SALES INC.  
C/O TODD WILLIAMS  
P.O. BOX 1217  
WILSONVILLE, OR 97070-1217

SUBJECT: Water Right Transfer Application T-13135

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13135. 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-13135  
Joel M. Plahn, District 16 Watermaster (via e-mail)  
Doann Hamilton, Agent for the applicant (via e-mail)

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