

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-13226, Marion County)	RECOGNITION FOR AN
)	ADDITIONAL POINT OF
)	APPROPRIATION AND TO MODIFY
)	THE 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

BLUE SKY FARM
17728 BUTTEVILLE RD NE
WOODBURN, OR 97071

Findings of Fact

1. On July 19, 2019, BLUE SKY FARM filed a groundwater registration modification application for an additional point of appropriation and to modify the place of use under Registration Application GR-1202 (Certificate of Registration GR-1162). The Department assigned the application number T-13226.
2. On July 29, 2019, Registration Application GR-1202 (Certificate of Registration GR-1162) was partially assigned from WILLIAM A. BROWN and NINA E. BROWN to KEVIN SMITH, TRUSTEE of both NINA E. BROWN and WILLIAM A. BROWN TRUSTS.
3. On July 19, 2019, the Department received an Application for Water Right Transfer Consent by Deeded Landowner, from Kevin Smith, landowner of tax lot 700, Section 36, T4S, R3W,

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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WM, granting consent to modification of Registration Application GR-1202 (Certificate of Registration GR-1162).

4. Notice of the application for groundwater registration modification was published on August 6, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
5. On December 4, 2019, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of deficiencies in the application. The application maps did not identify the correct township and range as identified in Registration Application GR-1202 (Certificate of Registration GR-1162), and the acres proposed for modifying the place of use did not match the acres identified in the "FROM" lands application map. The Department requested that the deficiencies be resolved by January 7, 2020.
6. On December 6, 2019, the applicant's agent submitted a revised Table 2 and maps, resolving the deficiencies.
7. On December 20, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13226 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of January 22, 2020, 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.
8. The portion of the groundwater registration to be modified is as follows:

Registration: Application GR-1202 (Certificate of Registration GR-1162), in the name of WILLIAM A. BROWN and NINA E. BROWN (*partially assigned to KEVIN SMITH, TRUSTEE of both NINA E. BROWN and WILLIAM A. BROWN TRUSTS*)

Use: IRRIGATION of 217.885 ACRES

Tentative

Priority Date: MAY 1947

Quantity: 617.0 GALLONS PER MINUTE

Source: PUMP WELL #2

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 W	WM	36	SW NW	PUMP WELL #2 - SOUTH 35 DEGREES EAST 1950 FEET FROM THE NW CORNER OF SECTION 36

Original Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	35	NE NE	82	21.312
4 S	2 W	WM	35	SE NE	82	23.631
4 S	2 W	WM	35	NE SE	82	4.500
4 S	2 W	WM	36	NW NE	82	3.271
4 S	2 W	WM	36	SW NE	82	6.714

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	36	NE NW	82	12.258
4 S	2 W	WM	36	NW NW	82	21.840
4 S	2 W	WM	36	SW NW	82	40.000
4 S	2 W	WM	36	SE NW	82	38.969
4 S	2 W	WM	36	NE SW	82	21.177
4 S	2 W	WM	36	NW SW	82	24.213
Total						217.885

9. Groundwater Registration Modification Application T-13226 proposes an additional point of appropriation approximately 290.8 feet from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 S	2 W	WM	36	SE NW	WELL #3 - SOUTH 35 DEGREES 45 MINUTES EAST 2240 FEET FROM THE NW CORNER OF SECTION 36

10. Groundwater Registration Modification Application T-13226 proposes to modify the place of use under the ground water registration to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
4 S	2 W	WM	35	NE NE	82	14.600
4 S	2 W	WM	35	SE NE	82	22.800
4 S	2 W	WM	35	NE SE	82	4.700
4 S	2 W	WM	35	NE SE	90	10.700
4 S	2 W	WM	36	NW NE	82	3.700
4 S	2 W	WM	36	SW NE	82	6.500
4 S	2 W	WM	36	NE NW	82	14.085
4 S	2 W	WM	36	NW NW	82	20.500
4 S	2 W	WM	36	SW NW	82	36.500
4 S	2 W	WM	36	SE NW	82	34.500
4 S	2 W	WM	36	NE SW	82	21.900
4 S	2 W	WM	36	NW SW	82	18.700
4 S	2 W	WM	36	NW SW	90	8.100
4 S	2 W	WM	36	SW SW	90	0.600
Total						217.885

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

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

Determination and Proposed Action

The additional point of appropriation and modification in place of use proposed in Groundwater Registration Modification T-13226 appears 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.

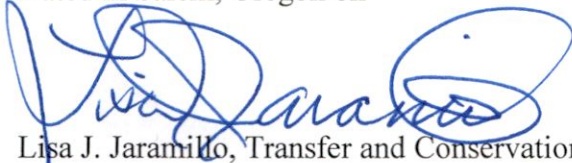
If Groundwater Registration Modification T-13226 is approved, the final order will include the following:

- 1. The modifications to Registration Application GR-1202 (Certificate of Registration GR-1162) proposed in Groundwater Registration Modification Application T-13226 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-1202 (Certificate of Registration GR-1162) 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 additional point of appropriation (Well #3), together with that diverted at the original point of appropriation (Pump Well #2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Pump Well #2).*

5. *The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*

Dated in Salem, Oregon on

FEB 11 2020



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

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

February 11, 2020

BLUE SKY FARM
17728 BUTTEVILLE RD NE
WOODBURN, OR 97071

SUBJECT: Water Right Transfer Application T-13226

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13226. 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 or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13226
Joel M. Plahn, District 16 Watermaster (*via e-mail*)
Aspen Rural Land Consulting, Agent for the applicant (*via e-mail*)

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