

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING DENIAL OF
T-12660, Josephine County)	RECOGNITION OF A MODIFICATION
)	IN POINTS 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 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

NICHOLAS AND JULIE COCK
1059 REASER LANE
RAMONA, CA 92065

Findings of Fact

1. On May 1, 2017, TERRY E. THOMPSON AND EDGAR J. WESTLAKE, filed a Groundwater Registration Modification Application to modify a point of appropriation under Registration Application GR-200 (Certificate of Registration GR-186). The Department assigned the application number T-12660.
2. On September 11, 2007, Registration Application GR-200 (Certificate of Registration GR-186) was partially assigned from Roy F. and Maude J. Lofland to Paula and Anthony Sepolpo.
3. On May 31, 2011, Registration Application GR-200 (Certificate of Registration GR-186) was partially assigned from Roy F. and Maude J. Lofland to Mark and Becky Vidlak.
4. On April 20, 2016, Registration Application GR-200 (Certificate of Registration GR-186) was partially assigned from Roy F. and Maude J. Lofland to Lofland LLC.
5. Notice of the application for groundwater registration modification was published on May 9, 2017, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.

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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

6. On May 19, 2017, Registration Application GR-200 (Certificate of Registration GR-186) was partially assigned (Tax Lots 115 and 116) from Roy F. and Maude J. Lofland to Terry Thompson and Edgar Westlake
7. On September 12, 2017, Registration Application GR-200 (Certificate of Registration GR-186) (Tax Lots 115 and 116) and Groundwater Registration Modification Application T-12660 was assigned from Terry Thompson and Edgar Westlake to Nicholas and Julie Cock.
8. On May 17, 2018, Registration Application GR-200 (Certificate of Registration GR-186) was partially assigned (Tax Lot 116) from Terry Thompson and Edgar Westlake to George B Hickey.
9. On December 18, 2019, the Department notified the applicant by mail of deficiencies in Groundwater Registration Modification Application T-12660, specifically Tax Lot 116 is proposed for modification, however the applicant is not the landowner of Tax Lot 116 and did not include a consent form with the application to modify Tax Lot 116 and there are discrepancies on Table 2 of the application:

On Table 2 of Groundwater Registration Modification Application T-12660, there are acres identified on the “From” lands side of the table totaling 8.4 acres as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
38 S	8 W	WM	23	SE NE	115	3.7
38 S	8 W	WM	23	SW NW	115	0.7
38 S	8 W	WM	23	SE NE	116	1.0
38 S	8 W	WM	23	NE SE	116	3.0
38 S	8 W	WM	23	SE NE	116	1.0
38 S	8 W	WM	23	NE SE	116	3.0
Total						8.4

On Table 2 of Groundwater Registration Modification Application T-12660, there are acres identified on the “To” lands side of the table totaling 8.4 acres as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
38 S	8 W	WM	23	SE NE	115	3.7
38 S	8 W	WM	23	SW NW	115	0.7
38 S	8 W	WM	23	SE NE	116	1.0
38 S	8 W	WM	23	NE SE	116	1.0
38 S	8 W	WM	23	SE NE	116	1.0
38 S	8 W	WM	23	NE SE	116	3.0
Total						8.4

Both the “From” and “To” lands are listed in Table 2 of the application as totaling 8.4 acres, however the “From” lands equal 12.4 acres and the “To” lands equal 10.4 acres. The map included with the application shows 8.4 acres. In addition, the acres are described as being located as Range 8W, however the acres listed in the groundwater registration are located in Range 5W. If Groundwater Registration Application T-12660 was approved without being amended, these misidentified acres would result in enlargement of the right. The applicant was given a deadline of January 18, 2019 to respond to the deficiencies. No response was received from the applicant.

10. On February 3, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to deny Groundwater Registration Modification Application T-12660 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of March 3, 2020, for the applicants to respond. The applicants did not respond by the deadline.

11. Groundwater Registration Modification Application T-12660 proposes to modify

Registration: Application GR-200 (Certificate of Registration GR-186), in the names of ROY F. LOFLAND and MAUDE J. LOFLAND, PAUL J. AND ANTHONY J. SEPOLPO, and MARK AND BECKY VIDLAK, LOFLAND, LLC., NICHOLAS and JULIE COCK, and GEORGE B. HICKEY (previously modified by voluntary partial cancellation approved October 20, 1982, T-10456, Special Order Volume 74, Pages 243-246 and T-11242, Special Order Volume 84, Pages 848-850).

Use: IRRIGATION of 8.4 acres

Tentative

Priority Date: November 2, 1950

Quantity: 14.8 GALLONS PER MINUTE (GPM)

Source: Infiltration Trenches No. 1 and 2 all within the Williams Creek Basin

Original Points of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	23	SE NE	INFILTRATION TRENCH #2 - 198 FEET SOUTH AND 744 FEET WEST FROM THE SE CORNER, NENE OF SECTION 23

Original Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres
38 S	5 W	WM	23	SE NE	115	3.7
38 S	5 W	WM	23	SW NW	115	0.7
38 S	5 W	WM	23	SE NE	116	1.0
38 S	5 W	WM	23	NE SE	116	3.0
38 S	5 W	WM	23	SE NE	116	1.0
38 S	5 W	WM	23	NE SE	116	3.0
Total						12.4

12. On October 20, 1982, a portion (Tax Lot 703) of Registration Application GR-200 (Certificate of Registration GR-186) was voluntarily partially cancelled by James C. and Edith Keding. The voluntary partial cancellation was of 10.0 acres and 0.06 cfs total as follows:

INFILTRATION TRENCH 1 - IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	CFS/GPM
38 S	5 W	WM	24	NW NW	2.5	703	0.03/13.5

INFILTRATION TRENCH 2 - IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	CFS/GPM
38 S	5 W	WM	24	SW NW	7.5	703	0.03/13.2

13. Construction work on Infiltration Trench No. 2 began on November 2, 1950. The groundwater registration described the point of appropriation from the second infiltration trench as being 744 feet West and 198 feet South from the SE corner of the NE ¼ NE ¼ of Section 23 and located within the SE ¼ NE1/4 of Section 23, Township 38 South, Range 5 West, W.M. The approximate dimensions of Infiltration Trench No. 2 were as follows: 13 feet by 10 feet by 13 feet deep.

14. Sometime prior to 1968, the dimensions of Infiltration Trench No. 2 were altered. The current Infiltration Trench No. 2 is 270 feet by 50 feet by 10 feet deep and the point of appropriation is described as being 110 feet South and 670 feet West from the NE corner of the SE ¼ NE ¼ of Section 23, Township 38 South, Range 5 West, W.M.
15. On February 26, 2008, the Department Approved Groundwater Modification Application T-10456 recorded at Special Order Volume 74, Pages 243-246 which modified the point of appropriation identified as Infiltration Trench No. 2 as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	23	SE NE	INFILTRATION TRENCH No. 2- 110 FEET SOUTH AND 670 FEET WEST FROM THE NE CORNER OF THE SE NE OF SECTION 23

16. Approved Groundwater Modification Application T-10456 recorded at Special Order Volume 74, Pages 243-246 also modified the location of the point of appropriation for 1.5 acres to the point of appropriation location described in Finding of Fact #14.
17. On July 21, 2011, the Department Approved Groundwater Modification Application T-11242, which modified the location of Infiltration Trench No. 1 approximately 1000 feet from the original point of appropriation for 20.22 acres to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	23	NE NE	1300 FEET WEST FROM THE SE CORNER OF SECTION 14

18. Groundwater Registration Modification Application T-12660, proposes to recognize a change in point of appropriation for 8.4 acres, located approximately 1000 to 1300 feet from the recognized point of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	23	NE SE	POA 3 – 21 FEET SOUTH AND 151 FEET WEST FROM THE E CORNER OF SECTION 23
38 S	5 W	WM	23	NE SE	POA 4 – 180 FEET SOUTH AND 3231 FEET WEST FROM THE E CORNER OF SECTION 23
38 S	5 W	WM	24	SW NW	POA 2 – 335 FEET NORTH AND 321 FEET EAST FROM THE E CORNER OF SECTION 23

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

19. The proposed modification would result in enlargement of the groundwater registration.
20. 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.
21. The proposed modification would not result in injury to other water rights.

Determination and Proposed Action

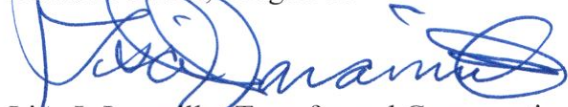
The modification in point of appropriation proposed in Groundwater Registration Modification T-12660 does not appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. If protests are not filed pursuant to OAR 690-382-0900, the modification will be denied.

If the enlargement issues are resolved and Groundwater Registration Modification T-12660 is approved, the final order will include the following:

- 1. The modification to Registration Application GR-200 (Certificate of Registration GR-186) proposed in Groundwater Registration Modification Application T-12660 is recognized. Recognition of the modification 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-200 (Certificate of Registration GR-186) 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 (POA 2, POA 3, and POA 4), together with that diverted at the original point of appropriation (Infiltration Trench #2), shall not exceed the quantity of water lawfully available at the original point of appropriation (Infiltration Trench #2).*
- 5. 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 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

MAY 28 2020



Lisa J. Jaramilla, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have any questions about the information in this document, you may reach me at 503-986-0806 or arla.l.davis@oregon.gov.

Protests should be addressed to the attention of Water Rights 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

May 28, 2020

NICHOLAS AND JULIE COCK
1059 REASER LANE
RAMONA, CA 92065

SUBJECT: Water Right Transfer Application T-12660

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to DENY application T-12660. This document is an intermediate step in the process. 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.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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 503-986-0806 or arla.l.davis@oregon.gov if I may be of assistance.

Sincerely,

for Arla L Davis
Groundwater Registration Modification Specialist
Transfer and Conservation Section

cc: T-12660
Scott C. Ceciliani, District 14 Watermaster (*via e-mail*)

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