

**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-12501, Josephine County)	RECOGNITION OF A MODIFICATION
)	IN CHARACTER OF USE

Authority

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.

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

RENDATA INDUSTRIAL PARK LLC
700 MERLIN ROAD
GRANTS PASS, OR 97526

Findings of Fact

1. On October 11, 2016, RENDATA INDUSTRIAL PARK LLC filed a groundwater registration modification application to modify the character of use under Registration Applications GR-3519 (Certificate of Registration GR-3236), GR-3520 (Certificate of Registration GR-3237), and GR-3521 (Certificate of Registration GR-3238). The Department assigned the application number T-12501.
2. On September 19, 2011, Registration Applications GR-3519 (Certificate of Registration GR-3236), GR-3520 (Certificate of Registration GR-3237), and GR-3521 (Certificate of Registration GR-3238) were assigned from BATE LUMBER COMPANY to RENDATA INDUSTRIAL PARK LLC.
3. On July 30, 2012, the Department approved instream transfer application T-11353 (Special Order Volume 88, Page 712-719) to provide adequate mitigation of interference of certificates 31332 and 27802.
4. On January 9, 2012 the Department approved Groundwater Registration Modification T-11295 (Special Order Volume 85, page 896-899) for Groundwater Registration Application GR-3521 (Certificate of Registration GR-3238), recognizing the additional points of appropriation and modification in place of use and character of use.

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.

5. On November 6, 2012 the Department approved Groundwater Registration Modification T-11293 (Special Order Volume 88, page 679–683) for Groundwater Registration Application GR-3519 (Certificate of Registration GR-3236), recognizing the additional points of appropriation and modification in place of use and character of use.
6. On November 6, 2012, the Department approved Groundwater Registration Modification T-11294 (Special Order Volume 88, page 684–688) for Groundwater Registration Application GR-3520 (Certificate of Registration (GR-3237), recognizing the additional points of appropriation and modification in place of use and character of use.
7. Notice of the application for the groundwater registration modification was published on October 18, 2016, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
8. On February 27, 2018, the Department contacted the agent for the applicant regarding a deficiency in the application, specifically a land use form was not submitted with other application materials.
9. On March 6, 2018, the agent for the applicant submitted a Land Use form by email to the Department.
10. On March 9, 2018, the Department contacted the agent for the applicant regarding multiple deficiencies in the application, specifically making updates to Table 2 to accurately reflect the changes requested in the application and removal of an erroneous certificate that was not part of the modification.
11. On March 14, 2018, the agent for the applicant submitted new application pages to the Department.
12. On April 9, 2018 the agent for the applicant submitted a new Land Use form by email to the Department.
13. On March 11, 2019, the Department contacted the agent for the applicant by email regarding further deficiencies in the application, specifically the Land Use Form submitted did not include all of the tax lots included in the transfer, and the Land Use Form is not approved for any other tax lot besides tax lot 209. Additionally Table 2 and the map must match and must include the amount of water that will be used for each proposed use. The Department requested the applicant submit a map for each Groundwater Registration included in the modification application, and to outline each area of use and rate individually to avoid enlargement.
14. On May 15, 2019, the agent for the applicant submitted an amended Land Use form by email to the Department. The amended Land Use Form does not outright allow the water uses proposed by the applicant and requires a Site Plan Review and a Development Permit according to Josephine County Code 19.42.030A for the lands identified as Community Industrial (CI). The Land Use Form also states that any lands zoned as Community Residential (CR) only allow crop production under Josephine County Code 19.101A.020 B and no crop processing or commercial sale or wholesales are allowed.

15. The amended Land Use Form sent to the Department for Registration Modification Application T-12501 lists the following Tax Lots involved in the modification and have been identified by the Josephine County Tax Assessors office as Community Residential - 2 Acre zone (CR 2) and Community Residential – 5 Acre zone (CR 5) as follows:

Community Residential – 2 Acre zone (CR 2)				
Twp	Rng	Mer	Sec	Tax Lot
35 S	6 W	WM	21	300
35 S	6 W	WM	21	301
35 S	6 W	WM	21	302

Community Residential – 5 Acre zone (CR 5)				
Twp	Rng	Mer	Sec	Tax Lot
35 S	6 W	WM	21	202
35 S	6 W	WM	21	203
35 S	6 W	WM	21	204
35 S	6 W	WM	21	205
35 S	6 W	WM	21	206
35 S	6 W	WM	22	207
35 S	6 W	WM	22	208
35 S	6 W	WM	22	500
35 S	6 W	WM	22	600
35 S	6 W	WM	22	601

16. The purpose of the Community Residential zone is to authorize residential uses, residential accessory uses, conditional uses and temporary uses at locations, densities and under conditions that are consistent with the development requirements for unincorporated rural community planning. The Community Residential zone shall provide residential zoning classifications for lands already zoned and committed to rural residential development at the time this zone is implemented. The Community Residential zone shall designate two zoning categories based upon the density permitted by the division and development within these categories. The first category shall be known as the Community Residential – 2 Acre zone. The second category shall be known as the Community Residential – 5 Acre zone.

17. The amended Land Use Form sent to the Department for Registration Modification Application T-12501 lists the following Tax Lots involved in the modification and have been identified by the Josephine County Tax Assessors office as Community Industrial (CI) as follows:

Community Industrial (CI)				
Twp	Rng	Mer	Sec	Tax Lot
35 S	6 W	WM	21	100
35 S	6 W	WM	21	200
35 S	6 W	WM	21	209
35 S	6 W	WM	21	700

18. Josephine County Code 19.101D.020 identifies the Community Industrial zone as lands that have the following uses, with accessory uses and structures, using ministerial review procedures (Chapter 19.22 JCC), unless site plan review is required (Chapter 19.42 JCC), in which case uses shall be permitted using quasi-judicial review procedures (Chapter 19.22 JCC). Uses shall also meet the applicable development standards listed in JCC 19.101D.040. In all cases, a development permit (Chapter 19.41 JCC) shall be required as final permit approval.
- A. Institutional. Public operated or County franchised uses such as a recycling center, resource recovery facility, sewage transfer site, waste transfer center or solid waste site (subject to Chapter 19.86 JCC), water treatment plant or reservoir, sewage disposal plant, correctional or jail facility, ambulance or police or fire station, utility yard or facility and airport.
 - B. Preparation, Repair, Assembly and Manufacturing. A comprehensive range of preparation, repair, assembling and manufacturing activities, such as the preparation and assembly of components or merchandise into other products, the manufacturing of component or end products, the processing, cooking or packaging of food products, the cleaning, repair, reconstituting or refurbishing of previously manufactured products, wood processing mill, wood products manufacturing, truck or automobile or heavy equipment body shop or repair garage or sales lot, metal working, reduction, refining or smelting, tire sales or repair or recapping, cement or asphalt batching, aggregate processing, animal slaughtering or meat processing. The secondary retail sale and service of goods shall be permitted only when the sales involve items that are prepared, repaired, assembled or manufactured on the same site.
 - C. Storage and Distribution. A comprehensive range of storage and distribution uses, such as transit storage, mini-storage, cold storage, warehousing, wholesale distribution, fuel distribution, equipment rental yard, fee parking lot, towing terminal with impound yard, automobile wrecking yard, truck or automobile or equipment parts warehouse (wholesale or retail sales).
 - D. Support Services. Activities that may be considered support uses to other industrial uses such as a restaurant or café, food catering, convenience store, building maintenance or janitorial service, automobile or truck gas station, consultant or professional service office (engineers, scientists, quality assurance labs, etc.).
 - E. One On-Site Dwelling. A manufactured dwelling or quarters may be placed or developed for a caretaker or night watchman when all of the following requirements are met:
 - 1. The resident must be an employee of the business (no rent may be charged);
 - 2. The employee status of the resident must be documented at the County's request;
 - 3. Employee quarters shall strictly comply with the definition for "quarters" contained in JCC 19.11.190 (no variance); and
 - 4. The dwelling must be served by a septic system developed on the same lot or parcel as the industrial use that it serves, or be connected to a community sewer system.
 - F. Lawfully existing single-family and/or manufactured dwellings (alteration or replacement only, subject to the time limits contained in JCC 19.13.030, Nonconforming structures.
 - G. Agricultural, farming and farm use as defined by Chapter 19.11 JCC. [Ord. 2016-004 § 1(3); 2005 RLDC § 101.420.]

19. On August 30, 2019, the Department mailed a copy of the draft Preliminary Determination proposing to deny Groundwater Registration Modification Application T-12501 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of September 30, 2019, for the applicant to respond and provide the Department with amended application pages and maps, in order to overcome the denial.
20. On January 7, 2020, the Department accepted the Land Use Form provided by the applicant to the Department on May 15, 2019, after correspondence and clarification with the Josephine County Community Development Planning Division regarding uses allowed under the CR2, CR5, and CI zones.
21. On January 27, 2020, the agent for the applicant submitted amended application pages and an amended map satisfying deficiencies and allowing for approval of Groundwater Registration Modification Application T-12501. The agent also indicated that Groundwater Registration GR-3519 (Certificate of Registration GR-3236) and GR-3521 (Certificate of Registration GR-3238) be removed from the application in their entirety.
22. On May 28, 2020, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12501 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of June 29, 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.

23. The ground water registration to be modified is as follows:

Registration: Application GR-3520 (Certificate of Registration GR-3237), in the name of BATE LUMBER COMPANY (assigned to RENDATA INDUSTRIAL PARK LLC)

Use: INDUSTRIAL

Tentative

Priority Date: PRIOR TO 1952

Quantity: 30 GALLONS PER MINUTE

Source: WELL 3 within the LOUSE CREEK BASIN

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	6 W	WM	21	SW NE	EAST 2° NORTH 325 FEET FROM THE CENTER OF SECTION 21

Original Place of Use:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	SW NE
35 S	6 W	WM	21	SE NW

24. The applicant provided further information indicating the location of the authorized point of appropriation is also described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	6 W	WM	21	SW NE	JOSE 18106 - 38 FEET NORTH AND 301 FEET EAST FROM THE CENTER OF SECTION 21

25. On November 6, 2012 the Department issued a Final Order (Special Order Volume 88, page 684-688) under Groundwater Registration Modification Application T-11295, approving recognition of a modification to Groundwater Registration Application GR-3520 (Certificate of Registration GR-3237). The proposed modification added five additional points of appropriation, modified the place of use and changed the character of use from industrial to commercial. The modifications recognized are as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	6 W	WM	21	SW NE	JOSE 18105 - 855 FEET NORTH AND 1070 FEET EAST FROM THE CENTER OF SECTION 21
35 S	6 W	WM	21	SW NE	JOSE 18107 - 234 FEET NORTH AND 176 FEET EAST FROM THE CENTER OF SECTION 21
35 S	6 W	WM	21	SW NE	JOSE 3079 - 736 FEET NORTH AND 980 FEET EAST FROM THE CENTER OF SECTION 21
35 S	6 W	WM	21	SW NE	JOSE 50369 - 1128 FEET NORTH AND 1139 FEET EAST FROM THE CENTER OF SECTION 21
35 S	6 W	WM	21	SE NE	JOSE 9938 - 7 FEET NORTH AND 1589 FEET EAST FROM THE CENTER OF SECTION 21

COMMERCIAL				
Twp	Rng	Mer	Sec	Q-Q
35 S	6 W	WM	21	NE NE
35 S	6 W	WM	21	NW NE
35 S	6 W	WM	21	SW NE
35 S	6 W	WM	21	SE NE
35 S	6 W	WM	21	NE NW
35 S	6 W	WM	21	SE NW
35 S	6 W	WM	21	NE SE
35 S	6 W	WM	21	NW SE
35 S	6 W	WM	22	SW NW
35 S	6 W	WM	22	NW SW

26. Groundwater Registration Modification Application T-12501 proposes to change the character of use for GR-3520 (Certificate of Registration GR-3237), from commercial to nursery.

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

27. The proposed modifications would result in enlargement of the groundwater registration.
28. 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.
29. The proposed modifications would interfere substantially with a hydraulically connected surface water source upon which other water rights rely, resulting in injury to those rights.
30. On November 6, 2012, the Department issued a final order for a permanent instream transfer T-11343 (Special Order Volume 88, Page 712-719) to provide mitigation for increased interference. The following quantities are permanently transferred instream:

Certificate	Priority	Rate	Season of Use	Use
31332	6/25/1893	0.06 cfs	1/1 to 12/31	Manufacturing
27802	1/7/1957	0.10 cfs	1/1 to 12/31	Maintenance of mill pond

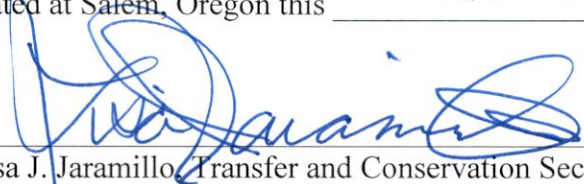
31. The requested instream quantities provide adequate mitigation for the expected interference.

Conclusions of Law

The modification in character of use proposed by Groundwater Registration Modification T-12501 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.

1. *The modification to Registration Application GR-3520 (Certificate of Registration GR-3237), proposed in Groundwater Registration Modification Application T-12501 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 GR-3520 (Certificate of Registration GR-3237), and any related decree or order.*
3. *Water shall no longer be appropriated for the former character of use (commercial) as part of this groundwater certificate of registration.*

Dated at Salem, Oregon this JUL 29 2020



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla 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 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 these proceedings under the federal Service Members 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

July 29, 2020

RENDA INDUSTRIAL PARK LLC
700 MERLIN RD
GRANTS PASS, OR 97526

SUBJECT: Water Right Transfer Application T-12501

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12501. 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 last date of newspaper publication.

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 arla.l.davis@oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis
Groundwater Registration Modification Specialist
Transfer and Conservation Section

cc: T-12501
Scott Ceciliani, District 14 Watermaster (*via e-mail*)
James S. De Smet, Agent for the applicant (*via e-mail*)

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