

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-13330, Marion County)	RECOGNITION FOR ADDITIONAL
)	POINTS OF APPROPRIATION AND
)	MODIFICATIONS IN PLACES OF USE,
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT CERTIFICATE, AND
)	DIMINUTION OF A WATER RIGHT
)	CERTIFICATE

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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

AVELLANA FARMS, LLC
2229 SAN FELIPE ST. SUITE 1150
HOUSTON, TX 77019

Findings of Fact

1. On December 26, 2019, AVELLANA FARMS, LLC filed a groundwater registration modification application for additional points of appropriation, and to modify the places of use under Registration Application GR-472 (Certificate of Registration GR-454), to cancel a portion of water right certificate 27567, and to diminish water right certificate 20436. The Department assigned the application number T-13330.

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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2. On April 6, 1961, Registration Application GR-472 (Certificate of Registration GR-454) was assigned from OTTO M. and MADGE M. NELSON to PAUL WHITLATCH.
3. On August 22, 2019, Registration Application GR-472 (Certificate of Registration GR-454) was partially assigned from PAUL WHITLATCH to AVELLANA FARMS, LLC.
4. Notice of the application for groundwater registration modification was published on December 31, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
5. On May 20, 2020, the Department contacted the applicant's agent by written correspondence to notify the agent of a deficiency in the application. The applicant did not include a Supplemental Form D with the application, as the place of use is located within the Santiam Water Control District. The Department requested that the deficiency be resolved by June 22, 2020.
6. On May 26, 2020, the applicant's agent submitted a Supplemental Form D, resolving the deficiency.
7. On June 18, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13330 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 20, 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 first groundwater registration to be modified is as follows:

Registration: Application GR-472 (Certificate of Registration GR-454), in the name of OTTO OR MADGE M. NELSON (*assigned to PAUL WHITLATCH; partially assigned to AVELLANA FARMS, LLC*)

Use: IRRIGATION of 27.04 ACRES

Tentative

Priority Date: MARCH 10, 1941

Quantity: 384 GALLONS PER MINUTE

Duty: .60.0 ACRE FEET PER YEAR

Source: OTTO NELSON WELL #2

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	2 W	WM	25	NE NE	OTTO NELSON WELL #2 - NORTH 27 ° 23 MINUTES EAST OF THE NE CORNER OF SECTION 25

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	NE NE	20.83
9 S	2 W	WM	25	SE NE	6.21
Total					27.04

9. The Department received information from the applicant that better describes the location of the authorized point of appropriation for Registration Application GR-472 (Certificate of Registration GR-454) as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	2 W	WM	25	NE NE	OTTO NELSON WELL #2 - NORTH 27 ° 23 MINUTES, 1290 FEET TO THE NE CORNER OF SECTION 25

10. Groundwater Registration Modification Application T-13330 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the original point of appropriation in miles (mi.)
9 S	2 W	WM	24	SW SE	WELL B - 1000 FEET NORTH AND 2580 FEET WEST FROM THE SE CORNER OF SECTION 24	0.6 mi.
9 S	2 W	WM	25	NW NE	WELL A - 445 FEET SOUTH AND 1980 FEET WEST FROM THE NE CORNER OF SECTION 25	0.3 mi.
9 S	2 W	WM	25	SE NE	OTTO NELSON WELL #3 - SOUTH 15° 53 MINUTES WEST 421 FEET TO THE SW CORNER OF THE SE1/4 NE1/4 CORNER OF SECTION 25	0.3 mi.

11. Groundwater Registration Modification Application T-13330 proposes to modify the place of use under the groundwater registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	NE NE	18.43
9 S	2 W	WM	25	SW NE	2.40
9 S	2 W	WM	25	SE NE	6.21
Total					27.04

12. The second groundwater registration to be modified is as follows:

Registration: Application GR-472 (Certificate of Registration GR-454), in the name of OTTO OR MADGE M. NELSON (*assigned to PAUL WHITLATCH; partially assigned to AVELLANA FARMS, LLC*)

Use: IRRIGATION of 16.13 ACRES

Tentative

Priority Date: JANUARY 19, 1946

Quantity: 225 GALLONS PER MINUTE

Duty: 40.0 ACRE FEET PER YEAR

Source: OTTO NELSON WELL #1

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	2 W	WM	25	NE NE	OTTO NELSON WELL #1 - NORTH 84 ° 10 MINUTES EAST 670 FEET TO THE NE CORNER OF SECTION 25

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	NE NE	16.13

13. Groundwater Registration Modification Application T-13330 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the original point of appropriation in miles (mi.)
9 S	2 W	WM	24	SW SE	WELL B - 1000 FEET NORTH AND 2580 FEET WEST FROM THE SE CORNER OF SECTION 24	0.4 mi.
9 S	2 W	WM	25	NW NE	WELL A - 445 FEET SOUTH AND 1980 FEET WEST FROM THE NE CORNER OF SECTION 25	0.2 mi.
9 S	2 W	WM	25	SE NE	OTTO NELSON WELL #3 - SOUTH 15° 53 MINUTES WEST 421 FEET TO THE SW CORNER OF THE SE1/4 NE1/4 CORNER OF SECTION 25	0.3 mi.

14. Groundwater Registration Modification Application T-13330 proposes to modify the place of use under the groundwater registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	NE NE	13.63
9 S	2 W	WM	25	SW NE	2.50
Total					16.13

15. The third groundwater registration to be modified is as follows:

Registration: Application GR-472 (Certificate of Registration GR-454), in the name of OTTO OR MADGE M. NELSON (*assigned to PAUL WHITLATCH; partially assigned to AVELLANA FARMS, LLC*)

Use: IRRIGATION of 15.31 ACRES

Tentative

Priority Date: APRIL 1, 1955

Quantity: 384 GALLONS PER MINUTE

Duty: 35.0 ACRE FEET PER YEAR

Source: OTTO NELSON WELL #3

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	2 W	WM	25	SE NE	OTTO NELSON WELL #3 - SOUTH 15° 53 MINUTES WEST 421 FEET TO THE SW CORNER OF THE SE1/4 NE1/4 CORNER OF SECTION 25

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	SE NE	11.98
9 S	2 W	WM	25	NE SE	3.33
Total					15.31

16. Groundwater Registration Modification Application T-13330 proposes additional points of appropriation as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from the original point of appropriation in miles (mi.)
9 S	2 W	WM	24	SW SE	WELL B - 1000 FEET NORTH AND 2580 FEET WEST FROM THE SE CORNER OF SECTION 24	0.7 mi.
9 S	2 W	WM	25	NW NE	WELL A - 445 FEET SOUTH AND 1980 FEET WEST FROM THE NE CORNER OF SECTION 25	0.4 mi.

17. Groundwater Registration Modification Application T-13330 proposes to modify the place of use under the groundwater registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	25	SW NE	0.20
9 S	2 W	WM	25	SE NE	13.48
9 S	2 W	WM	25	NE SE	1.63
Total					15.31

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

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

Diminution of a Certain Water Right

21. On December 26, 2019, the agent for the applicant submitted an affidavit requesting the Department diminish the entirety of Certificate 20436 for 22.2 acres of primary irrigation to supplemental irrigation. The right proposed to be diminished from primary irrigation to supplemental irrigation is described as follows:

Certificate: 20436 in the name of OTTO NELSON (perfected under Permit S-18130)
Use: IRRIGATION of 22.2 ACRES
Priority Date: JANUARY 6, 1948
Rate: 0.277 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: COLD CREEK, a tributary of NORTH SANTIAM RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q - Q	GLot
9 S	2 W	WM	25	SE NE	1

Authorized Place of Use:

DIMINISHED TO SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q - Q	GLot	Acres
9 S	2 W	WM	25	NE NE		1.8
9 S	2 W	WM	25	SE NE	1	16.8
9 S	2 W	WM	25	NE SE	10	3.6
Total						22.2

Partial Cancellation of a Water Right

22. On December 26, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Finally Back To Me, LLC. The right to be cancelled is as follows:

Certificate: 27567 in the name of OTTO or MADGE NELSON (perfected under Permit G-621)
Use: SUPPLEMENTAL IRRIGATION of 2.5 ACRES
Priority Date: AUGUST 5, 1957
Rate: 0.03 CUBIC FOOT PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A WELL, a tributary of NORTH SANTIAM RIVER

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
9 S	2 W	WM	25	NE NE	SOUTH 60° 33 MINUTES WEST, 802 FEET FROM THE NE CORNER OF SECTION 25

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
9 S	2 W	WM	25	NE NE	2.5

Determination and Proposed Action

The additional points of appropriation and modification in places of use proposed in Groundwater Registration Modification T-13330 appears to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000. The right requested to be diminished should be diminished to supplemental irrigation and the abandoned portion of the right should be cancelled. If protests are not filed pursuant to OAR 690-382-0900, the modifications will be approved.

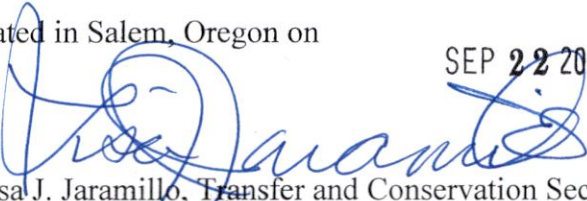
If Groundwater Registration Modification T-13330 is approved, the final order will include the following:

- 1. The modifications to Registration Application GR-472 (Certificate of Registration GR-454) proposed in Groundwater Registration Modification Application T-13330 are recognized and the abandoned right is cancelled. Certificate 20436 is diminished. 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-472 (Certificate of Registration GR-454) and any related decree.*
- 3. Water right Certificate 27567 is cancelled. A new certificate will be issued describing that portion of the right not affected by this cancellation.*
- 4. Water shall be acquired from the same aquifer (water source) as the original points of appropriation.*
- 5. The quantity of water diverted at the new additional points of appropriation (Wells 1, 3, A, and B), together with that diverted at the original points of appropriation (Otto Nelson Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point(s) of appropriation (Otto Nelson Wells 1, 2, and 3).*

6. *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

SEP 22 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

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.

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

September 22, 2020

AVELLANA FARMS, LLC
2229 SAN FELIPE ST. SUITE 1150
HOUSTON, TX 77019

SUBJECT: Water Right Transfer Application T-13330

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13330. 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 and in the Stayton Mail newspaper, 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.

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.

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.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Corey Courchane". The signature is fluid and cursive, with a long horizontal stroke at the end.

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13330
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
William E. McGill, Agent for the applicant (*via e-mail*)

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