

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-12922, Josephine County)	RECOGNITION OF A MODIFICATION
)	OF ADDITIONAL 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

GEORGE HICKEY, COA LLC
17610 WILLIAMS HWY
WILLIAMS, OR 97544

Findings of Fact

1. On May 2, 2018, GEORGE HICKEY, COA LLC, filed a groundwater registration modification application to modify additional points of appropriation under Registration Application GR-200 (Certificate of Registration GR-186). The Department assigned the application number T-12922.
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.

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 February 17, 2017, the Department contacted the agent for the applicant regarding an error in the application, specifically well L-87081 is identified in the application as an authorized point of appropriation, however it is not a recognized point of appropriation for GR-200 (Certificate of Registration GR-186).
6. On February 17, 2017 the agent for the applicant requested via email to remove the well identified as L-87081 from the application, satisfying the deficiency.
7. 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
8. 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.
9. 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.
10. Notice of the application for groundwater registration modification was published on May 22, 2018, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
11. On June 12, 2019, the applicant submitted a revised application and map to clarify the place of use acreage.
12. On June 15, 2020, the applicant submitted a revised application and map to clarify the place of use acreage.
13. On June 29, 2019, the Department sent a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-12922 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 27, 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 Groundwater Registration Modification. The Department found an error in the application following the issuance of the draft preliminary determination.
14. On June 15, 2020, the applicant approved modifications to the Groundwater Registration application correcting the error.
15. On July 26, 2020, the Department sent a copy of the 2nd Revised draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-12922 to the applicant. 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 Groundwater Registration Modification.

16. The portion of the groundwater registration to be modified is as follows:

Registration: 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, Special Order Volume 116, pages 472-476).

Use: IRRIGATION of 2.9 ACRES

Tentative

Priority Date: NOVEMBER 2, 1950

Quantity: 9.72 GALLONS PER MINUTE

Source: Infiltration Trench No. 1 and 2, within the WILLIAMS CREEK BASIN

Original Point of Appropriation:

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 ¼ NE ¼ OF SECTION 23

Original Place of Use:

IRRIGATION (Infiltration Trench No. 2)					
Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	23	SE NE	1.1
38 S	5 W	WM	23	NE SE	1.8
Total					2.9

17. 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 26.7 gpm total as follows:

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

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

18. Registration Application GR-200 (Certificate of Registration GR-186) also claimed the use of water from a second infiltration trench (Infiltration Trench No. 2) for the irrigation of lands other than those supplied by Infiltration Trench No. 1. 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 NE ¼ 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.

19. 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.
20. 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

21. On February 26, 2008, the Department 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 #17.
22. 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	POA 3 - 1300 FEET WEST FROM THE SE CORNER OF SECTION 14

23. On April 22, 2020, the Department approved Groundwater Registration Modification Application T-12349, which recognized 2 additional points of appropriation for 9.7 acres as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	5 W	WM	23	NE SE	POA 4 - 240 FEET SOUTH AND 660 FEET WEST FROM THE EAST CORNER OF SECTION 23
38 S	5 W	WM	23	NE SE	POA 5 - 80 FEET SOUTH AND 570 FEET WEST FROM THE EAST CORNER OF SECTION 23

24. Groundwater Registration Modification Application T-12922 proposes to recognize 2 additional points of appropriation for the 2.9 acres described in Finding of Fact #14, located approximately 0.3 to 0.6 mile from the recognized wells to:

Twp	Rng	Mer	Sec	Q - Q	Measured Distances
38 S	5 W	WM	23	NE SE	POA #6 - 165 FEET SOUTH AND 330 FEET WEST FROM THE NE CORNER OF THE NE¼ SE¼, OF SECTION 23
38 S	5 W	WM	23	SE NE	POA #7 - 20 FEET NORTH AND 55 FEET WEST FROM THE NE CORNER OF THE NE¼ SE¼, OF SECTION 23

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

25. The proposed modification would not result in enlargement of the groundwater registration.
26. 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.
27. 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-12922 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.

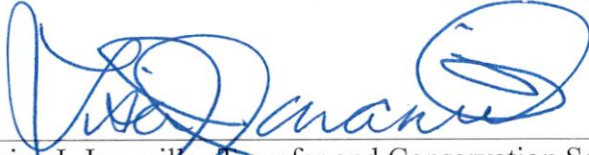
If Groundwater Registration Modification T-12922 is approved, the final order will include the following:

1. *The modification to Registration Application GR-200 (Certificate of Registration GR-186) proposed in Groundwater Registration Modification Application T-12922 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. The portion of the layered water right that has been abandoned is cancelled.*
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 additional points of appropriation (POA 6 and POA 7), together with that diverted at the original points of appropriation (INFILTRATION TRENCH 1 and INFILTRATION TRENCH 2) shall not exceed the quantity of water lawfully available at the original points of appropriation (INFILTRATION TRENCH 1 and 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 diversion.*
 - 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 at Salem, Oregon this

OCT 08 2020



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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@oregon.gov Arla L Davis. If you have questions about the information in this document, you may reach me at arla.l.davis@oregon.gov Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrdd.state.or.us

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 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

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(503) 986-0900

Fax (503) 986-0904

October 8, 2020

GEORGE HICKEY, COA LLC
17610 WILLIAMS HWY
WILLIAMS, OR 97544

SUBJECT: Groundwater Registration Modification T-12922

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12922. This document is an intermediate step in the approval process; water may not be used legally as proposed in the groundwater registration modification 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 Grants Pass Daily Courier 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 Department's notice *or* 30 days after the last date of newspaper publication, whichever is later.

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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-12922
Scott Ceciliani, District 14 Watermaster (*via e-mail*)