

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF
T-13299, Linn County)	RECOGNITION OF MODIFICATIONS
)	IN POINT OF APPROPRIATION AND
)	PLACE OF USE AND PARITAL
)	CANCELLATION OF A WATER
)	RIGHT

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

STEPHEN DEMERGASSO
30946 WYATT DR
HARRISBURG, OR 97446

Findings of Fact

1. On December 6, 2019, DEMERGASSO FAMILY MARITAL DEDUCTION SHARE TRUST UAD 3/22/2009, filed a groundwater registration modification application to modify the point of appropriation and place of use under Registration Application GR-1629 (Certificate of Registration GR-1593), and to partially cancel a portion of water right Certificate 42195. The Department assigned the application number T-13299.

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.

2. On August 16, 2016, Registration Application GR-1629 (Certificate of Registration GR-1593) was assigned from GERALD AND MARIE DETERING to STEPHEN YATES-DEMERGASSO.
3. On December 6, 2019, the Department received an Affidavit of Consent by Deeded Landowner from Stephen J. Yates-Demergasso, granting consent to modify Registration Application GR-1629 (Certificate of Registration GR-1593).
4. Notice of the application for groundwater registration modification was published on December 17, 2019, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
5. On June 11, 2020, the Department contacted the applicant by written correspondence to notify the applicant and the applicant's agent of a deficiency in the application. The Department determined that GR-1629 is layered with 3.2 acres under Certificate 30889. The Department requested that the deficiency be resolved by July 13, 2020.
6. On December 6, 2019, the Department received an Affidavit for the Voluntary Cancellation of a Portion of Water Right Certificate 42195, partially resolving the deficiency.
7. On June 30, 2020, the Department received an Affidavit for the Voluntary Cancellation of a Portion of a Water Right Certificate, resolving the deficiency.
8. On July 23, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-13299 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 24, 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.
9. On August 6, 2020, the applicant requested to update the mailing address to Stephen Demergasso, 30946 Hyatt Dr., Harrisburg, OR 97446.
10. The portion of the groundwater registration to be modified is as follows:

Registration: Application GR-1629 (Certificate of Registration GR-1593), in the name of GERALD AND MARIE DETERING (*assigned to* STEPHEN YATES-DEMERGASSO)

Use: IRRIGATION of 12.8 ACRES

Tentative

Priority Date: MARCH 1945

Quantity: 111.1 GALLONS PER MINUTE; 32.0 ACRE FEET PER YEAR

Source: PUMP WELL NO. 1

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	4 W	WM	35	SW SE	PUMP WELL NO. 1 - 660 FEET SOUTH AND 580 FEET EAST FROM THE NW CORNER OF THE SWSE CORNER OF SECTION 35

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	4 W	WM	35	SW SE	12.8

11. Groundwater Registration Modification Application T-13299 proposes to modify the location of the original point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Approximate distance from original point of appropriation in miles (mi.)
16 S	4 W	WM	2	NW NW	WELL 1 - 460 FEET SOUTH AND 890 FEET EAST FROM THE NW CORNER OF SECTION 2	0.5 mi.
16 S	4 W	WM	2	SW NW	WELL 2 - SOUTH 37 DEGREES 19 MINUTES EAST, 29.3 CHAINS FROM THE NW CORNER OF SECTION 2	0.5 mi.
16 S	4 W	WM	2	SW NW	WELL 3 - 2080 FEET SOUTH AND 900 FEET EAST FROM THE NW CORNER OF SECTION 2	0.7 mi.

12. Groundwater Registration Modification Application T-13299 proposes to modify the place of use under the groundwater registration to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
16 S	4 W	WM	2	NE NW	6.5
16 S	4 W	WM	2	NW NW	6.3
Total					12.8

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

13. The proposed modifications would not result in enlargement of the groundwater registration.
14. 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.
15. The proposed modifications would not result in injury to other water rights.

Partial Cancellation of a Water Right

16. On December 6, 2019, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen J. Yates-Demergasso. The right to be cancelled is as follows:

Certificate: 42195 in the name of ESTATE OF GERALD W. DETERING and MARIE DETERING (perfected under Permit G-2636)
Use: IRRIGATION of 0.8 ACRE and SUPPLEMENTAL IRRIGATION of 3.2 ACRES
Priority Date: APRIL 20, 1964
Rate: 0.05 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; provided further that the right allowed herein shall be limited to any deficiency in the available supply of any prior right existing for the same land and shall not exceed the limitation allowed herein.
Source: WELL NO. 4, a tributary of AN UNNAMED SLOUGH (WILLAMETTE RIVER)

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q - Q	DLC	Measured Distances
16 S	4 W	WM	2	NW NE	52	WELL NO. 4 – 180 FEET SOUTH AND 3810 FEET EAST FROM THE NW CORNER OF SECTION 2

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	0.8

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	3.2

17. On June 30, 2020, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Stephen J. Yates-Demergasso. The right to be cancelled is as follows:

Certificate: 30889 in the name of GERALD W. and MARIE DETERING (perfected under Permit S-22026)
Use: IRRIGATION and SUPPLEMENTAL IRRIGATION of 3.2 ACRES
Priority Date: JANUARY 12, 1953
Rate: 0.03 CUBIC FOOT PER SECOND (CFS), BEING 0.015 CFS FROM EACH SLOUGH
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: TWO SLOUGHS, WHICH ARE HIGH WATER CHANNELS OF THE WILLAMETTE RIVER, a tributary of WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q - Q	DLC
15 S	4 W	WM	35	SW SW	
15 S	4 W	WM	35	SE SW	
16 S	4 W	WM	1	NW NW	52

Authorized Place of Use:

IRRIGATION AND SUPPLEMENTAL IRRIGATION:					
Twp	Rng	Mer	Sec	Q - Q	Acres
15 S	4 W	WM	35	SW SE	3.2

Determination and Proposed Action

The modification in point of appropriation and modification in place of use proposed in Groundwater Registration Modification T-13299 appear to be consistent with the requirements of ORS 537.610, 537.705, 540.505 to 540.580 and OAR 690-382-1000 and the abandoned rights should be cancelled. If protests are not filed pursuant to OAR 690-382-0900, the modifications will be approved.

If Groundwater Registration Modification T-13299 is approved, the final order will include the following:

1. *The modifications to Registration Application GR-1629 (Certificate of Registration GR-1593) proposed in Groundwater Registration Modification Application T-13299 are recognized and the abandoned rights are cancelled. 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-1629 (Certificate of Registration GR-1593) and any related decree.*
3. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
4. *Water shall no longer be appropriated from the original point of appropriation for the modified place of use, as part of this groundwater certificate of registration.*
5. *The quantity of water diverted at the new points of appropriation (Wells 1, 2, and 3), shall not exceed the quantity of water lawfully available at the original point of appropriation (Pump Well No. 1).*

6. *The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*
7. *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.*
8. *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 **OCT 14 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

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Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 14, 2020

STEPHEN DEMERGASSO
30946 HYATT DR
HARRISBURG, OR 97446

SUBJECT: Water Right Transfer Application T-13299

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13299. 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 Tribune News (Junction City) 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".

Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-13299
Lanaya F. Blakely, District 2 Watermaster *(via e-mail)*
Will McGill Surveying Llc, Agent for the applicant *(via e-mail)*

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