

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING APPROVAL OF RECOGNITION
T-13849, Tillamook County)	OF MODIFICATIONS IN POINT OF
)	APPROPRIATION AND PLACE OF USE

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

JENCK FARMS LLC
C/O DONNIE JENCK
745 THIRD STREET
TILLAMOOK, OR 97141

Findings of Fact

1. On October 12, 2021, JENCK FARMS LLC, C/O DONNIE JENCK filed a groundwater registration modification application for an additional point of appropriation and to modify the place of use under Registration Application GR-2952 (Certificate of Registration GR-2771). The Department assigned the application number T-13849.
2. On September 26, 1972, Registration Application GR-2952 (Certificate of Registration GR-2771) was assigned from HAROLD BEELER to HAROLD AND OR DEANNA BEELER.

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 the newspaper notice or the Department's weekly notice as prescribed by OAR 690-380-4020, whichever is later, of this preliminary determination.

3. On October 24, 1972, Registration Application GR-2952 (Certificate of Registration GR-2771) was assigned from ANTONE AND JOHANNA BEELER to HAROLD AND DEANNA BEELER.
4. On October 26, 2021, Registration Application GR-2952 (Certificate of Registration GR-2771) was partially assigned from HAROLD AND OR DEANNA BEELER to MARY FAITH BELL, CHAIR, TILLAMOOK COUNTY BOARD OF COMMISSIONERS. Registration Application GR-2952 (Certificate of Registration GR-2771) was subsequently partially assigned from MARY FAITH BELL, CHAIR, TILLAMOOK COUNTY BOARD OF COMMISSIONERS to JENCK FARMS, LLC.
5. Notice of the application for groundwater registration modification was published on October 26, 2021, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
6. On April 27, 2023, the Department contacted the applicant's agent to verify whether one of the changes requested, was a change in point of appropriation or an additional point of appropriation. The application indicates an additional point of appropriation under Table 1 and within Table 2. However, the Table 2 column labeled, "POA(s) to be (from Table 1)" identified only Proposed Well 2, which indicates a change in point of appropriation. The Department requested revisions to be submitted.
7. On April 28, 2023, the Department received revisions to the application, resolving the deficiency.
8. On October 2, 2023, the Department mailed a copy of the draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-13839 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 1, 2023, 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 modification.
9. The portion of the groundwater registration to be modified is as follows:

Registration: Application GR-2952 (Certificate of Registration GR-2771), in the name of ANTONE AND JOHANNA BEELER (*partially assigned to JENCK FARMS, LLC*)

Use: IRRIGATION of 60.8 ACRES

Tentative

Priority Date: MAY 1951

Quantity: 156.3 GALLONS PER MINUTE

Duty: 2-3 ACRE-FEET PER YEAR

Source: PUMP WELL

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 W	WM	24	NW SW	WELL 1 - 650 FEET SOUTH AND 310 FEET EAST FROM THE NW CORNER OF THE SW1/4 OF SECTION 24

Original Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	10 W	WM	23	NE SE	8	9.9
1 S	10 W	WM	23	SE SE	8	4.8
1 S	10 W	WM	24	SW NW	1	11.6
1 S	10 W	WM	24	NW SW		31.1
1 S	10 W	WM	24	SW SW	3	3.4
Total						60.8

10. Groundwater Registration Modification Application T-13849 proposes to modify the point of appropriation approximately 0.9 mile from the original well to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	10 W	WM	25	NW SW	PROPOSED WELL 2 - 320 FEET SOUTH AND 1075 FEET EAST FROM THE W/14 CORNER OF SECTION 25

11. Groundwater Registration Modification Application T-13849 also proposes to modify the place of use under the groundwater registration to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	GLot	Acres
1 S	10 W	WM	25	NW SW	9	19.8
1 S	10 W	WM	25	SW SW	9	16.3
1 S	10 W	WM	26	NE SE	12	9.3
1 S	10 W	WM	26	SE SE	13	15.4
Total						60.8

**Review Criteria for Groundwater Registration Modification Applications
[OAR 690-382-0100(10), 690-382-0700(2), 690-382-1000(1) and 690-380-2110(2)]**

12. The proposed modifications would not result in a state Scenic Waterway not receiving previously available water during periods in which stream flows are less than the quantities determined by the Department to be necessary to meet the requirements of ORS 390.835.
13. The proposed point of appropriation develops groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
14. The proposed modifications would not result in enlargement of the registration.
15. The proposed modifications would not result in injury to other water rights.
16. All other application requirements are met.

Determination and Proposed Action

The modification in point of appropriation and modification in place of use proposed in Groundwater Registration Modification T-13849 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.

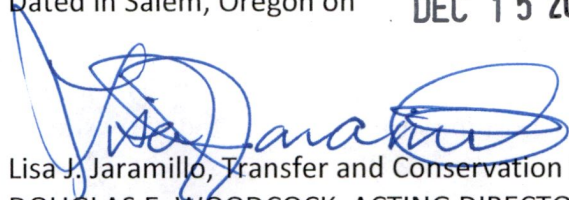
If Groundwater Registration Modification T-13849 is approved, the final order will include the following:

- 1. The modifications to Registration Application GR-2952 (Certificate of Registration GR-2771) proposed in Groundwater Registration Modification Application T-13849 are recognized. 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-2952 (Certificate of Registration GR-2771) and any related decree.*
- 3. Approval of this groundwater registration modification application does not constitute nor grant legal access onto or through another person's property for purposes of accessing the new point of appropriation and the new place of use.*
- 4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 5. Water shall no longer be appropriated from the original point of appropriation as part of this groundwater certificate of registration.*
- 6. The quantity of water diverted at the proposed point of appropriation (Proposed Well 2) shall not exceed the quantity of water lawfully available at the original point of appropriation (Well 1).*
- 7. The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*

8. *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 point of appropriation (new and existing).*
- 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 **DEC 15 2023**



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
DOUGLAS E. WOODCOCK, ACTING 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 503-979-3917 or corey.a.courchane@water.oregon.gov.

Protests

Under the provisions of ORS 540.520(6) & (7) and OAR 690-382-0900, within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0800, whichever is later, any person may file, jointly or severally, a protest expressing opposition of approval of the groundwater registration application and disagreement with this Preliminary Determination or a standing statement in support of this Preliminary Determination. Protests and standing statements must be received by the Water Resources Department within 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0900, whichever is later.

Protests must be in writing and received in hard copy form with the appropriate statutory protest filing fee; protests cannot be filed by electronic mail. [OAR 690-002-0025(3) and 690-382-0900]. and include the following:

- The person's name, address, and telephone number;
- All reasonably ascertainable issues and all reasonably available arguments supporting the person's position by the close of the protest period. Failure to raise a reasonably

ascertainable issue in a protest or failure to provide sufficient specificity to afford the Department an opportunity to respond to the issue may preclude consideration of the issue during the hearing;

- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.

Requests for Standing

Under the provisions of OAR 690-382-0900(5), the Department shall provide to persons who have filed standing statements as defined under OAR 690-382-0100(8) notice of any differences between the Department's Preliminary Determination and the Final Order, notice of a hearing on the application under OAR 137-003-0535, and an opportunity to request limited party status or party status in the hearing.

Requests for standing must be received in the Water Resources Department no later than 30 days after the last date of publication of the newspaper notice or the Department's weekly notice as prescribed by OAR 690-382-0900, whichever is later. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the preliminary determination as issued.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been filed under OAR 690-382-0900. In accordance with OAR 690-382-1100, notice and conduct of the hearing shall:

- Be under the applicable provisions of ORS 183.310 to 183.550, pertaining to contested cases, and the hearing shall be held in the area where the rights are located unless all parties stipulate otherwise; and
- If a protest has asserted that a water right to be transferred has been forfeited through non-use, include the notice and procedures described in OAR 690-017-0500 to 690-017-0900.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear, or fail to appear at a scheduled hearing, the Director may issue a final order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions, or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 690-137-0555, an agency representative may represent partnerships, corporations, associations, governmental subdivisions or public, or private organizations if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Servicemembers: Active-duty servicemembers have a right to stay proceedings under the federal Servicemembers Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at 503-507-2749.

If you have questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.

Address any correspondence to: Oregon Water Resources Department, Transfer and Conservation Section, 725 Summer Street NE, Suite A, Salem OR 97301-1266



Oregon

Tina Kotek, Governor

Water Resources Department

North Mall Office Building

725 Summer St NE, Suite A

Salem, OR 97301

Phone 503 986-0900

Fax 503 986-0904

www.oregon.gov/owrd

December 15, 2023

VIA CERTIFIED MAIL AND E-MAIL

JENCK FARMS LLC
C/O DONNIE JENCK
745 THIRD STREET
TILLAMOOK, OR 97141

SUBJECT: Groundwater Registration Modification T-13849

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13849. 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 Tillamook Headlight Herald 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, whichever is later.

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 corey.a.courchane@water.oregon.gov or (503) 979-3917, if I may be of assistance.

Sincerely,

A handwritten signature in blue ink that reads "Corey Courchane". The signature is fluid and cursive, with the first name "Corey" and last name "Courchane" clearly distinguishable.

Corey Courchane
Allocation of Conserved Water
Transfer and Conservation Section

cc: GR Modification application file T-13849
Nikki M. Hendricks, District 1 Watermaster (*via e-mail*)
Elizabeth Howard, Agent for the applicant (*via e-mail*)

enc