

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

In the Matter of Groundwater)	PRELIMINARY DETERMINATION
Registration Modification Application)	PROPOSING DENIAL OF RECOGNITION
T-13610, Marion County)	OF AN ADDITIONAL POINT 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

JOSE GARCIA
PO BOX 571
AURORA, OR 97002

Findings of Fact

1. On February 4, 2021, JOSE GARCIA, filed a groundwater registration modification application for an additional point of appropriation under Registration Application GR-471 (Certificate of Registration GR-453). The Department assigned the application number T-13610.
2. On February 4, 2021, Registration Application GR-471 (Certificate of Registration GR-453) was partially assigned from Alfred, Carl, and Lucile Hofmann to Jose Garcia.
3. Notice of the application for groundwater registration modification was published on February 23, 2021, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
4. Groundwater Registration Modification T-13610 is an incomplete application because the location information provided for the proposed additional point of appropriation was not provided, which has prevented the Department from completing the review of the

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.

application to ensure the proposed additional point of appropriation, if approved, would not result in injury to other existing water rights, enlargement of the right, or that the proposed point of appropriation would develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).

5. On May 25, 2023, and September 26, 2023, the Department contacted the applicant's agent by phone and email regarding deficiencies as described above in Finding of Fact No. 4. A deadline of June 25, 2023, was originally set for the applicant to provide amended application information. The applicant did not respond to either request for amended information.
6. On June 13, 2024, the Department sent a copy of the draft Preliminary Determination to the applicant, proposing to deny Transfer Application T-13610. The draft Preliminary Determination cover letter provided a deadline of July 13, 2024, for the applicant to respond and submit the required information.
7. As of August 16, 2024, the applicant has not responded to the draft Preliminary Determination.
8. The groundwater registration to be modified is as follows:

Registration: Application GR-471 (Certificate of Registration GR-453), in the name of ALFRED, CARL, AND LUCILE HOFMANN (*partially assigned to JOSE GARCIA*)

Use: IRRIGATION of 20.0 ACRES

Tentative

Priority Date: 1941

Quantity: 200 GALLONS PER MINUTE; 36 ACRE FEET PER YEAR

Source: PUMP WELL #1

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	1 W	WM	19	SW SW	PUMP WELL #1 - NORTH 30 DEGREES 6 MINUTES WEST, 10.986 CHAINS FROM THE SW CORNER OF SECTION 10

Original Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
9 S	2 W	WM	19	SW SW	20.0

9. Groundwater Registration Modification Application T-13610 proposes an additional point of appropriation, however the location information provided is incomplete and the distance from the original point of appropriation cannot be determined. The location information provided by the applicant is as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
9 S	2 W	WM	19	SW SW	NO INFORMATION PROVIDED BY APPLICANT

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)]

10. The proposed modification 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.
11. Due to the deficiencies listed above in Finding of Fact No. 4, a determination could not be made that the proposed additional point of appropriation develops groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2). If the deficiencies are resolved, a review will be done to determine if the proposed additional point of appropriation develops groundwater from the same aquifer as the authorized point of appropriation as required by OAR 690-380-2110(2).
12. Due to the deficiencies listed above in Finding of Fact No. 4, an enlargement determination could not be made. If the deficiencies are resolved, a review will be done to determine if the proposed change would result in enlargement of the water right.
13. Due to the deficiencies listed above in Finding of Fact No. 4, an injury determination could not be made. If the deficiencies are resolved, a review will be done to determine if the proposed change would result in injury to other existing water rights.
14. The application is incomplete due to the deficiencies listed above in Finding of Fact No. 4. Therefore, all other application requirements are not met.

Determination and Proposed Action

The additional point of appropriation proposed in Groundwater Registration Modification T-13610 appears to be **NOT** 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 denied.

If the issues identified in Finding of Fact No. 4 above are resolved and Groundwater Registration Modification Application T-13610 is approved, the final order will include the following:

1. *The modification to Registration Application GR-471 (Certificate of Registration GR-453) proposed in Groundwater Registration Modification Application T-13610 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 contained in Registration Application GR-471 (Certificate of Registration GR-453) 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.*
4. *Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
5. *The combined quantity of water diverted at the proposed additional point of appropriation, together with that diverted at the original point of appropriation (Pump Well #1), shall not exceed the quantity of water lawfully available at the original point of appropriation (Pump Well #1).*

Dated in Salem, Oregon on

AUG 20 2024



Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
IVAN GALL, DIRECTOR
Oregon Water Resources Department

This Preliminary Determination was prepared by Arla L Davis. If you have questions about the information in this document you may reach me at 503-979-3129 or arla.l.davis@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

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725 Summer St NE, Suite A
Salem, OR 97301
Phone 503 986-0900
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www.oregon.gov/owrd

August 20, 2024

VIA CERTIFIED MAIL AND E-MAIL

JOSE GARCIA
PO BOX 571
AURORA, OR 97002

SUBJECT: Water Right Transfer Application T-13610

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to deny application T-13610. This document is an intermediate step in the denial process; water may not be used legally as proposed in the transfer application until a Final Order approving the transfer 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 Department's notice.

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 don't hesitate to contact me at 503-979-3129 or arla.l.davis@water.oregon.gov, if I may be of assistance.

Sincerely,

Arla L Davis

Arla L Davis
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-13610
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
Lyle Misbach, Agent for the applicant (*via e-mail*)

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