

**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-13294, Marion County)	OF MODIFICATIONS IN POINT OF
)	APPROPRIATION, MODIFICIATION IN
)	PLACE OF USE, AND MODIFICATION IN
)	CHARACTER 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

TRACY WILDER
OREGON DEPARTMENT OF CORRECTIONS
3601 STATE STREET
SALEM, OR 97301

Findings of Fact

1. On November 27, 2019, Chad Naugle, Oregon Department of Corrections, filed a groundwater registration modification application to modify the point of appropriation, to modify the place of use, and to modify the character of use under Groundwater Registration Application GR-691 (Certificate of Registration GR-689). The Department assigned the application number T-13294.
2. On November 12, 2019, Groundwater Registration Application GR-691 (Certificate of Registration GR-689) was assigned from the Oregon State Hospital to the Oregon Department of Corrections (DOC).
3. 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.

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.

4. On January 28, 2021, the Department contacted the applicant's agent (GSI Water Solutions) by written correspondence to notify the applicant and applicant's agent of a deficiency in the application. The Department requires non-district applicants to communicate with districts/ water suppliers during the planning and preparation of transfer applications involving water rights having a point of diversion or appropriation (POD/POA) or place of use (POU) served by or located within the boundaries of an irrigation district. Groundwater Registration GR-691 and the changes proposed under Groundwater Registration Application T-13294 are located within the boundaries of the Santiam Water Control District (the District).
5. The Groundwater Registration Modification Application T-13294, as submitted to the Department on November 27, 2019, proposed to change the character of use from Domestic Use to Irrigation of 35.7 acres. The changes in place of use and character of use for Irrigation would layer that use with Certificate 68665, in the name of Santiam Water Control District (the District). Application T-13294, as originally proposed, identified the intention to work with the District to diminish Certificate 68665 to be supplemental to a new irrigation use approved under Groundwater Registration Modification Application T-13294. Pursuant to ORS 540.580, only districts can request to make changes to their water rights.
6. On February 5, 2021, the agent for the applicant requested additional time to resolve issues regarding Groundwater Registration GR-691 (Certificate of Registration GR-689), layering with Certificate 68665, and the District granting consenting to the diminishment of Certificate 68665.
7. On September 15, 2022, the agent, on behalf of the applicant, submitted a request to amend Groundwater Registration Modification Application T-13294. The amendment requested by the applicant includes:
 - a) Modification of the proposed change in character of use to Commercial Use for a Detention Facility;
 - b) Modification of the proposed change in place of use to cover a larger area;
 - c) Addition of Well 3B to the modified groundwater registration modification application; and
 - d) Amended application materials including:
 - i) Updated applicant contact information (Tracy Wilder for Department of Corrections);
 - ii) An updated Table 2 describing the proposed place of use;
 - iii) An updated application map showing the amended place of use and additional well (Well 3(B)); and
 - iv) An updated Land Use Information Form signed by the City of Salem Public Works/ Planning Department.
8. On July 24, 2023, the agent, on behalf of the applicant, clarified that Well 3(B) should not have been included with the amended application materials. A revised application map, with Well 3(B) removed, was provided to the Department.
9. On February 16, 2024, the Department sent a copy of the draft Preliminary Determination (DPD) proposing to deny Groundwater Registration Modification Application T-13294 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of March 18, 2024, for the applicant to respond.

10. On March 7, 2024, the Department met with the agent for the applicant via Teams meeting to discuss the issues outlined in the DPD denying Groundwater Registration Modification Application T-13294.
11. On March 17, 2024, the agent for the applicant requested an additional three weeks to respond to the DPD. The Department granted this request and extended the deadline for response to the DPD to April 8, 2024.
12. On April 5, 2024, the agent for the applicant submitted amended application materials in response to the denial of Groundwater Registration Modification Application T-13294:
 - A. As it relates to the change in character of use from domestic to commercial requested by Groundwater Registration Modification Application T-13294, the Department agrees that the following clarification of the proposed use of groundwater under GR-691 resolves this issue:

The proposed use under T-13294 is intended to reflect that the Department no longer considers the character of use under GR-691 to be domestic use as it is not being used at a residence and would characterize the use as commercial use. Historically the use of water under GR-691 was within a state institution (Oregon State Hospital). The proposed use under T-13294, will continue to be used similar to the use claimed under GR-691 and will allow the use within a state institution (Oregon Department of Corrections) to continue and preserve the right in a future groundwater adjudication by ensuring the water use is correctly characterized.
 - B. As it relates to the application map issues:

The revised map includes the following information identified by the Department as deficient:

 - i) The original well for GR-691 is misidentified on the application map. The map shows the well in the wrong quarter-quarter and lists the wrong Well Log number and location coordinates. The revised map includes this requested information.
 - ii) Label and identify the direction of flow of Fruitland Creek, West Middle Fork Pudding River and any other water body. The revised map includes this requested information.
 - iii) Labeling for the type of use (original and proposed). The Department concluded that this information is not required.
 - iv) Labeling for the priority date of both the FROM and TO Lands. The Department concluded that this information is not required.
 - v) The major water delivery system features from the original point of appropriation to the original place of use. The revised map includes this information.
 - C. As it relates to the Department's request for a Supplemental Form D and notification of Groundwater Registration Modification Application T-13294 to the Irrigation District. The submitted a supplemental form D to the Department, satisfying this issue.
13. The cover letter included with the DPD denying Groundwater Registration Modification Application T-13294 also requested the application to submit Report of Ownership Information to the Department. The agent for the applicant clarified with the Department that incorrect information was provided by the original application, and the Department of Corrections qualifies as a municipality, as defined in ORS 540.510(3)(b).

14. the Department sent a copy of the Revised Draft Preliminary Determination proposing to approve Groundwater Registration Modification Application T-13294 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 23, 2025, for the applicant to respond. On January 28, 2025, the agent for the applicant requested that the Department proceed with issuance of a Preliminary Determination.

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

Registration: Groundwater Registration Application GR-691 (Certificate of Registration GR-689), in the name of State of Oregon, Oregon State Hospital (*assigned to Oregon Department of Corrections*)

Use: DOMESTIC USE

Tentative

Priority Date: MAY 1947

Quantity: 200.0 GALLONS PER MINUTE (GPM)

Volume: 326.0 ACRE-FEET (AF) per year

Source: Pump Well #3

Original Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	2 W	WM	5	SE NW	PUMP WELL #3 - 2227 FEET SOUTH AND 3439 FEET WEST FROM THE NE CORNER OF SECTION 5

Original Place of Use:

DOMESTIC USE				
Twp	Rng	Mer	Sec	Q-Q
8 S	2 W	WM	8	SW NE
8 S	2 W	WM	8	SE NW
8 S	2 W	WM	8	NE SW
8 S	2 W	WM	8	NW SE

16. Groundwater Registration Modification Application T-13294, as amended, proposes to modify the location of the original point of appropriation with approximate distances from the original well as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Distance from Auth POA
8 S	2 W	WM	5	NE SE	WELL 3: 1775 FEET NORTH AND 600 FEET WEST FROM THE SE CORNER OF SECTION 5	0.55 Mile SE
8 S	2 W	WM	5	SW SE	WELL 1(A): 745 FEET NORTH AND 1635 FEET WEST FROM THE SE CORNER OF SECTION 5	0.53 Mile SE
8 S	2 W	WM	5	SW SE	WELL 1(B): 290 FEET NORTH AND 1335 FEET WEST FROM THE SE CORNER OF SECTION 5	0.63 Mile SE
8 S	2 W	WM	5	SE SE	WELL 2(A): 1245 FEET NORTH AND 1140 FEET WEST FROM THE SE CORNER OF SECTION 5	0.53 Mile SE
8 S	2 W	WM	8	NE NE	WELL 2(B): 40 FEET SOUTH AND 1055 FEET WEST FROM THE SE CORNER OF SECTION 5	0.71 Mile SE

17. Groundwater Registration Modification Application T-13294, as amended, proposes to modify the place of use under the ground water registration to:

COMMERCIAL USE WITHIN A DETENTION FACILITY					
Twp	Rng	Mer	Sec	Q-Q	DLC
8 S	2 W	WM	4	NW SW	47
8 S	2 W	WM	4	SW SW	47
8 S	2 W	WM	4	SE SW	47
8 S	2 W	WM	5	NE SE	47
8 S	2 W	WM	5	SW SE	46
8 S	2 W	WM	5	SW SE	47
8 S	2 W	WM	5	SE SE	46
8 S	2 W	WM	5	SE SE	47
8 S	2 W	WM	8	NE NE	46
8 S	2 W	WM	8	NE NE	47
8 S	2 W	WM	8	NW NE	46
8 S	2 W	WM	8	SE NE	46
8 S	2 W	WM	8	SE NE	
8 S	2 W	WM	8	NE SE	46
8 S	2 W	WM	8	NE SE	
8 S	2 W	WM	8	NW SE	46
8 S	2 W	WM	8	NW SE	
8 S	2 W	WM	9	NW NE	
8 S	2 W	WM	9	SW NE	
8 S	2 W	WM	9	NE NW	47
8 S	2 W	WM	9	NE NW	
8 S	2 W	WM	9	NW NW	46
8 S	2 W	WM	9	NW NW	47
8 S	2 W	WM	9	NW NW	
8 S	2 W	WM	9	SW NW	46
8 S	2 W	WM	9	SW NW	47
8 S	2 W	WM	9	SW NW	
8 S	2 W	WM	9	SE NW	

18. Groundwater Registration Modification Application T-13294, as amended, proposes to modify the character of use under the groundwater registration to Commercial Use within a Detention Facility.

Review Criteria for Groundwater Registration Modification Applications [OAR 690-382-0100(10), 690-382-0700(2), 690-382-1000(1), 690-380-2110(2), 690-380-2200, and 690-380-2300]

19. 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.
20. The proposed points of appropriation develop groundwater from the same aquifer as the authorized point of appropriation, as required by OAR 690-380-2110(2).
21. The proposed modifications, as conditioned, would not result in enlargement of the registration.

22. The proposed modifications would not result in injury to other water rights.
23. Use of groundwater for irrigation use will be limited to no more than 0.5 acre for any Commercial Use authorized under Groundwater Registration GR-691, modified under T-13294.

Determination and Proposed Action

The modification in point of appropriation, modification in place of use and modification in character of use proposed in Groundwater Registration Modification T-13294 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.

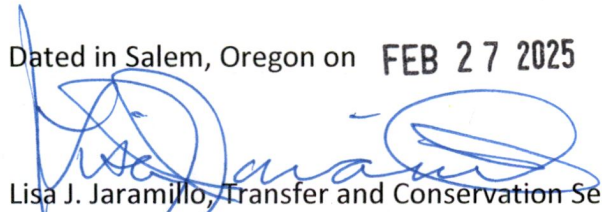
If Groundwater Registration Modification Application T-13294 is approved, the final order will include the following:

1. *The modifications to Groundwater Registration GR-691 (Certificate of Registration GR-689) proposed in Groundwater Registration Modification Application T-13294 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 Groundwater Registration Application GR-691 (Certificate of Registration GR-689) 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 points 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 (Pump Well #3) as part of this groundwater certificate of registration.*
6. *The quantity of water diverted at the proposed points of appropriation (Wells 3(A), 2(A), 1(A), 1(B), and 2(B)) shall not exceed the quantity of water lawfully available at the original point of appropriation (Pump Well #3).*
7. *The area of irrigation and/or landscape maintenance under the proposed use shall be limited to no more than 0.5 acre under Groundwater Registration GR-691, modified under T-13294.*
8. *Water shall no longer be appropriated for the former character of use as part of this groundwater certificate of registration.*
9. *The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*

10. *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 **FEB 27 2025**


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

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

February 27, 2025

VIA CERTIFIED MAIL AND E-MAIL

OREGON DEPARTMENT OF CORRECTIONS
ATTN: TRACY WILDER
3601 STATE STREET
SALEM, OR 97301

SUBJECT: Water Right Transfer Application T-13294

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13294. 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 Statesman Journal 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.

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-13294 **Error! Reference source not found.**
Gregory J. Wacker, District 16 Watermaster (*via e-mail*)
GSI Water Solutions Inc., Agent for the applicant (*via e-mail*)

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