

**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-13846, Washington County	)	OF A MODIFICATION IN 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**

OREGON BERRY PACKING CO.  
C/O JEFF MALENSKY  
PO BOX 1336  
HILLSBORO, OR 97123

**Findings of Fact**

1. On July 13, 2021, OREGON BERRY PACKING CO. filed a Groundwater Registration Modification (GR-Mod) Application to modify the place of use under Registration Application GR-478 (Certificate of Registration GR- 460). The Department assigned the application number T-13846
2. Notice of the application for GR-Mod was published on October 26, 2021, pursuant to OAR 690-382-0600. No comments were filed in response to the notice.
3. On April 18, 2024, the Department sent a copy of the draft Preliminary Determination proposing to approve GR-Mod Application T-13846 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 18, 2024, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.

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. The draft Preliminary Determination sent April 18, 2024, did not include the identified layering of Certificates 62442, 83064, and GR-478.
5. On April 1, 2025, the Department contacted the applicant's agent regarding a deficiency in the Report of Ownership Information provided, specifically, the applicant is not the deeded landowner.
6. On April 28, 2025, the applicant's agent provided a consent form and the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
7. On June 11, 2025, the applicant's agent notified the Department Certificate 62442 is acting as a supplemental water right for the sake of this transfer. Its period of use is during the non-irrigation season and will be moving its place of use to "like" primary Certificates 94282, 94550, and 94551 per OAR 690-382-0200(5).
8. On June 17, 2025, the applicant's agent notified the Department that Certificate 83064 is a primary right to make up a deficiency in GR-478. The points of appropriation for GR-478 do not produce enough water for the authorized places of use as stated on January 29, 1987, in Certificate 83064's application (G-11597) Addendum B (Addendum). Certificate 83064 and GR-478 have places of use that are moving together per OAR 690-382-0200(1).
9. On July 3, 2025, the Department found further evidence in the physical file of Certificate 83064 Addendum shows that the rate for each well under GR-478 has been diminished to lessen the amount of sand pumped by each well. The wells show to be diminished to:

Well Name	Initial Well Rate (GPM)	Diminished Well Rate (GPM)
Well #1	100 GPM	20 GPM
Well #2	60 GPM	20 GPM
Well #3	150 GPM	25 GPM
Well #4	100 GPM	30 GPM

10. In a letter to the applicant of G-11597 dated March 19, 1987 (1987 Letter), the Department stated that the applicant was unable to formally apply for a change in points of appropriation for GR-478, and to file a new application to protect the applicant at that time's current development.
11. Because the applicant for Certificate 83064 was previously instructed by the Department to file a new application to develop new wells and diminish the rate in the authorized points of appropriation in GR-478 to account for the new wells in Certificate 83064, the Department finds that there is no need to further diminish Certificate 83064 to a supplemental irrigation right under OAR 690-380-5120.



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

**Registration:** Application GR-478 (Certificate of Registration GR-460), in the name of LOUIS R. MALENSKY (*assigned to OREGON BERRY PACKING CO.*)

**Use:** IRRIGATION of 68.46 ACRES

**Tentative**

**Priority Date:** PUMP WELL #1 - SPRING 1949, PUMP WELL #2 - SPRING 1948, PUMP WELL #3 - SUMMER 1953, PUMP WELL #4 - FALL 1949

**Quantity:** 100 GPM FROM PUMP WELL #1, 60 GPM FROM PUMP WELL #2, 150 GPM FROM PUMP WELL #3 AND 100 GPM FROM PUMP WELL #4.

**Source:** PUMP WELL #1, PUMP WELL #2, PUMP WELL #3, AND PUMP WELL #4 within the TUALATIN RIVER BASIN

**Original Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1 S	2 W	WM	18	SE SW	PUMP WELL #1 - SOUTH 37 DEGREES, 42 MINUTES EAST, 1172.49 FEET FROM THE NE CORNER OF DLC 63
1 S	2 W	WM	18	SE SW	PUMP WELL #2 - SOUTH 34 DEGREES, 22 MINUTES EAST, 1304.26 FEET FROM THE NE CORNER OF DLC 63
1 S	2 W	WM	19	NW NE	PUMP WELL #4 - SOUTH 54 DEGREES, 56 MINUTES EAST, 2400.09 FEET FROM THE NE CORNER OF DLC 63
1 S	2 W	WM	19	NE NW	PUMP WELL #3 - SOUTH 38 DEGREES, 22 MINUTES EAST, 2092.72 FEET FROM THE NE CORNER OF DLC 63

**Original Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
1 S	2 W	WM	18	SE SW	22.40
1 S	2 W	WM	18	SW SE	11.60
1 S	2 W	WM	19	NW NE	14.96
1 S	2 W	WM	19	NE NW	19.50
TOTAL					68.46

13. Groundwater Registration Modification Application T-13846 proposes to modify the place of use under the ground water registration to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	DLC	Glod	Tax Lot	Acres
1 S	2 W	WM	18	SW SW	63		300	3.8
1 S	2 W	WM	18	SW SW		3	300	0.6
1 S	2 W	WM	18	SE SW		3	800	0.3
1 S	2 W	WM	18	SE SW		3	200	4.46
1 S	2 W	WM	18	SW SE			200	3.7
1 S	2 W	WM	19	NW NE			200	3.4
1 S	2 W	WM	19	NW NE	63		200	0.1
1 S	2 W	WM	19	NE NW		1	200	3.7
1 S	2 W	WM	19	NW NW	63		300	25.5
1 S	2 W	WM	19	SW NW	63		300	22.9
TOTAL								68.46

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

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

**Determination and Proposed Action**

The modification in place of use proposed in Groundwater Registration Modification T-13846 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-13846 is approved, the final order will include the following:*

1. *The modification to Registration Application GR-478 (Certificate of Registration GR-460) proposed in Groundwater Registration Modification Application T-13846 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-478 (Certificate of Registration GR-460) and any related decree.*
3. *The former place of use of the modified groundwater registration shall no longer receive water as part of the groundwater certificate of registration.*

Dated in Salem, Oregon on **AUG 12 2025**



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

<p>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 <a href="mailto:arla.l.davis@water.oregon.gov">arla.l.davis@water.oregon.gov</a></p>
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## **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





# Oregon

Tina Kotek, Governor

## Water Resources Department

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August 12, 2025

OREGON BERRY PACKING CO.  
C/O JEFF MALENSKY  
PO BOX 1336  
HILLSBORO, OR 97123

VIA CERTIFIED MAIL AND E-MAIL

SUBJECT: Groundwater Registration Modification (GR-Mod) T-13846

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-13846**Error! Reference source not found.** This document is an intermediate step in the approval process; water may not be used legally as proposed in the GR-Mod 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 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 do not hesitate to contact me at Please don't hesitate to contact me at 503-871-1889 or [Lisa.J.Jaramillo@water.oregon.gov](mailto:Lisa.J.Jaramillo@water.oregon.gov) if I may be of assistance.

Sincerely,

*Arla L Davis*

Arla L DavisLisa Jaramillo  
GR-Mod Specialist  
Transfers and Conservation Section

cc: GR-Mod Application file T-13846**Error! Reference source not found.**  
Jacob W. Constans, District 18 Watermaster (*via e-mail*)  
Eric Urstadt, Agent for the applicant (*via e-mail*)

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