

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

In the Matter of Transfer Application)
T-10987, Grant County)
)
)

FINAL ORDER APPROVING AN
ADDITIONAL POINT OF DIVERSION,
AND PARTIAL CANCELLATION OF A
WATER RIGHT

Authority

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department’s procedures and criteria for evaluating transfer 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

ERIKA WATSON
CG ENTERPRISES, LLC
30339 NORTH RIVER ROAD
PRAIRIE CITY, OR 97869

Findings of Fact

Background

On December 10, 2009, CG Enterprises, LLC filed an application for an additional point of diversion under Certificate 25550 and partial cancellation of Certificate 23240. The Department assigned the application number T-10987.

1. The portion right to be transferred is as follows:

Certificate: 25550 in the name of G T Meador (confirmed by John Day River Decree)
Use: IRRIGATION of 133.1 ACRES, LIVESTOCK AND DOMESTIC
Priority Date: 1867
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-FORTIETH of one cubic foot per second per acre irrigated from April 1 to September 30; further limited to 1.0 acre-foot per acre per calendar

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

month to July 1 and ¾ acre-foot per acre thereafter; total 5.0 acre-feet per acre for season, measured at the point of diversion.

Period of Use: April 1 through September 30

Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Place of Use:

IRRIGATION, LIVESTOCK AND DOMESTIC					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	8	SW NW	4.0
13 S	34 E	WM	8	NE SW	20.6
13 S	34 E	WM	8	NW SW	37.0
13 S	34 E	WM	8	SW SW	31.5
13 S	34 E	WM	8	SE SW	40.0

2. Certificate 25550 does not specify the point of diversion; however, information from the John Day River Decree indicates water is to be delivered via the Tucker Ditch. Additional information from the Certified Water Right Examiner indicates the authorized point of diversion is located as follows:

Twp	Rng	Mer	Sec	Q-Q
13 S	34 E	WM	16	SW NW

3. Transfer Application T-10987 proposes an additional point of diversion approximately ½ mile downstream to:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
13 S	34 E	WM	17	NW NE	890 FEET SOUTH AND 1770 FEET WEST FROM THE NE CORNER OF SECTION 17

4. Notice of the application for transfer was published on December 29, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
5. The Oregon Department of Fish and Wildlife (ODFW) has determined that a fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. This diversion may be eligible for screening cost share funds.
6. On July 8, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10987 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of August 8, 2010, 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.
7. On August 26, 2010, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10987 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the

Department's weekly notice on August 31, 2010, and in the Blue Mountain Eagle newspaper on September 8, 15, and 22, 2010, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria OAR 690-380-4010(2)

- 8. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 9. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Transfer Application T-10987.
- 10. The proposed change would not result in enlargement of the right.
- 11. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 12. On December 10, 2009, an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of the right was received from Erica Watson, Manager of CG Enterprises, LLC. The right to be cancelled is as follows:

Certificate: 23240 in the name of George T. and Garland Meador (perfected under Permit S-20892)
Use: SUPPLEMENTAL IRRIGATION of 128.6 ACRES
Priority Date: DECEMBER 5, 1951
Rate: 3.21 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, is limited to a diversion of ONE-FORTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: JOHN DAY RIVER, tributary to the COLUMBIA RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
13 S	34 E	WM	17	NW NE

Authorized Place of Use to be Cancelled:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
13 S	34 E	WM	8	SW NW	0.7
13 S	34 E	WM	8	NE SW	20.6
13 S	34 E	WM	8	NW SW	37.0
13 S	34 E	WM	8	SW SW	31.5
13 S	34 E	WM	8	SE SW	38.8

Conclusions of Law


The additional point of diversion proposed in Transfer Application T-10987 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled.

Now, therefore, it is ORDERED:

1. The additional point of diversion proposed in application T-10987 is approved. The portion of Certificate 23240 that has been abandoned is cancelled.
2. The right to 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 Certificate 25550 and any related decree.
3. Water right certificate 25550 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and cancellation.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
5. 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 diversion.
 - 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.
6. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain the headgate as required by the Department.

7. Prior to diverting water, the water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
8. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2012**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
9. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25 day of October, 2010.


Dwight French for
PHILLIP C. WARD, DIRECTOR

OCT 27 2010

Mailing Date: _____