

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

In the Matter of Transfer Application) FINAL ORDER APPROVING CHANGE
T-9640, Umatilla County, Oregon) IN PLACE OF USE, POINT OF
) APPROPRIATION, AND CHARACTER
) OF USE

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.

Applicant

R & J Water Company
c/o Roy Woolliams
P.O. Box 826
Hermiston, Oregon 97838

Findings of Fact

1. R & J Water Company filed an application to change the place of use, add a point of appropriation, and change the character of use under Certificate 75737. The Department assigned the application number T-9640.
2. The portion of the right to be transferred is as follows:

Certificate: 75737 in the name of C & B Livestock, Inc.

Use: Dust Control

Priority Date: September 7, 1965

Quantity: 0.90 cubic feet per second (cfs)

Source: Well #2 within the Umatilla Basin

Authorized Point of Appropriation:

Township		Range		Meridian	Sec	¼ ¼	Location
4	N	28	E	W.M.	22	SE SW	10'N & 1330'E from SW corner, Sec. 22

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

Authorized Place of Use:

Township		Range		Meridian	Sec	¼ ¼	Use
4	N	28	E	W.M.	21	NE SE	Dust Control
4	N	28	E	W.M.	21	NW SE	Dust Control
4	N	28	E	W.M.	21	SW SE	Dust Control
4	N	28	E	W.M.	21	SE SE	Dust Control
4	N	28	E	W.M.	22	SW SW	Dust Control

3. Application T-9640 proposes to add an additional point of appropriation approximately 100 feet from the existing authorized point of appropriation in the Umatilla Basin at:

Township		Range		Meridian	Sec	¼ ¼	Location
4	N	28	E	W.M.	22	SW SW	100'N & 1310'E from SW corner, Sec. 22

4. Application T-9640 also proposes to change the character of use to Quasi-Municipal.

5. Application T-9640 also proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	¼ ¼	Use
4	N	28	E	W.M.	21	SE NE	Quasi-Municipal
4	N	28	E	W.M.	21	NE SE	Quasi-Municipal
4	N	28	E	W.M.	21	NW SE	Quasi-Municipal
4	N	28	E	W.M.	21	SW SE	Quasi-Municipal
4	N	28	E	W.M.	21	SE SE	Quasi-Municipal
4	N	28	E	W.M.	22	SW NW	Quasi-Municipal
4	N	28	E	W.M.	22	SE NW	Quasi-Municipal
4	N	28	E	W.M.	22	NE SW	Quasi-Municipal
4	N	28	E	W.M.	22	NW SW	Quasi-Municipal
4	N	28	E	W.M.	22	SW SW	Quasi-Municipal
4	N	28	E	W.M.	22	SE SW	Quasi-Municipal
4	N	28	E	W.M.	22	NW SE	Quasi-Municipal
4	N	28	E	W.M.	22	SW SE	Quasi-Municipal

6. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

7. Water has been reportedly used within the last five years according to the terms and conditions of the right and no evidence has been submitted that would demonstrate that the right is subject to forfeiture under ORS 540.610.

8. Absent the limitation that water may only be diverted as necessary to achieve the authorized beneficial use without waste, the total annual quantity of water diverted under the right proposed for transfer would be 650 acre-feet ($0.90 \text{ cfs} \times 1.98 \times 365 \text{ days}$) if taken continuously at the maximum authorized rate.
9. The transfer application indicates that the right has been exercised through the use of a 20,000 gallon storage tank from which two water tankers with a combined capacity of 16,000 gallons are filled and used to spread water in the feedlot, roads and other areas to control dust. It would take approximately 50 minutes pumping at the maximum authorized rate to fill the storage tank.
10. The affidavit attesting to the use of water included with the application indicates that the pump discharges to a 20,000 gallon storage tank from which water trucks and tankers are filled. The water trucks and tankers are used to control dust in the feedlot, roads and other areas of feedlot operation.
11. The applicant provided power usage records and an estimate of the quantity of water pumped by the well supplying the right asserting that a total of 409.2 acre-feet were pumped. The estimate is based on a calculated flow rate at the pump of 402 gallons per minute (gpm).
12. In calculating the flow rate at the pump, the applicant assumed drawdown to be 10 feet. However, based on the Department's experience with other wells in the area, drawdown in the well likely would be closer to 30 feet if sustained pumping at 402 gpm had occurred. Alternatively, the flow rate at the pump likely was closer to 200 gpm if drawdown was limited to 10 feet. This is corroborated by the Claim of Beneficial Use for Transfer T-7532 in which the total head and flow that C&B #2 well is capable of producing is calculated as 275 gpm.
13. Given the use authorized under certificate 75737, the total volume at the full face value of the right could not be beneficially used.
14. On March 1, 2005, the Department issued a Preliminary Determination proposing to reject the application.
15. On March 31, 2005, Department staff met with the applicant's representatives to estimate the quantity of water that could be beneficially used under the existing water right. The water right is used extensively during summer months for dust control. The water is used during the remaining months to a lesser extent. Based on the applicant's actual use and consideration of climatic conditions, approximately 165 acre-feet could be used annually under the existing water right.
16. On April 18, 2005, the applicant filed a timely protest and agreed to limit the total annual quantity of water to be used under the transferred right to 165 acre-feet.

17. The proposed changes would not result in enlargement of the right if the use of water proposed in the application is limited to 165 acre-feet annually.
18. The proposed change would not result in injury to other water rights.
19. A Settlement Agreement resolving the Applicant's protest was entered into on September 30, 2005 between the Department and the Applicant. The Settlement Agreement is incorporated into and attached to this Final Order.

Conclusions of Law

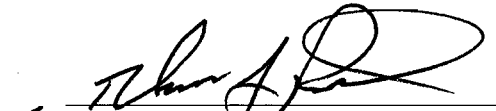
The changes in point of appropriation, place of use, and character of use proposed in application T-9640 and as conditioned are consistent with the requirements of ORS 537.705 and 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes in point of appropriation, place of use, and character of use proposed in application T-9640 are approved.
2. Water right certificate 75737 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer.
3. The right to 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 75737 and any related decree.
4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
5. The proposed change shall be completed on or before October 1, 2006.
6. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.
7. The quantity of water diverted at the additional point of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation. In addition, the total quantity of water annually used under the right shall be limited to no more than 165 acre-feet.

8. Prior to diverting water at the new point of appropriation, the water user shall install and maintain an in-line flow meter or other suitable device for measuring and recording the quantity of water appropriated. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 2 day of November, 2005.


Phillip C. Ward
Director

Mailing date: NOV 03 2005

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
T-9640 in the name of R & J Water Company,) **SETTLEMENT**
Applicant and Protestant) **AGREEMENT**
)
)
_____)

The Oregon Water Resources Department ("Department") and R & J Water Company ("Applicant"), referred to collectively as "the Parties" and each individually a "Party," do hereby stipulate and agree in this "Settlement Agreement" as follows:

Stipulations

- I. On February 6, 2004, R & J Water Company filed an application to change the place of use, add a point of appropriation, and change the character of use under Certificate 75737. The Department assigned the application number T-9640.
- II. On March 1, 2005, the Department issued a Preliminary Determination proposing to reject the application.
- III. On April 18, 2005, the applicant filed a timely protest and agreed to limit the total annual quantity of water to be used under the transferred right to 165 acre-feet.
- IV. The Department's continuing evaluation reveals that a Final Order should be issued consistent with the draft Final Order which is attached and incorporated into this Settlement Agreement.
- V. The Parties agree that all issues raised in the Applicant's protest are resolved solely on the following terms.

Terms of Agreement

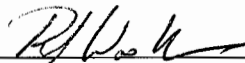
- 1. In signing this Settlement Agreement, the Applicant withdraws its protest to the Preliminary Determination for transfer application T-9640 with prejudice.
- 2. The Applicant waives all right and opportunity to file protests, requests for contested case hearings, requests for reconsideration, exceptions, judicial review, and any other procedures for requesting review of the Final Order on transfer application T-9640 or this Settlement Agreement.
- 3. Within 30 days after all Parties have signed this Settlement Agreement, OWRD will issue a Final Order consistent with the draft Final Order attached to this Settlement Agreement. The Final Order will incorporate this Settlement Agreement by reference and as an attachment. Within the same 30-day period,

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SALEM, OREGON


OWRD will also refund the \$250.00 protest fee to the Applicant.

4. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
5. Each Party to this Settlement Agreement certifies that they have read the entire Settlement Agreement, draft Final Order, and draft Permit, and understand and agree with the entire contents thereof.



R. & J. Water Company
c/o Roy Woolliams
P.O. Box 826
Hermiston, Oregon 97838

September 30/05
DATE



Tom Paul, Acting Deputy Director
for
Phil Ward, Director
Oregon Water Resources Department
725 Summer St. NE, Suite A
Salem, OR 97301-1271

DATE

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

In the Matter of Transfer Application) **DRAFT** FINAL ORDER APPROVING
T-9640, Umatilla County, Oregon) CHANGE IN PLACE OF USE, POINT
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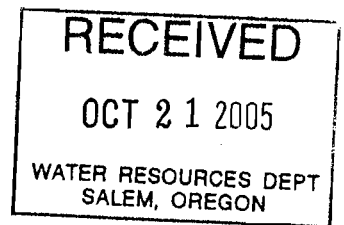
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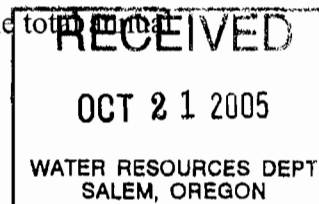
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9. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this ____ day of _____, 2005.

DRAFT - DO NOT SIGN

Phillip C. Ward
Director

Mailing date: _____

