

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

In the Matter of Transfer Application)
T-10427, Umatilla County)
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)

FINAL ORDER APPROVING A
CHANGE IN POINT OF
APPROPRIATION, PLACE OF USE,
AND CHARACTER OF USE, 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
CRAIG COLEMAN
33896 E. WALLS ROAD
HERMISTON, OREGON 97838

Receiving Landowner
FLYING J INC.
1104 COUNTRY HILLS DRIVE
OGDEN, UTAH 84403

Findings of Fact

Background

1. On July 2, 2007, Craig Coleman filed an application to change the character of use, place of use, and point of appropriation under Certificate 80913. The Department assigned the application number T-10427.
2. On July 2, 2007, the applicant submitted an Affidavit for Partial Cancellation of a Water Right Certificate requesting to voluntarily cancel 13.5 acres of supplemental irrigation use under Certificate 80915 appurtenant to tax lot 2300, in the NW ¼ of the NW ¼ of Section 36, T4N, R27E (the same lands listed in Finding of Fact #17). The portion of the supplemental right which the applicant has proposed to cancel is a part of the lands affected

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.

by Transfer T-9996, and is currently in an inchoate state, (Certificate 80915 having been cancelled by the T-9996 order recorded at Special Order Volume 68, pages 52-55.)

3. The portion of the right to be transferred is as follows:

Certificate: 80913 in the name of HANSELL BROTHERS, INC. (perfected under Permit U-649)

Use: IRRIGATION of 13.5 ACRES

Priority Date: AUGUST 9, 1954

Rate: 0.11 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year

Source: A WELL in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 N	27 E	WM	36	SW NW	Well #9 - 1884 FEET SOUTH AND 1315 FEET EAST FROM THE NW CORNER OF SECTION 36

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	27 E	WM	36	NW NW	13.50

4. Application T-10427 proposes to move the authorized point of appropriation approximately 1.4 miles northeast from the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 N	27 E	WM	25	NW NE	590 FEET SOUTH AND 1420 FEET WEST FROM THE NE CORNER OF SECTION 25

5. Application T-10427 proposes to change the character of use from irrigation to industrial use.

6. Application T-10427 also proposes to change the place of use of the right to:

INDUSTRIAL				
Twp	Rng	Mer	Sec	Q-Q
4 N	27 E	WM	25	NE NE
4 N	27 E	WM	25	NW NE
4 N	27 E	WM	25	SW NE
4 N	27 E	WM	25	SE NE

7. Notice of the application for transfer was published on July 17, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On October 15, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10427 to the applicant. The draft Preliminary Determination set forth a deadline of November 30, 2007, 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.

9. On January 28, 2008, the Department issued a Preliminary Determination proposing to approve Transfer T-10427 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 February 5, 2008, and in the East Oregonian newspaper on February 9, 16 and 23, 2008, 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)

10. Water has been used within the last five years according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing right were present within the five-year period prior to submittal of Application T-10427.
12. The proposed change would not result in enlargement of the right, as long as the new use is limited to a rate of 50 gallons per minute (0.11 cubic feet per second) and does not exceed the maximum annual duty allowed for the original use, being 40.5 acre-feet per year.
13. The proposed change would not result in injury to other water rights.
14. The receiving landowner is Flying J Inc., who will be responsible for proving up on the changes from 13.5 acres of irrigation use to industrial use.

Partial Cancellation of Water Rights

15. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer. The supplemental right under Certificate 82596 is not included in transfer application T-10427, and will be cancelled upon issuance of a final order approving T-10427, unless the applicant amends the application to include the supplemental rights in the transfer, or withdraws those lands from the transfer.
16. Consistent with OAR 690-380-2250, the Department in the draft preliminary determination notified the applicant of the Department's intent to cancel the portion of the supplemental water right described below unless within 30 days of the date of the notification the applicant modified the application to include the supplemental right or withdrew the application. The applicant did not respond to the notice by withdrawing the application or modifying it to include the supplemental right. Therefore, the following portion of the supplemental right will be cancelled upon issuance of a final order approving T-10427.

17. The portion of the following right is proposed to be cancelled:

Certificate: 82596 in the name of COUNTY LINE WATER IMPROVEMENT DISTRICT (perfected under Permit G-10836)

Use: SUPPLEMENTAL IRRIGATION of 13.5 ACRES

Priority Date: FEBRUARY 15, 1978

Rate: 0.16 CUBIC FOOT PER SECOND

Limit/Duty: 0.0118 cfs per acre, not to exceed 2.89 acre-feet per acre per year of artificially and naturally recharged ground water.

Source: ARTIFICIALLY RECHARGED GROUND WATER FROM WELLS IN THE ORDNANCE CRITICAL GROUND WATER AREA

Authorized Points of Appropriation (Coleman Wells):

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
4 N	27 E	WM	26	SW NW	1130 FEET NORTH AND 60 FEET EAST FROM W1/4 CORNER, SECTION 26
4 N	27 E	WM	26	SW NW	1160 FEET NORTH AND 370 FEET EAST FROM W1/4 CORNER, SECTION 26
4 N	27 E	WM	27	SW NW	230 FEET NORTH AND 1210 FEET EAST FROM W1/4 CORNER, SECTION 27
4 N	27 E	WM	27	SE NW	2740 FEET NORTH AND 1890 FEET EAST FROM SW CORNER, SECTION 27
4 N	27 E	WM	27	SE NW	960 FEET NORTH AND 1850 FEET EAST FROM W1/4 CORNER, SECTION 27

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	27 E	WM	36	NW NW	13.50

Conclusions of Law

The changes in character of use, place of use, and point of appropriation proposed in application T-10427 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 character of use, place of use, and point of appropriation proposed in application T-10427 are approved.
2. The portion of Certificate 82596 listed in Finding of Fact #17 is cancelled. A new certificate will be issued to describe the remaining portion of the right not affected by the cancellation.
3. Water right certificate 80913 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.

4. The 13.5 acre portion of the inchoate water right described in Finding of Fact #2, perfected under Permit G-10505 and transferred under T-9996 is cancelled, and shall not included in a Claim of Beneficial Use for T-9996.
5. 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 80913 and any related decree.
6. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
7. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. The diversion for industrial use shall be limited to a rate of 50 gallons per minute (0.11 cubic feet per second) and an annual amount not to exceed 40.5 acre-feet.
10. Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. 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. The water user shall maintain and operate the measuring device as required by the Department.
11. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2009. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
12. When satisfactory proof of the completed changes is received, a new certificate confirming portion of the right transferred will be issued.

Dated at Salem, Oregon this 25th day of March 2008.


Phillip C. Ward, Director

Mailing date: MAR 28 2008