

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

In the Matter of Transfer Application)	SUPERSEDING FINAL ORDER
T-10665, Umatilla County)	APPROVING CHANGES IN PLACE OF
)	USE AND CHARACTER OF USE AND
)	CORRECTING A SCRIVENER'S
)	OMISSION IN A PREVIOUS ORDER

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.

Applicant

CRAIG COLEMAN
33896 E. WALLS RD
HERMISTON OR 97838

Findings of Fact

Background

1. On June 30, 2008, Craig Coleman filed an application to change the use and place of use under Certificate 83422. The Department assigned the application number T-10665.
2. On April 18, 2008, Certificate 84071 was issued to supersede Certificate 83422 and correct an error in the Place of Use and Character of Use.
3. On September 9, 2008, the applicant submitted an amended Supplemental Form A which added Nursery use to the proposed Character of Use and added the nursery acreage and ¼ ¼ locations to the proposed Place of Use, as well as a revised map to show the nursery use acreage totaling 49.8 acres and primary irrigation acreage totaling 51.4 acres.
4. On September 26, 2008, an amended application map and amended Supplemental Form A were submitted, along with a Land Use Information Form signed by the county.

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.

5. On September 29, 2008, a request was sent to the applicant indicating that the transfer application originally submitted should be corrected from "industrial" use to "nursery" use and that the acreages under nursery use should be quantified.
6. A revised Form A and transfer map were submitted on October 9, 2008, by William Porfily, CWRE and agent for the applicant. The application requested the transfer of 0.17 cfs to nursery use covering 49.8 acres, and the transfer of 0.65 cfs to irrigate 51.4 acres, which would exceed the 1/80 cfs per acre standard rate allowed for irrigation.
7. An amendment to the application was provided on November 9, 2009, correcting the distribution as follows: 0.26 cfs to be transferred for nursery use covering 49.8 acres, and 0.45 cfs to be transferred to irrigate 36.3 acres at the rate of 1/80 cfs per acre, leaving 0.11 cfs for maintenance of wetlands for fish and wildlife in Tax Lot 1200.
8. The portion of the right to be transferred is as follows:

Certificate: 84071 in the name of CRAIG COLEMAN (perfected under Permit G-1671)

Use: MAINTENANCE OF WETLAND FOR FISH AND WILDLIFE

Priority Date: JUNE 28, 1960

Rate: 0.71 CUBIC FOOT PER SECOND from either well, in any combination, measured at the wells. 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 available from the original point of appropriation, being Well #1.

Source: WELLS 1 AND 1A in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	27 E	WM	27	NE SE	WELL #1A: 1350 FEET NORTH AND 430 FEET WEST FROM THE SE CORNER OF SECTION 27
4 N	27 E	WM	27	NE SE	WELL #1: 1420 FEET NORTH AND 490 FEET WEST FROM THE SE CORNER OF SECTION 27

Authorized Place of Use:

MAINTENANCE OF WETLAND FOR WILDLIFE AND FISH				
Twp	Rng	Mer	Sec	Q-Q
3 N	27 E	WM	3	SW NE
3 N	27 E	WM	3	SE NE
3 N	27 E	WM	3	SE NW

9. Application T-10665 proposes to change the character of use of 0.45 cfs to IRRIGATION and 0.26 cfs to NURSERY OPERATIONS.
10. Application T-10665 also proposes to change the place of use of the right to:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	27E	WM	27	SE SW	5.2

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	27E	WM	27	NE SE	0.3
4N	27E	WM	27	NW SE	0.9
4N	27E	WM	27	SW SE	3.5
4N	27E	WM	36	SE SE	3.1
4N	27E	WM	36	NW NW	13.5
4N	27E	WM	36	NW SW	9.8
TOTAL					36.3

NURSERY					
Twp	Rng	Mer	Sec	Q-Q	Acres
4N	27E	WM	26	NW SW	0.6
4N	27E	WM	27	NE SE	29.8
4N	27E	WM	26	NW SE	19.4
TOTAL					49.8

11. Notice of the application for transfer was published on July 8, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
12. On June 25, 2009, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-10665 to the applicant. The Preliminary Determination cover letter set forth a deadline of July 27, 2009, for the applicant to respond and provide an ownership report for the lands to which the water right was appurtenant, and affidavit of consent from any landowners not included in the transfer application. The applicant submitted an ownership report indicating that a portion of the right to be transferred (Tax Lot 1200 in Section 2, T3N, R27E, W.M.) was appurtenant to land owned by L. Reyburn Collis and Doris W. Collis, who were not included in the transfer application.
13. On November 9, 2009, the transfer application and map were further modified, and new maps were submitted December 9, 2009, proposing to leave 0.11 cfs (50 gpm) for maintenance wetlands for fish and wildlife in Tax Lot 1200, increasing the Nursery Use to 0.26 cfs and decreasing the number of acres of Irrigation to 36.3. Also submitted was an affidavit from L. Reyburn Collis and Doris W. Collis consenting to the transfer, provided that 50 gpm of water would remain in the pond on Tax Lot 1200 in Section 2, T3N, R27E, W.M. for fish and wildlife use.
14. Use of water on the remaining lands (0.11 cfs for fish and wildlife use in Tax Lot 1200 in Section 2, T3N, R27E) as well as 0.45 cfs transferred to lands for irrigation and 0.26 cfs for nursery use is limited to the stated rate and duty, but further limited to what can be beneficially used on the designated places of use. "Beneficial Use" means the reasonably

efficient use of water without waste for a purpose consistent with the laws, rules and the best interests of the people of the state. OAR 690-300(5).

15. On January 10, 2011, the Department e-mailed a copy of a revised Preliminary Determination proposing to approve Transfer Application T-10665 to the applicant. A copy of the document was also mailed on January 11, 2011. The revised draft Preliminary Determination cover letter set forth a deadline of February 11, 2011, for the applicant to respond. On January 11, 2011, the applicant's agent sent an e-mail, requesting on behalf of the applicant that the Department proceed with issuance of a Preliminary Determination.
16. On January 12, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10665 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 January 18, 2011, and in the East Oregonian newspaper on January 15, 22 and 29, 2011, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
17. On March 8, 2011, the Department issued a Final Order for the transfer, recorded at Special Order Volume 83, Pages 695 to 699. Shortly following issuance of the order the Department recognized that through a scrivener's omission, the order failed to state that Certificate 84071 was cancelled, even though Certificate 86859 was issued to describe the portion of the right not modified by T-10665.
18. This order is issued to supersede the previous order recorded at Special Order Volume 83, Pages 695 to 699, and to correct the scrivener's omission.

Transfer Review Criteria (OAR 690-380-4010)

19. 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.
20. 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-10665.
21. The proposed changes, as conditioned to require operation and maintenance of measurement devices, would not result in enlargement of the right, provided the rate and duty of the right are not exceeded and application of water for the designated purposes is further limited to what can be used beneficially and without waste within the authorized places of use.
22. The proposed changes would not result in injury to other water rights.

Conclusions of Law

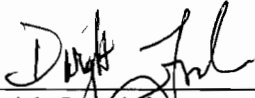
The changes in place of use and character of use proposed in application T-10665 are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000 and the scrivener's omission in Special Order Volume 83, Pages 695 to 699 should be corrected in the record.

Now, therefore, it is ORDERED:

1. The order entered at Special Order Volume 83, Pages 695 to 699 is withdrawn and of no further force and effect and is superseded by this order.
2. The changes in place of use and character of use proposed in application T-10665 are approved.
3. 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 84071 and any related decree.
4. Certificate 84071 is cancelled. Certificate 86859 is issued describing that portion of the right not affected by this transfer.
5. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
6. The amount of water used for IRRIGATION, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one cubic foot per second per acres, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
7. The amount of water used for NURSERY USE is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one-fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants, the amount of water diverted is limited to one-eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one-eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.
8. The former place of use of the transferred right shall no longer receive water under the right.
9. The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.

10. The approved changes 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 changes and full beneficial use of the water.
11. When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 16 day of March, 2011.



Dwight French for
PHILLIP C. WARD, DIRECTOR

Mailing date: **MAR 21 2011**