

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

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

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF 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

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 notice of this preliminary determination.

month to July 1 and ¼ 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.

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

- 7. 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.
- 8. 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.
- 9. The proposed change would not result in enlargement of the right.
- 10. The proposed change would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 11. 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

Determination and Proposed Action

The additional point of diversion proposed in Transfer Application T-10987 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right will be cancelled.

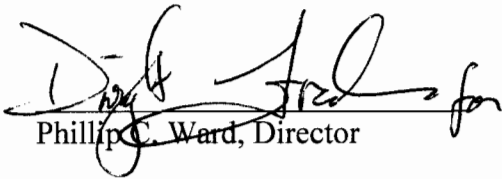
If application T-10987 is approved, the final order will include the following:

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, 2011**. 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 27 day of August 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrdd.state.or.us.

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.