

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

In the Matter of Transfer Application            )  
T-10427, Umatilla County                        )  
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PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF 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 No. 16). The supplemental right under Certificate 80915 which the applicant has proposed to cancel is a part of the lands affected by Transfer T-9996, and is currently in an inchoate state.

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.

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.

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

9. 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.
10. 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.
11. 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.
12. The proposed change would not result in injury to other water rights.
13. 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***

14. 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.
15. 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.
16. 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

**Determination and Proposed Action**


The changes in character of use, place of use, and point of appropriation proposed in application T-10427 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If application T-10427 is approved, the final order will include the following:*

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 No. 16 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 No. 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 28<sup>th</sup> day of January 2008.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or [Dorothy.I.Pedersen@ wrd.state.or.us](mailto:Dorothy.I.Pedersen@ wrd.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.