



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

4601 N Monroe Street • Spokane, Washington 99205-1295 • (509)329-3400

June 16, 2009

CERTIFIED MAIL 7003 1680 0007 1588 7418

Sun Ranch, Incorporated
5769 Road 3 NE
Moses Lake, WA 98837

Re: Application for Change under Ground Water Certificate No. 809-D w/chg v.1-3, p. 136

Dear Mr. Enright:

Enclosed is a copy of the Department of Ecology's *Report of Examination for Change*. This report contains our decision regarding your application.

Your application has been denied.

You have a right to appeal this decision. To appeal you must:

- File your appeal with the Pollution Control Hearings Board within 30 days of the "date of receipt" of this document. Filing means actual receipt by the Board during regular office hours.
- Serve your appeal on the Department of Ecology within 30 days of the "date of receipt" of this document. Service may be accomplished by any of the procedures identified in WAC 371-08-305(10). "Date of receipt" is defined at RCW 43.21B.001(2).

Be sure to do the following:

- Include a copy of this document that you are appealing with your *Notice of Appeal*.
- Serve and file your appeal in paper form; electronic copies are not accepted.

1. To file your appeal with the Pollution Control Hearings Board

Mail appeal to:

The Pollution Control Hearings Board
PO Box 40903
Olympia WA 98504-0903

OR Deliver your appeal in person to:

The Pollution Control Hearings Board
4224 – 6th Ave SE Rowe Six, Bldg 2
Lacey WA 98503



2. To serve your appeal on the Department of Ecology

Mail appeal to:

The Department of Ecology
Appeals Coordinator
PO Box 47608
Olympia WA 98504-7608

OR Deliver your appeal in person to:

The Department of Ecology
Appeals Coordinator
300 Desmond Dr SE
Lacey WA 98503

3. And send a copy of your appeal to:

Keith L. Stoffel
Department of Ecology
Eastern Regional Office
4601 North Monroe Street
Spokane, WA 99205

*For additional information visit the Environmental Hearings Office Website:
<http://www.eho.wa.gov> . To find laws and agency rules visit the Washington State
Legislature Website: <http://www1.leg.wa.gov/CodeReviser> .*

If you have any questions, please contact Kevin Brown at 509 329-3422.

Sincerely,



Keith L. Stoffel
Section Manager
Water Resources Program

KLS:KB:ka

Enclosures: Report of Examination for Change
Your Right To Be Heard



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
Application for Change
REPORT OF EXAMINATION
 TO APPROPRIATE PUBLIC WATERS OF THE STATE OF WASHINGTON

- Surface Water** (Issued in accordance with the provisions of Chapter 117, Laws of Washington for 1917, and amendments thereto, and the rules and regulations of the Department of Ecology.)
- Ground Water** (Issued in accordance with the provisions of Chapter 263, Laws of Washington for 1945, and amendments thereto, and the rules and regulations of the Department of Ecology.)

PRIORITY DATE May 28, 1945	APPLICATION NUMBER	PERMIT NUMBER	CERTIFICATE NUMBER 809-D w/chg v.1-3, p. 136
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NAME Sun Ranch, Inc			
ADDRESS (STREET) 5769 Road 3 NE	(CITY) Moses Lake	(STATE) WA	(ZIP CODE) 98837

PUBLIC WATERS TO BE APPROPRIATED

SOURCE Two Wells
TRIBUTARY OF (IF SURFACE WATERS)

MAXIMUM CUBIC FEET PER SECOND	MAXIMUM GALLONS PER MINUTE DENIED	MAXIMUM ACRE -FEET PER YEAR DENIED
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QUANTITY, TYPE OF USE, PERIOD OF USE
 DENIED

LOCATION OF DIVERSION/WITHDRAWAL

APPROXIMATE LOCATION OF DIVERSION-WITHDRAWAL
 Well 1: 600 feet South and 1,850 feet West from the NE corner of Section 13, within the NW $\frac{1}{4}$ of the NE $\frac{1}{4}$
 Well 2: within the E $\frac{1}{2}$ of the NW $\frac{1}{4}$ of Section 13

LOCATED WITHIN (SMALLEST LEGAL SUBDIVISION)	SECTION	TOWNSHIP N.	RANGE, (E. OR W.) W.M.	W.R.I.A.	COUNTY
NW $\frac{1}{4}$ NE $\frac{1}{4}$	13	19 N.	27 E.	41	Grant
NE $\frac{1}{4}$ NW $\frac{1}{4}$	13	19 N.	27 E.	41	Grant

RECORDED PLATTED PROPERTY

LOT	BLOCK	OF (GIVE NAME OF PLAT OR ADDITION)
Parcel 161414000		

LEGAL DESCRIPTION OF PROPERTY ON WHICH WATER IS TO BE USED

DENIED

DESCRIPTION OF PROPOSED WORKS

Sun Ranch, Inc. plan to use a proposed well to provide domestic, stock watering and irrigation supply water at a combined annual quantity of 450 acre-feet per year and an instantaneous capacity of 1,000 gpm.

DEVELOPMENT SCHEDULE

BEGIN PROJECT BY THIS DATE: NA	COMPLETE PROJECT BY THIS DATE: NA	WATER PUT TO FULL USE BY THIS DATE: NA
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REPORT

BACKGROUND

The examination of Change/Transfer Application CG3-*00897S submitted by Sun Ranch, Inc. (Sun Ranch) on October 4, 2007 was led by consultants from GeoEngineers, Inc. contracted as part of Ecology’s cost reimbursement program to facilitate the phased processing of the application. Karen Tusa of the Water Resources Program, Eastern Region, Department of Ecology (Ecology) oversaw the examination and Kevin Brown of Ecology also provided review.

A Declaration of Ground Water Claim (Declaration Claim Number 897) was made by Clinton Cordell. A Ground Water Certificate 809-D, with a priority date of May 28, 1945, was issued on November 19, 1948 for 1,000 gpm and 450 acre-feet for domestic supply and irrigation of 100 acres. The authorized place of use is described as the NE¼ and the E½NW¼ of Section 13, T. 19 N., R. 27 E.W.M. Certificate of Change v.1-3, p. 136 was issued to Oran H. Fore in 1976 for an additional point of withdrawal.

Sun Ranch proposes to add a point of withdrawal and change the place of use from the N½ of Section 13 to the SE¼ of Section 13. A summary of the proposed changes to Ground Water Certificate No. 809-D is presented in Table 1.

Table 1 Summary of Existing Water Right and Proposed Changes

Attributes	Existing	Proposed
Name	Clinton Cordell (Certificate) Oran Fore (Change)	Sun Ranch, Inc.
Priority Date/Date of Change Application	Priority Date: May 28, 1945	Date of Change Application: October 4, 2007
Instantaneous Quantity (Qi)	1,000 gpm	Same
Annual Quantity (Qa)	450 acre-feet per year	Same
Source	Two Wells	New Well
Point of Withdrawal	Well 1: NW¼NE¼ Section 13, T.19N., R.27E. W.M. Well 2: E½NW¼ Section 13, T.19N., R.27E W.M.	Proposed Well: SE¼SE¼ Section 13, T.19N., R.27E. W.M.
Purpose of Use	Domestic, and Irrigation Supply	Same
Period of Use	Seasonal (Irrigation) Year-Round (Domestic)	Same
Place of Use	100 acres E½NW¼ and NE¼ of Section 13; T.19N., R.27E. W.M.	100 acres within SE¼ of Section 13; T.19N., R.27E. W.M.

A notice of application was duly published in accordance with RCW 90.03.280 in the Columbia Basin Herald on December 27, 2007 and January 3, 2008 and no protests were received.

SEPA

Environmental review under State Environmental Policy Act (SEPA) is required for many projects; however, some minor projects are categorically exempt from SEPA. Appropriations of one cfs or less of surface water, or of 2,250 gpm or less of ground water, for any purpose, and appropriations of 50 cfs or less for surface water used for irrigation are categorically exempt from SEPA. See WAC 197-11-305. This application is categorically exempt from the provisions of the SEPA of 1971, Chapter 43.21C RCW.

INVESTIGATION

The examination team of GeoEngineers and Ecology reviewed Sun Ranch’s change application and supporting documents contained in the Ecology file, communicated regularly with senior Ecology staff to discuss direction of the work and any issues that arose, met and communicated with the applicant to review the water rights examination process and obtain current information, obtained and reviewed reports and other documents relevant to the application, and conducted a field examination of the key features of the application (e.g., proposed point of withdrawal, pumping and conveyance systems, and place of use).

The investigation included, but was not limited to, the review of:

- the State Water Code, specifically WACs 173-124A and 173-134A;
- United States Geological Survey (USGS) topographic maps;

- Ecology's water right files, water right database (WRTS), and on-line Washington State Well Log Viewer;
- aerial photographs of Grant County from 1983, 1996, and 1999 to 2007;
- information submitted by and conversations and/or meetings with John Enright; and
- a site visit on April 23, 2008.

Existing Water Right Documents

The original Declaration Ground Water Claim (897) for the subject water right change (CG3-*00897S), one of three submitted by Clinton Cordell in June 1948, resulted in the issuance of Certificate of Ground Water Right (809-D) in November 19, 1948. A Certificate of Change was issued January 8, 1976 for an additional point of withdrawal for 800 gpm, 360 acre-feet at a point located in the E½ of the NW¼ of Section 13, T. 19 N., R. 27 E. W.M. Sun Ranch has also requested a change (CG3-*00896S) for one of the other Declarations (896) with a Certificate of Ground Water Right (808-D). The second change application is also being processed concurrently as part of the cost reimbursement program. In total, the two Sun Ranch change applications request the withdrawal of 2,000 gpm and 765 acre-feet from four wells, with a new well proposed to be used for both change applications.

State Water Code

Chapters 90.03 and 90.44 RCW authorize the appropriation of public water for beneficial use and describe the process for obtaining water rights including the process to amend or change existing rights. Laws specifically governing the water right permitting process are RCW 90.03.250 through 90.03.340 and RCW 90.44.060.

The existing and proposed project lies within the Quincy ground water subarea. Management policy is provided in WAC 173-134A.

Site Visit

Joel Purdy, a Senior Hydrogeologist with GeoEngineers, conducted a site visit on April 23, 2008. John Enright of Sun Ranch gave a tour of the facilities and property. The tour included the inspection of a well presumed to be the Cordell well (Well 1) that was subject to the original Declaration. The Cordell Well is located approximately 2,140 feet west and 500 feet south of the NE corner of Section 13 within the NW¼ of the NE¼ according to the original Declaration. The presumed Cordell well shown by Enright was found to be located approximately 1,850 feet west and 600 feet south of the NE corner of Section 13 within the NW¼ of the NE¼. It was revealed during the site visit that Sun Ranch does not own the well or the property on which the water right is located.

The proposed place of use was also investigated and there was no indication of recent, or historically persistent, irrigation on the property based on aerial photographs from 1999 to 2007. There were cement structures and unused irrigation equipment that were described as being constructed in anticipation of the proposed water right transfer. Apparently, the well is currently used by the landowner James L'Heureax for periodic irrigation of pasture, located within the authorized place of use directly south of the well and north of the proposed place of use. No irrigation systems were evident at the time of the site visit. The Oran Fore (Well 2) point of withdrawal was not investigated since John Enright did not know where it was located or have access to the adjoining property on which it is reportedly located, which, according to Grant County parcel map, the property is owned by Sergey and Mariya Bragar. Also, the authorized place of use currently consists of 25 individual parcels owned separately.

Well 1 (NW¼NE¼ of Section 13) is completed to 85 feet in the unconsolidated deposits overlying the Columbia River Basalts. There is no pumping test data for the well or historical withdrawal rates other than what was reported on the well log, which states that the well was pumped at 1,000 gpm. There is no information available that indicate whether Well 1 has the capacity to produce at the requested instantaneous rate of 1,000 gpm. A 30-hp pump was observed to be installed in Well 1. No information regarding Well 2 (Fore Well) was obtained. Well 2 is located within the E½ of the NW¼ of Section 13 according to the Certificate of Change dated January 8, 1976.

Evaluation of the Right and Beneficial Use Analysis

The Washington State Supreme Court, in Okanogan Wilderness v. Town of Twisp and Department of Ecology, 133 Wn.2d 769, 947 P.2d 732 (1997), found that applications for change may be granted only to the extent the water has been historically put to beneficial use, as beneficial use determines the measure of a water right. They also found that the existence and quantification of a water right must be determined, including whether or not the water right has been lost for non-use before the Department can approve a change or transfer of the water right.

Examination of aerial photographs of the place of use indicated that there has been irrigation of a small portion (approximately 40 acres) of the existing place of use in 2004 and approximately 58 acres in 2000 on the L'Heureax parcel, and apparent lawn watering of approximately 24 acres on 15 parcels currently developed with residences. The aerial photographs indicate that the irrigation was not intense, likely to grow pasture grass. At an irrigation rate of 3.5 acre-feet per year per acre, this usage equates to between 224 and 287 acre-feet per year.

Sun Ranch Existing and Proposed Points of Withdrawal

The existing points of withdrawal associated with the subject change application produce water from the shallow management unit. The point of withdrawal for the original Declaration is reportedly a 32-inch-diameter well dug to 85 feet. An additional point of withdrawal was added as part of the change for Oran Fore in 1976. There is no information on this well. The proposed third point of withdrawal is a well that has not yet been drilled.

There is no evidence that Sun Ranch has any ownership or claim related to the Declaration of Ground Water Claim Number 897 or Certified Water Right (809-D). They are not the owner of the property the water right is issued for nor have they provided any documentation of purchase or transfer of the water rights from the property owners.

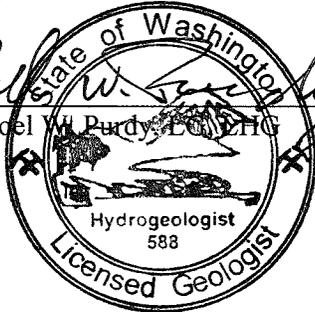
FINDINGS:

There is insufficient information to conclude the applicant has the authority to file an application to transfer a water right from lands he does not own. Due to the lack of ownership or valid claim to either the well, the property on which the well is located or the property within the original place of use, the examiner concludes that the subject application for change is invalid and the request for change is DENIED. Based on the tentative evaluation, an evaluation of public interest or impairment was not completed.

CONCLUSIONS:

Based on the investigation conducted for this Application for Change, the application is denied.

REPORT BY: *Joel W. Purdy* Date: *6/8/09*
Joel W. Purdy, L.C. ZHG



JOEL W. PURDY

REVIEWED BY: *Kevin Brown* Date: *6/11/09*
Kevin Brown, Dept. of Ecology

FINDINGS OF FACT AND DECISION

Upon reviewing the above report, I find all facts, relevant and material to the subject application, have been thoroughly investigated. Therefore, I ORDER a change be DENIED under Ground Water Change/Transfer Application Number CG3-*000897S specified in the foregoing report.

Signed at Spokane, Washington, this 16th day of June, 2009.

Keith L. Stoffel
Keith L. Stoffel
Water Resources Section Manager
Eastern Regional Office