

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

In the Matter of Transfer Application) **FINAL ORDER**
T-11790, Baker County) **APPROVING A CHANGE IN PLACE**
) **OF USE**

Authority

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, 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

LOWRY FAMILY TRUST
24428 KEATING GRANGE LANE
BAKER CITY OR 97814

Agent

HANLEY ENGINEERING INC.
PO BOX 701
BAKER CITY OR 97814

Findings of Fact

1. On April 15, 2014, Lowry Family Trust filed an application to change the place of use under Certificates 74037, 75869, and 87531. The Department assigned the application number T-11790.
2. Notice of the application for transfer was published on April 22, 2014, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On September 10, 2014, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11790 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of October 10, 2014, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
4. On October 16, 2014, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11790 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on October 21, 2014 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

Certificate: 74037 in the name of LOWER POWDER RIVER IRRIGATION DISTRICT (confirmed by Powder River Decree)
Use: IRRIGATION OF 7.0 ACRES
Priority Date: 1876
Rate: 0.175 CUBIC FEET 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 ONE-FORTIETH of one cubic foot per second for each acre irrigated during the irrigation season of each year.
Source: TUCKER CREEK, tributary of the POWDER RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	42 E	WM	17	NE NE	TUCKER CREEK - 200 FEET SOUTH AND 120 FEET WEST FROM THE NE CORNER OF SECTION 17

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	42 E	WM	16	NW NW	7.0

6. Transfer Application T-11790 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	42 E	WM	9	SW SW	7.0

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

Certificate: 75869 in the names of ROBERT AND VIRGINIA LOWRY (confirmed by Powder River Decree)
Use: SUPPLEMENTAL IRRIGATION OF 7.0 ACRES
Priority Date: 1888
Rate: 0.175 CUBIC FEET 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 ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated during the irrigation season of each year.
Source: POWDER RIVER, tributary of the SNAKE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
7 S	41 E	WM	34	SE NW	ERWIN DITCH - 3850 FEET NORTH AND 100 FEET WEST FROM THE S ¹ / ₄ CORNER OF SECTION 34

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	42 E	WM	16	NW NW	7.0

8. Transfer Application T-11790 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
8 S	42 E	WM	9	SW SW	7.0

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

Certificate: 87531 in the names of ROBERT AND VIRGINIA LOWRY (confirmed by Powder River Decree)
Use: IRRIGATION OF 22.5 ACRES
Priority Date: 1864 FOR 18.0 ACRES AND 1875 FOR 4.5 ACRES
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 during the irrigation season of each year.
Source: TUCKER CREEK, tributary of the SNAKE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
8 S	42 E	WM	4	NW NW	HULICK 1 – 500 FEET SOUTH AND 600 FEET EAST FROM THE NW CORNER OF SECTION 4
8 S	42 E	WM	4	NW NW	ADDITIONAL POD – 1100 FEET SOUTH AND 590 FEET EAST FROM THE NW CORNER OF SECTION 4
8 S	42 E	WM	4	SW SW	HULICK 2 – 330 FEET NORTH AND 1010 FEET EAST FROM THE SW CORNER OF SECTION 4
8 S	42 E	WM	9	NW SW	ERWIN - 2145 FEET NORTH AND 600 FEET EAST FROM THE SW CORNER OF SECTION 9

Authorized Place of Use:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
8 S	42 E	WM	4	SW NW	1864	4.5
8 S	42 E	WM	4	NW SW	1864	13.5
8 S	42 E	WM	9	NW SW	1875	4.5

10. Transfer Application T-11790 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Priority Date	Acres
8 S	42 E	WM	4	SW SW	1864	7.5
8 S	42 E	WM	9	NW SW	1864	10.5
8 S	42 E	WM	9	NW SW	1875	4.5

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

11. Water has been used according to the terms and conditions of the rights. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and sprinkler system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11790.
13. The proposed change would not result in enlargement of the rights.
14. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-11790 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-11790 is approved.
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 Certificates 74037, 75869, 87531, and any related decree.
3. Water right certificates 74037, 75869, and 87531 are cancelled. New certificates will be issued describing those portions of these rights not affected by this transfer.
4. The former place of use of the transferred rights shall no longer receive water under the rights.
5. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2016**. 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.
6. After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 12 day of January, 2015.



Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: JAN 16 2015