

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

In the Matter of Transfer Application            )     FINAL ORDER APPROVING A  
T-12897, Umatilla County                        )     CHANGE IN PLACE OF USE

**Authority**

Oregon Revised Statutes (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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

EARL BROWN AND SONS INC.  
PO BOX 249  
MILTON-FREEWATER, OR 97862

**Findings of Fact**

1. On April 9, 2018, EARL BROWN AND SONS INC. filed an application to change the place of use under Certificate 91203. The Department assigned the application number T-12897.
2. Notice of the application for transfer was published on April 17, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. According to the assessor map for Umatilla County, tax lot 2300 in Section 28, T6N, R35E, WM has been changed to tax lot 2302, where a portion of the place of use to be transferred resides.
4. Multiple layered primary and supplemental water rights exist on the authorized and the proposed place of use. The applicant is proposing to move the most junior supplemental water right to a place of use where other supplemental water rights exist.

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 June 13, 2018, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-12897 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 13, 2018, for the applicant to respond.
6. On July 9, 2018, the applicant's agent requested additional time to respond to the draft Preliminary Determination proposing to deny Transfer Application T-12897. The Department set forth a deadline of August 13, 2018, for the applicant to respond.
7. On August 16, the applicant's agent submitted a revised application and map, resolving issues which lead to the initial denial.
8. On November 13, 2018, the Department Watermaster revised his review based on the new application.
9. On November 21, 2018, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-12897 to the applicant. The revised draft Preliminary Determination cover letter set forth a deadline of December 20, 2018, 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.
10. On December 17, 2018, the Department issued a Preliminary Determination proposing to approve Transfer T-12897 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 December 18, 2018, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 91203 in the name of EARL BROWN AND SONS INC.  
(perfected under Permit G-15717)

**Use:** SUPPLEMENTAL IRRIGATION OF 37.9 ACRES AND TEMPERATURE CONTROL

**Priority Date:** JANUARY 23, 2004

**Rate:** 0.94 CUBIC FOOT PER SECOND

**Limit/Duty:** The amount of water used for irrigation under this right, 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) and 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

**Period of Use:** MARCH 1 THROUGH OCTOBER 31

**Source:** WELL 1 AND WELL 2, IN WEST LITTLE WALLA WALLA RIVER BASIN

**Authorized Points of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 N	35 E	WM	34	NW SE	WELL 1 - 1245 FEET SOUTH AND 355 FEET EAST FROM THE C1/4 CORNER OF SECTION 34
6 N	35 E	WM	35	SW NW	WELL 2 - 405 FEET NORTH AND 1310 FEET EAST FROM THE W1/4 CORNER OF SECTION 35

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	28	NE SE	9.0
6 N	35 E	WM	28	SE SE	28.9
TOTAL					37.9

TEMPERATURE CONTROL				
Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	28	NE SE
6 N	35 E	WM	28	SE SE

12. Transfer Application T-12897 proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 N	35 E	WM	27	SW SW	18.70
6 N	35 E	WM	34	NE SW	9.65
6 N	35 E	WM	34	SE SW	0.20
6 N	35 E	WM	34	SE SE	9.35
TOTAL					37.90

TEMPERATURE CONTROL				
Twp	Rng	Mer	Sec	Q-Q
6 N	35 E	WM	27	SW SW
6 N	35 E	WM	34	NE SW
6 N	35 E	WM	34	SE SW
6 N	35 E	WM	34	SE SE

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

13. 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.
14. 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 Transfer Application T-12897.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.
17. All other application requirements are met.

## Conclusions of Law

The change in place of use proposed in Transfer Application T-12897 is consistent with the requirements of ORS 537.705 and 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-12897 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 Certificate 91203 and any related decree.
3. Water right Certificate 91203 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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 existing point of appropriation.
  - 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.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2020**. 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.
7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon, JAN 18 2019.



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

Mailing date: JAN 22 2019