

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

In the Matter of Transfer Application)
T-10692, Umatilla County)
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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. ORS 540.510 establishes the process in which the Department may cancel a supplemental water right not included as part of the transfer application.

Applicant

EMA TRUST, DATED JANUARY 24, 2001
PO BOX 278
PENDLETON, OR 97801

Receiving Landowner

HALE FARMS, LLC
73120 HIGHWAY 207
ECHO, OR 97826

Findings of Fact

Background

1. On August 5, 2008, EMA TRUST, DATED JANUARY 24, 2001 filed an application to change the point of appropriation and the place of use under Certificates 54559 and 80428, and Transfer T-8070. The Department assigned the application number T-10692.
2. On November 19, 2008, the Water Resources Department recognized that proof of beneficial use, satisfactory to the Director, had been demonstrated for 12.1 acres of the 13.45 acres authorized under T-8070 (Special Order Volume 58, pages 77-79). The full

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

0.13 cfs authorized under T-8070 may be applied to the reduced number of acres in the place of use, since 0.13 cfs equals less than the full rate of 1/80 of a cfs per acre.

3. Additional documentation and revisions to the application and map were received on December 19, 2008, and March 16, April 14, April 17, April 20, June 24, 2009, and March 18, 2010.
4. The portions of the rights proposed for transfer appropriate water by means of a common well (Rew Well #1) that was not capable of simultaneously supplying water for the two original permits (G-5335 and G-5337) when the Department approved the proof of beneficial use under the rights. Consequently, those rights both carry a condition that further limits what can be appropriated under the rights to an aggregate total, not to exceed the 2.0 cfs capacity of the original well at time of perfection of the rights. All portions of Certificates 54559 and 80428, and transfer application T-8070 perfected under Permits G-5335 and G-5337 will continue to carry the condition that together limits them to the capacity of the original well at the time of perfection of the permits even if they are transferred to other places of use and other points of appropriation.
5. Since the authorized uses are currently appropriating water from the original well, they are physically limited by the capacity of the original well, enabling the Department to determine that water is used within the rate and effective duty of these rights. However, if this transfer is approved, the capacity of the proposed new wells may not be physically limited to the same degree. Since they share a common distribution system, tracking the water use under individual rights will be more difficult.
6. The proposed changes in place of use and point of appropriation, absent sufficient conditions, would not allow the Department to determine that water is used within the rate and effective duty under all the transferred and remaining portions of the authorized rights, thus providing an opportunity for enlargement of the rights.
7. Junior rights could be injured within Subarea H of the Stage Gulch Critical Groundwater Area through increased pumping and possibly increased allocations to these water rights in future years.
8. The Department must condition the rights to prevent enlargement and injury by requiring adequate measurement of the water distributed under these rights at the new place of use, and cancelling portions of the rights not proposed for transfer.

Voluntary Partial Cancellations of a Water Right

9. The applicant has submitted a proposed affidavit authorizing cancellation of a portion of the following right:
Certificate: 54559 in the name of REW RANCHES, INC. by LAWRENCE B. REW (perfected under Permit G-5335)
Use: IRRIGATION of 316.8 ACRES
Priority Date: JULY 19, 1974

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year. The irrigation season used herein shall include any time of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, provided further that in the event of a request for change in point of appropriation, an additional point of appropriation, or repair of this well, the quantity of water allowed herein together with the right perfected under Permit G-5337 shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.

Source: REW WELL 1 in the UMATILLA RIVER basin

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 N | 31 E | WM | 30 | NW NE | 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 30 E | WM | 24 | NE SW | 7.30 |
| 3 N | 30 E | WM | 24 | SE SW | 5.70 |
| 3 N | 31 E | WM | 29 | NE SW | 40.00 |
| 3 N | 31 E | WM | 29 | NW SW | 40.00 |
| 3 N | 31 E | WM | 29 | SW SW | 25.90 |
| 3 N | 31 E | WM | 29 | SE SW | 40.00 |
| 3 N | 31 E | WM | 30 | NE NE | 40.00 |
| 3 N | 31 E | WM | 30 | NW NE | 39.10 |
| 3 N | 31 E | WM | 30 | SW NE | 25.60 |
| 3 N | 31 E | WM | 30 | SE NE | 40.00 |
| 3 N | 31 E | WM | 30 | NE NW | 4.00 |
| 3 N | 31 E | WM | 30 | NE SE | 8.50 |
| 3 N | 31 E | WM | 30 | SE SE | 0.70 |
| TOTAL: | | | | | 316.80 |

10. The applicant has submitted a proposed affidavit authorizing cancellation of a portion of the following right:

Certificate: 80428 in the name of LAWRENCE B. REW & REW RANCHES, INC. (perfected under Permit G-5337)

Use: IRRIGATION of 3.0 ACRES

Priority Date: OCTOBER 21, 1974

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year, provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with the right perfected under Permit G-5335, and the confirming right issued as a result of the change in place of use authorized under T-8070, shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.

Source: REW WELL #1 in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 N | 31 E | WM | 30 | NW NE | 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 30 E | WM | 24 | SE SE | 3.00 |

- The partial cancellations described Findings of Fact #9 and #10 are based on affidavits submitted by the applicant with the understanding that the notarized affidavits will be submitted prior to issuance of the Final Order, and the cancellations will take effect upon expiration of all appeal periods subsequent to issuance of the Final Order.
- The partial cancellation of the water rights described in Findings of Fact #9 and #10 affect acres, but not rate. The water rights are deficient rate water rights, thus no rate is cancelled. This yields a prorated rate subject to transfer, based on the remaining non-canceled acres and acres proposed for transfer, and described in the following findings.

| Certificate | Original Authorized Acres | Affidavit Canceled Acres | Non-Canceled Remaining Acres | Proposed Transfer Acres |
|-------------|---------------------------|--------------------------|------------------------------|-------------------------|
| 54559 | 632.00 | 316.80 | 315.20 | 250.00 |
| (IR) 80428 | 111.35 | 3.00 | 108.35 | 108.35 |
| (IS) 80428 | 5.40 | 0.00 | 5.40 | 0.00 |

IR means irrigation
IS means supplemental irrigation

- The portion of the first right to be transferred is as follows:
Certificate: 54559 in the name of REW RANCHES, INC. BY LAWRENCE B. REW (perfected under Permit G-5335)
Use: IRRIGATION of 250.00 ACRES
Priority Date: JULY 19, 1974
Rate: 1.17 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year. The irrigation season used herein shall include any time of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, provided further that in the event of a request for change in point of appropriation, an additional point of appropriation, or repair of this well, the quantity of water allowed herein together with the right perfected under Permit G-5337 shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.
Source: REW WELL 1 in the UMATILLA RIVER basin

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 N | 31 E | WM | 30 | NW NE | 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 30 E | WM | 24 | SW NW | 19.80 |
| 3 N | 30 E | WM | 24 | SE NW | 3.50 |
| 3 N | 30 E | WM | 24 | NE SW | 30.40 |
| 3 N | 30 E | WM | 24 | SE SW | 33.60 |
| 3 N | 30 E | WM | 24 | NE SE | 5.40 |
| 3 N | 30 E | WM | 24 | NW SE | 23.40 |
| 3 N | 30 E | WM | 24 | SW SE | 39.50 |
| 3 N | 30 E | WM | 24 | SE SE | 12.20 |
| 3 N | 30 E | WM | 25 | NE NE | 14.20 |
| 3 N | 30 E | WM | 25 | NW NE | 25.20 |
| 3 N | 30 E | WM | 25 | SE NE | 5.00 |
| 3 N | 30 E | WM | 25 | NE NW | 6.00 |
| 3 N | 31 E | WM | 30 | NW NE | 0.90 |
| 3 N | 31 E | WM | 30 | SW NE | 12.60 |
| 3 N | 31 E | WM | 30 | NE NW | 10.70 |
| 3 N | 31 E | WM | 30 | SE NW | 7.60 |
| TOTAL: | | | | | 250.00 |

14. Transfer Application T-10692 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 30 E | WM | 5 | SE SW | 3.35 |
| 3 N | 30 E | WM | 7 | NE SE | 29.10 |
| 3 N | 30 E | WM | 7 | NW SE | 28.50 |
| 3 N | 30 E | WM | 7 | SW SE | 28.90 |
| 3 N | 30 E | WM | 7 | SE SE | 31.30 |
| 3 N | 30 E | WM | 8 | NE NW | 30.50 |
| 3 N | 30 E | WM | 8 | NW NW | 31.40 |
| 3 N | 30 E | WM | 8 | SW NW | 31.20 |
| 3 N | 30 E | WM | 8 | SE NW | 30.70 |
| 3 N | 30 E | WM | 8 | NE SW | 5.05 |
| TOTAL: | | | | | 250.00 |

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

Certificate: 80428 in the name of LAWRENCE B. REW & REW RANCHES, INC.
(perfected under Permit G-5337)

Use: IRRIGATION of 108.35 ACRES

Priority Date: OCTOBER 21, 1974

Rate: 1.12 CUBIC FEET PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year, provided further that in the event of a request for a change in point of appropriation, an additional point of appropriation or repair of this well, the quantity of water allowed herein together with the right perfected under Permit G-5335, and the confirming right issued as a

result of the change in place of use authorized under T-8070, shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.

Source: REW WELL #1 in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 N | 31 E | WM | 30 | NW NE | 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 30 E | WM | 24 | SE SE | 14.80 |
| 3 N | 30 E | WM | 25 | NE NE | 23.00 |
| 3 N | 31 E | WM | 19 | SW SW | 16.25 |
| 3 N | 31 E | WM | 30 | NW NW | 32.30 |
| 3 N | 31 E | WM | 30 | SW NW | 22.00 |
| TOTAL: | | | | | 108.35 |

16. Transfer Application T-10692 proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3N | 30E | WM | 5 | NE SW | 29.80 |
| 3N | 30E | WM | 5 | NW SW | 28.20 |
| 3N | 30E | WM | 5 | SW SW | 34.00 |
| 3N | 30E | WM | 5 | SE SW | 16.35 |
| TOTAL: | | | | | 108.35 |

17. The third right to be transferred is as follows:

Certificate: T-8070 in the name of REW RANCHES, INC. (developed under Permit G-5337 with a change in place of use under T-8070 perfected to the satisfaction of the Director on November 19, 2008)

Use: IRRIGATION of 12.10 ACRES

Priority Date: OCTOBER 21, 1974

Rate: 0.13 CUBIC FOOT PER SECOND

Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year, provided the amount of water allowed at the new place of use and the quantity of water on the remaining lands, together with the right perfected under Certificate 54559 (Permit G-5335) shall not exceed 2.0 cfs, the capacity of this well system at the time of perfection of this right.

Source: REW WELL #1 in the UMATILLA RIVER BASIN

Authorized Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 3 N | 31 E | WM | 30 | NW NE | 1070 FEET SOUTH AND 90 FEET EAST FROM THE N1/4 CORNER OF SECTION 30 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3 N | 31 E | WM | 30 | NE NW | 1.10 |
| 3 N | 31 E | WM | 30 | NW NW | 0.50 |
| 3 N | 31 E | WM | 30 | SW NW | 7.30 |
| 3 N | 31 E | WM | 30 | SE NW | 3.20 |
| TOTAL: | | | | | 12.10 |

18. Transfer Application T-10692 also proposes to change the place of use of the right to:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3N | 30E | WM | 5 | SE SW | 12.10 |

19. Transfer Application T-10692 also proposes to change the authorized point of appropriation to six wells approximately 5.5 miles to 8.5 miles to the west and northwest from the existing point of appropriation:

| Well Name | Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|----------------------|-----|-----|-----|-----|-------|--|
| HALE #8 | 3N | 29E | WM | 14 | SW NW | 1350 FEET SOUTH AND 50 FEET WEST FROM THE NE CORNER OF THE NW1/4 NW1/4 OF SECTION 14 |
| COPPINGER #3 | 3N | 29E | WM | 23 | SE NE | 3960 FEET NORTH AND 1320 FEET WEST FROM THE SE CORNER OF SECTION 23 |
| COPPINGER #1 | 3N | 29E | WM | 24 | SW NE | 20 FEET NORTH AND 1490 FEET WEST FROM THE E1/4 CORNER OF SECTION 24 |
| HALE #3 | 3N | 30E | WM | 7 | SW SW | 1420 FEET SOUTH AND 40 FEET EAST FROM THE W1/4 CORNER OF SECTION 7 |
| DITCHENS LAND CO. #2 | 3N | 30E | WM | 20 | SW SW | 80 FEET EAST FROM THE SW CORNER OF SECTION 20 |
| DITCHENS LAND CO. #1 | 3N | 30E | WM | 30 | NE SW | 30 FEET SOUTH AND 640 FEET WEST FROM THE C1/4 CORNER OF SECTION 30 |

20. Notice of the application for transfer was published on August 12, 2008, pursuant to OAR 690-380-4000.
21. On October 14, 2008, the Department contacted the applicant by written correspondence to notify the applicant of deficiencies in the application. The Department requested that the deficiencies be resolved by December 5, 2008.
22. A response to the Department's request was submitted by the applicant's agent in a letter dated December 19, 2008 (received by the Department on December 22, 2008). The letter addressed each of the separate issues raised in the deficiency letter and included the following documents as attachments: A revised Supplemental Form A for Certificate 80428 indicating that only a portion of the right was proposed for transfer and showing the correct locations of the proposed wells; revised supplemental Forms A for Certificate 54559

and T-8070 showing the correct locations of the proposed wells; a series of maps obtained from the U.S. Department of Agriculture accompanied by additional tabulated information intended to show more clearly which lands were enrolled in the Federal Conservation Reserve Program (CRP); and a revised Land Use Information Form. The additional information and documents provided in the response did not satisfactorily address all of the deficiencies in the application.

23. On February 5, 2009, the Department contacted the applicant by written correspondence to notify the applicant of additional deficiencies in the application and to request additional documentation of enrollment in the CRP for some of the lands proposed for transfer. The Department asked that the remaining deficiencies be resolved by March 5, 2009.
24. In a letter dated March 6, 2009 (received March 9, 2009), the agent for the applicant provided additional information and three affidavits providing documentation to show that lands proposed for transfer were either enrolled in the CRP or had been irrigated in the last five years, as well as a revised "from" transfer application map. The additional information and documents provided in the response satisfactorily addressed the completeness deficiencies in the application.
25. On April 14 and April 17, 2009, the applicant's Certified Water Right Examiner submitted further amendments to the transfer application to reflect reductions in the areas proposed for transfer. The documents submitted included an amended "from" map and amended Supplemental Forms A for the affected rights.
26. On April 20, 2009, the Certified Water Right Examiner for the receiving landowner submitted an amended "to" map and revised pages for Supplemental Form A for each right, to match the reductions in the area proposed for transfer.
27. On May 29, 2009, the Department mailed a copy of the Preliminary Determination proposing to deny Transfer Application T-10692 to the applicant and receiving landowner, due to potential for enlargement and injury if the proposed changes were to be approved without further modifications and conditioning. The Preliminary Determination cover letter set forth options for modification of the change and conditioning that could avoid the potential for injury and enlargement. The cover letter set a deadline of July 15, 2009 for the applicant and receiving landowner to respond.
28. On June 25, 2009, the Department received a letter dated June 24, 2009 from Steven Shropshire, the applicant's agent, stating that the applicant proposed to address the injury and enlargement concerns by voluntarily cancelling all portions of the water rights evidenced by Certificates 54559 and 80428 on the applicant's property that are not involved in transfer application T-10692. Proposed affidavits of voluntary cancellation for those portions of the rights were enclosed, and the statement that actual, signed affidavits would be sent to the Department as soon as the Department is prepared to sign a final order approving the transfer, with the intent that the cancellation will become effective only upon the expiration of all appeal periods following issuance of that final order. Additionally, the receiving landowner commits to measure the diversion of water at the new place of use (consistent with the conditions in the final order for CW-58, recorded at Special Order

Volume 78, pages 350-362, with the correcting and superseding final order recorded at Special Order Volume 78, pages 425-437), as confirmed by David Filippi, representing Hale Farms, LLC by phone on July 10, 2009.

29. 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, and on July 14, 2009 requested that five years be allowed for completion of the changes, due to the extensive delivery infrastructure needed to apply the water to beneficial use at the new place of use.
30. On July 15, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10692 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 July 21, 2009, and in the East Oregonian newspaper on July 24, July 29 and August 5, 2009, pursuant to ORS 540.520 and OAR 690-380-4020.
31. On August 31, 2009, Lloyd Piercy timely submitted a Protest of the Preliminary Determination, and on September 4, 2009, Lloyd Piercy timely submitted additional information supplementing his protest. No other timely protests were received by the Department.
32. On April 20, 2010, the Department, EMA Trust, Dated January 24, 2001, Hale Farms LLC, Lloyd Piercy, and Lois Piercy entered into a settlement agreement pursuant to which Lloyd Piercy withdrew his protest of the Preliminary Determination. This Final Order reflects modifications agreed upon as a result of the settlement agreement.

Transfer Review Criteria (OAR 690-380-4010)

33. Evidence was submitted with the application indicating that the lands proposed for transfer have either been irrigated within the last five years according to the terms and conditions of the rights, or have been enrolled in the Federal Conservation Reserve Program and are, therefore, not subject to forfeiture in accordance with ORS 540.610.
34. 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-10692.
35. The proposed change, as conditioned, would not result in enlargement of the rights.
36. The proposed change, as conditioned, would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 37. The following portion of a supplemental right is appurtenant to the same lands as a portion of Certificate 54559 that is proposed to be transferred off the lands. The application proposes NOT to transfer the layered supplemental right.
- 38. Supplemental water rights (layered water rights) must be included in a transfer application or cancelled, pursuant to ORS 540.510(1) and OAR 690-380-2250.
- 39. Consistent with OAR 690-380-2250, the Department notified the applicant of the Department’s intent to cancel the portions of the supplemental water right described below unless within 30 days of the date of notification, the applicant modified the application to include the supplemental right or withdraws the application. The applicant did not modify the application to include the supplemental right or withdraw the application.
- 40. The portion of the supplemental right to be cancelled is as follows:

Certificate: 54566 in the name of M.S. AND SHIRLEY R. TEMPLE (perfected under Permit G-6987)
Use: SUPPLEMENTAL IRRIGATION of 22.2 ACRES
Priority Date: SEPTEMBER 9, 1976
Rate: 0.12 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year.
Source: REW WELL in the UMATILLA RIVER BASIN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 3N | 30E | WM | 23 | SE SE | 80 FEET NORTH AND 1090 FEET WEST FROM THE SE CORNER OF SECTION 23 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3N | 30E | WM | 24 | SW NW | 19.80 |
| 3N | 30E | WM | 24 | SE NW | 0.40 |
| 3N | 30E | WM | 24 | NE SW | 1.50 |
| 3N | 30E | WM | 24 | SE SW | 0.50 |
| TOTAL: | | | | | 22.20 |

Partial Diminution of a Water Right

- 41. The following portion of an irrigation right is appurtenant to the same lands as the proposed place of use.
- 42. The receiving landowner requested the right be diminished to supplemental irrigation, provided that the diminished right may, in the interest of conserving ground water supplies, be exercised at times even when water is available in the ground water supply provided the total quantity diverted from all sources of supply not exceed the limitation allowed in the right.

43. The portion of the irrigation right to be diminished to supplemental irrigation is as follows:

Permit: 54561 in the name of Echo Irrigation District

Use: IRRIGATION of 370.45 ACRES

Priority Date: JANUARY 30, 2008

Rate: 9.26 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 4.5 acre-feet per acre per year for the period of use March 1 through April 14 and October 1 through October 31.

Source: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|-----|-----|-----|-------|---|
| 5N | 30E | WM | 8 | SW NW | 2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER OF SECTION 8 |

Authorized Place of Use:

| IRRIGATION | | | | | |
|------------|------|-----|-----|-------|--------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 3N | 30E | WM | 5 | NE SW | 29.80 |
| 3N | 30E | WM | 5 | NW SW | 28.20 |
| 3N | 30E | WM | 5 | SW SW | 34.00 |
| 3N | 30E | WM | 5 | SE SW | 31.80 |
| 3 N | 30 E | WM | 7 | NE SE | 29.10 |
| 3 N | 30 E | WM | 7 | NW SE | 28.50 |
| 3 N | 30 E | WM | 7 | SW SE | 28.90 |
| 3 N | 30 E | WM | 7 | SE SE | 31.30 |
| 3 N | 30 E | WM | 8 | NE NW | 30.50 |
| 3 N | 30 E | WM | 8 | NW NW | 31.40 |
| 3 N | 30 E | WM | 8 | SW NW | 31.20 |
| 3 N | 30 E | WM | 8 | SE NW | 30.70 |
| 3 N | 30 E | WM | 8 | NE SW | 5.05 |
| TOTAL: | | | | | 370.45 |

Conclusions of Law

The changes in point of appropriation and place of use proposed in Transfer Application T-10692, as conditioned, are consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. The application is approved pursuant to the terms and conditions below, the abandoned rights are cancelled, and the rights requested to be diminished are diminished from irrigation to supplemental irrigation.

Now, therefore, it is ORDERED:

1. The changes in point of appropriation and place of use proposed in application T-10692 are approved. The portions of the rights that have been abandoned are cancelled, effective upon the expiration of all appeal periods following issuance of the final order. The rights requested to be diminished are diminished, effective upon the expiration of all appeal periods following issuance of the final order.

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 54559 and 80428 and Transfer T-8070 and Permit S-54561, and any related decree.
3. Water right certificates 54559, 54566 and 80428 are cancelled. New certificates will be issued describing those portions of the rights not affected by this transfer and cancellation.
4. The quantity of water diverted at the new points of appropriation, together with that diverted at the original point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
5. The amount of water allowed under each of the rights is as follows:

| CERTIFICATE | RATE in CFS | LIMIT/DUTY |
|-------------|-------------|---|
| 54559 | 1.17 | ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year. The irrigation season used herein shall include any time of each year that water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity in the soil profile to be utilized by plant growth in the subsequent growing season, provided the amount of water allowed at the new place of use, together with the amount of water allowed at the new place of use for the right perfected under Certificate 80428 (Permit G-5337) and the confirming right issued as a result of the change in place of use authorized under T-8070, shall not exceed 1.86 cfs and 1,014.56 acre-feet per year, which reflect the capacity of the well system at the time of perfection of this right attributable to the acres being transferred or cancelled. |
| 80428 | 1.12 | ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year, provided the amount of water allowed at the new place of use, together with the amount of water allowed at the new place of use for the right perfected under Certificate 54559 (Permit G-5335) and the confirming right issued as a result of the change in place of use authorized under T-8070, shall not exceed 1.86 cfs and 1,014.56 acre-feet per year, which reflect the capacity of the well system at the time of perfection of this right attributable to the acres being transferred or cancelled. |
| T-8070 | 0.13 | ONE-EIGHTIETH cfs per acre, not to exceed 3.0 acre-feet per acre per year, provided the amount of water allowed at the new place of use, together with the amount of water allowed at the new place of use for the rights perfected under Certificate 54559 (Permit G-5335) and Certificate 80428 (Permit G-5337), shall not exceed 1.86 cfs and 1,014.56 acre-feet per year, which reflect the capacity of the well system at the time of perfection of this right attributable to the acres being transferred or cancelled. |

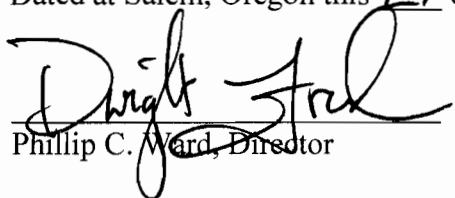
6. Before water may be applied to the new lands, the receiving landowner shall install totalizing flow meters or other measurement systems as approved by the Department at:
 - a) The point of diversion from the Columbia River and all other points of diversion or appropriation, which supply water to the new lands;
 - b) The northern boundary connection of the Echo Irrigation District; and

- c) All field diversions (center pivots or other method of water delivery) used to apply water to the new lands.

Additionally, the meters must be maintained in good working order according to manufacturer's specifications. A different plan for measurement of diverted water at each field diversion, which is acceptable to, and approved by the Department may be allowed. Testing of the approved measurement devices shall occur at such intervals as deemed appropriate and necessary by the Watermaster.

7. The receiving landowner shall maintain a complete record of water usage on a monthly basis and shall submit monthly and annual reports to the Watermaster's office in Pendleton. The water use reports shall include recorded monthly water usage measurements from each point of diversion, the measurement device located at the North Echo Irrigation District boundary connection and for each field diversion (center pivot or other means of application). The reports shall also include dates of measurement and other information as may be requested by the Watermaster. The frequency or timing of the reports may be modified upon a determination by the Department that an alternate frequency is needed or appropriate. The reporting frequency may also be modified after the second full season of use, if requested by the receiving landowner and approved by the Department. The reports may be e-mailed, faxed or mailed.
8. The receiving landowner shall allow the Watermaster access to the water meters described above. Where a meter is located within a private structure, the Watermaster shall request access upon reasonable notice.
9. Additional measurement and reporting conditions, including, but not limited to, additional measuring sites, general water-use information, and the place and nature of water use may be required at the discretion of the Department.
10. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.
11. The former place of use of the transferred rights shall no longer receive water under the rights.
12. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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 changes and full beneficial use of the water.
13. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this 23 day of April 2010.


Phillip C. Ward, Director

mailing date: _____

APR 26 2010

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

| | | |
|--|---|-------------------|
| In the Matter of Protest of Transfer |) | |
| Application T-10692, Umatilla County, |) | |
| Oregon; and |) | SETTLEMENT |
| |) | AGREEMENT |
| In the Matter of Stage Gulch 2010 Annual |) | |
| Allocation of Ground Water Under Water |) | |
| Right Certificate 80295 and Order |) | |
| approving Transfer T-8688, Umatilla |) | |
| County, Oregon |) | |

The Oregon Water Resources Department (“**OWRD**”), EMA Trust, Dated January 24, 2001 (“**EMA Trust**”), Hale Farms LLC, an Oregon limited liability company (“**Hale**”), Lloyd Piercy, and Lois Piercy, do hereby stipulate and agree in this “**Settlement Agreement**” as follows:

Background

A. Transfer Application T-10692 proposes changes in points of appropriation and place of use and partial cancellation of water rights. EMA Trust is the transfer applicant, and Hale is the receiving landowner. On July 15, 2009, OWRD issued a Preliminary Determination Proposing Approval of Changes in Points of Appropriation and Place of Use and Partial Cancellation of Water Rights for T-10692 (“**T-10692 PD**”).

B. On August 31, 2009, Lloyd Piercy timely submitted a Protest of T-10692 PD. On September 4, 2009, Lloyd Piercy timely submitted additional information supplementing his Protest. No other timely protests were received by OWRD regarding T-10692 PD.

C. On July 22, 2009, OWRD issued to Lloyd Piercy a Proposed Order Approving Allocation of Ground Water and Opportunity for Hearing, in the Matter of Stage Gulch 2010 Annual Allocation of Ground Water, Under Water Right Certificate 80295 and Order Approving Transfer T-8688, Umatilla County, Oregon (“**PFO 80295**”).

D. On August 21, 2009, Hale timely submitted to OWRD a Protest and Request for Contested Case Hearing (“**Protest**”) of PFO 80295.

E. On August 20, 2009, Lloyd Piercy and Lois Piercy timely submitted to OWRD a Hearing Request for 2010 water allocations, Stage Gulch Critical Ground Water – Sub area H (“**Hearing Request**”). Lloyd and Lois Piercy since clarified that this Hearing Request is limited to PFO 80295. No other timely protests or requests for contested case hearings were received by OWRD regarding PFO 80295.

F. OWRD, EMA Trust, Hale, Lloyd Piercy, and Lois Piercy agree that the issues raised in Lloyd Piercy's Protest of T-10692 PD, Hale's Protest of PFO 80295, and Lloyd Piercy and Lois Piercy's Hearing Request for PFO 80295 are resolved on the following terms.

Terms of the Agreement

1. EMA Trust, Hale, Lloyd Piercy, and Lois Piercy waive all right and opportunity to request reconsideration, file exceptions, and seek judicial review of this Settlement Agreement and the Final Determination incorporating this Settlement Agreement.

2. In signing this Settlement Agreement, Lloyd Piercy withdraws his Protest of T-10692 PD, Hale withdraws its Protest of PFO 80295, and Lloyd Piercy and Lois Piercy withdraw their Hearing Request. However, Hale, Lloyd Piercy, and Lois Piercy are not precluded, and are in no way estopped, from challenging future (2011 and beyond) proposed orders regarding allocations of ground water in the Stage Gulch Critical Ground Water Area, including proposed allocations for Water Right Certificate 80295 and Order Approving Transfer T-8688, on the same grounds as raised in their respective Protests and Requests for Hearing or on any other grounds.

3. OWRD agrees to issue the Final Determination incorporating this Settlement Agreement attached hereto as Exhibit A.

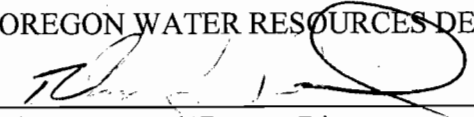
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5. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.

6. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, and understands and agrees with the contents thereof.

7. This Settlement Agreement may be signed in counterparts.

OREGON WATER RESOURCES DEPARTMENT



Thomas J. Paul, Deputy Director
For Phillip C. Ward, Director
Oregon Water Resources Department

Date: 4/20/2010

EMA TRUST, DATED JANUARY 24, Trust, Dated January 24, 2001

By: _____
Eric Anderson, Trustee

Date: _____

HALE FARMS LLC
an Oregon limited liability company

By: _____
Robert C. Hale, Manager

Date: _____

LLOYD PIERCY

Date: _____

LOIS PIERCY

Date: _____

Exhibit A

Final Determination for Transfer Application T-10692

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

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APR 27 2010

WATER RESOURCES DEPT
SALEM, OREGON

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Oregon Water Resources Department

Date: _____

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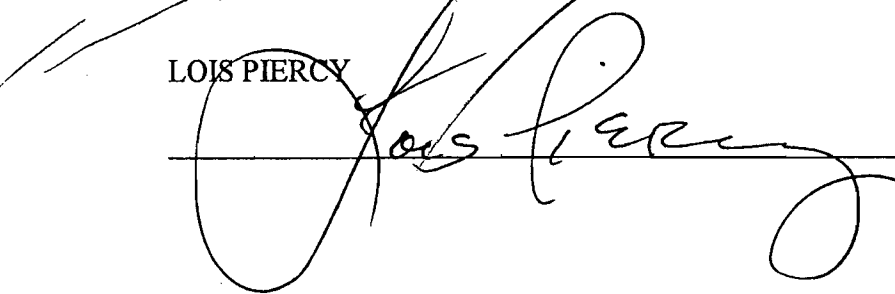
Date: _____

LLOYD PIERCY



Date: 4/20/10

LOIS PIERCY



Date: 4/20/10

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APR 27 2010

WATER RESOURCES DEPT
SALEM, OREGON

Exhibit A

Final Determination for Transfer Application T-10692

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SALEM, OREGON

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OREGON WATER RESOURCES DEPARTMENT

Date: _____

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For Phillip C. Ward, Director
Oregon Water Resources Department

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By: Eric Anderson Trustee
Eric Anderson, Trustee

Date: 4/20/10

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an Oregon limited liability company

By: _____
Robert C. Hale, Manager

Date: _____

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Craig Reeder, Manager

Date: 04-20-10

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