BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	FINAL ORDER
T-12606, Wallowa County)	APPROVING A CHANGE IN PLACE
)	OF USE AND A RE-DESCRIPTION OF
)	A WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

DONALD AND LOIS HOUGH 86201 BICENTENNIAL LANE JOSEPH, OR 97846

Findings of Fact

- 1. On March 9, 2017, DONALD AND LOIS HOUGH filed an application to change the place of use under Certificate 57784. The Department assigned the application number T-12606.
- 2. Notice of the application for transfer was published on March 14, 2017, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 3. Upon the initial review of the transfer an error was found in the description of the water right. The water right is re-described below.
- 4. On June 12, 2017, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12606 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of July 14, 2017, 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.

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 August 1, 2017, the Department issued a Preliminary Determination proposing to approve Transfer Application T-12606 and sent a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published in the Department's weekly notice on August 8, 2017, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
- 6. The portion of the first right to be transferred is as follows:

Certificate: 57784 in the name of DONALD L. HOUGH (perfected under

Permit S-41712)

Use: IRRIGATION OF 12.0 ACRES

Priority Date: APRIL 14, 1977

Rate: 0.30 CUBIC FOOT 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, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.5 acre-feet per acre for each acre irrigated during the irrigation

season of each year.

Source: WALLOWA RIVER, tributary to the GRANDE RONDE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
3 S	45 E	WM	5	NE NW	3	880 FEET SOUTH AND 1550 FEET EAST FROM THE NW CORNER OF SECTION 5

Authorized Place of Use:

	IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres	
2 S	45 E	WM	24	NE SW	0.8	
2 S	45 E	WM	24	NE SE	1.9	
2 S	45 E	WM	24	NW SE	9.3	
				Total	12.0	

- 7. Certificate 57784 describes the authorized place of use as 0.8 acres in the NE¼ SW¼, 1.9 acres in the NE¼ SE¼, and 9.3 acres in the NW¼ SE¼, Section 24, Township 2 South, Range 45 East, WM, Wallowa County, Oregon.
 - a. The transfer application depicts the place of use under Certificate 57784 as being 0.5 acres in the NE¼ SW¼ and 11.5 acres in the NW¼ SE¼, Section 24, Township 2 South, Range 45 East, WM, Wallowa County, Oregon.
 - b. Based on the original Government Land Office survey map and the USGS Quad map, the size of the section lines are larger than normal section lines therefore the size of the QQs are larger than a typical QQ. The QQ's in this section would be approximately 1400 feet long. As a result of the size of the QQ, a shift of the QQ lines is necessary. This shift would align the established long standing fence line of the applicant. Aerial photography shows the long term accepted property boundary lines which have not changed. The property boundary lines along with the water right descriptions would align almost perfectly with the shift described above. Also, Water Right Certificate

57784 was applied and issued to Donald L. Hough assuming all the water rights issued were appurtenant to his land. Therefore, the Department concludes that the land to which the right has always been appurtenant should be re-described, consistent with the application map prepared by the CWRE, and is described in the table below.

c. The following table lists the place of use as described in existing Certificate 57784 and a proposed re-description based on the above findings:

Twp	Dna	Sec	Original Description of Place of Use		Proposed Re-Description of Place of Use				
Twp	Rng		Q-Q	DLC or GLot	Acres	Q-Q	DLC or GLot	Acres	Current Tax Lot [optional]
2 S	45 E	24	NESW		0.8	2 S	45 E	0.5	7600
2 S	45 E	24	NESE	•	1.9	2 S	45 E	11.5	7600
2 S	45 E	24	NWSE		9.3				

8. Transfer Application T-12606 proposes to change the place of use of the right to:

		IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	45 E	WM	24	NE SW	0.8
2 S	45 E	WM	24	SE SW	9.9
2 S	45 E	WM	24	NW SE	1.3
				Total	12.0

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

- 9. 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.
- 10. A diversion structure and ditch 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-12606.
- 11. The proposed change would not result in enlargement of the right.
- 12. 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-12606 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-12606 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 57784 and any related decree.
- 3. Water right Certificate 57784 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
- 4. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate 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 the headgate as required by the Department.
- 5. Water use measurement conditions:
 - a. **Before water use may begin** under this order, the water user shall install a suitable measuring device, at each point of diversion (new and existing).
 - b. The water user shall maintain the measuring device in good working order.
 - c. The water user shall allow the Watermaster access to the measuring device; provided however, where the measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.
- 6. The former place of use of the transferred right shall no longer receive water under the right.
- 7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2018**. 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.
- 8. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this day of September, 2017.
Dwight Low
Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

Mailing date: SEP 2 0 2017