



# Oregon

John A. Kitzhaber, MD, Governor

## Water Resources Department

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725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
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October 14, 2014

VIA E-MAIL

LOWRY FAMILY TRUST  
24428 KEATING GRANGE LANE  
BAKER CITY, OR 97814

SUBJECT: Water Right Transfer Application T-11790

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-11790. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the Department's notice.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0886 or [Patrick.K.Starnes@wrp.state.or.us](mailto:Patrick.K.Starnes@wrp.state.or.us) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application file T-11790  
Rick M. Lusk, District 8 Watermaster (*via e-mail*)  
Hanley Engineering Inc., Agent/CWRE for the applicant (*via e-mail*)

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**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

5. 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

6. 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 AN 100 FEET WEST FROM THE S¼ 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

7. 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

8. 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 AN 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

9. 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)]**

10. 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.
11. 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.
12. The proposed change would not result in enlargement of the rights.

13. The proposed change would not result in injury to other water rights.

### **Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-11790 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-11790 is approved, the final order will include the following:*

- 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 the 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 16 day of October 2014.

  
Dwight French, Water Right Services Administrator, for  
THOMAS M. BYLER, DIRECTOR

This Preliminary Determination was prepared by Carrie Matthews. If you have questions about the information in this document, you may reach me at 541-523-8224 ext. 223 or [Carrie.R.Matthews@wr.d.state.or.us](mailto:Carrie.R.Matthews@wr.d.state.or.us)

Protests should be addressed to the attention of the Transfer and Conservation Section, Water Resources Department, 725 Summer St NE, Suite A, Salem, OR 97301-1266.