



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
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Salem, OR 97301  
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August 1, 2017

DONALD AND LOIS HOUGH  
86201 BICENTENNIAL LANE  
JOSEPH, OR 97846

SUBJECT: Water Right Transfer Application T-12606

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12606. 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@oregon.gov](mailto:Patrick.K.Starnes@oregon.gov) if I may be of assistance.

Sincerely,

Kelly Starnes  
Transfer Program Analyst  
Transfer and Conservation Section

cc: Transfer Application T-12606  
David Bates, Watermaster, District 7 *(via e-mail)*  
Ralph W. Swinehart, CWRE for the applicant *(via e-mail)*

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12606, Wallowa County	)	PROPOSING APPROVAL OF 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.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

5. 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

6. Certificate 57784 describes the authorized place of use as 0.8 acres in the NE $\frac{1}{4}$  SW $\frac{1}{4}$ , 1.9 acres in the NE $\frac{1}{4}$  SE $\frac{1}{4}$ , and 9.3 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 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 NE $\frac{1}{4}$  SW $\frac{1}{4}$  and 11.5 acres in the NW $\frac{1}{4}$  SE $\frac{1}{4}$ , 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	Rng	Sec	Original Description of Place of Use			Proposed Re-Description of Place of Use			
			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				

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

IRRIGATION					
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)]***

8. 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.
9. 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.
10. The proposed change would not result in enlargement of the right.
11. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

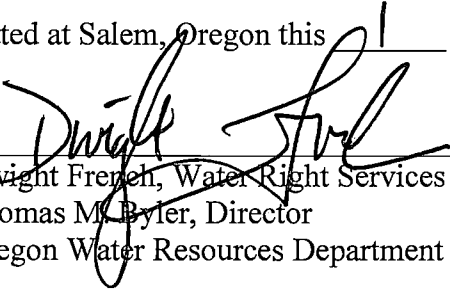
The change in place of use proposed in Transfer Application T-12606 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

*If Transfer Application T-12606 is approved, the final order will include the following:*

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 1 day of August, 2017.

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

This Preliminary Determination was prepared by Marcy Osborn. If you have questions about the information in this document, you may reach me at 541-523-8224 ext.228 or marcy.j.osborn@oregon.gov.

*Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.*

**Notice Regarding Service Members:** Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>