

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-12897, Umatilla County	)	PROPOSING APPROVAL OF A
	)	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.
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.

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.

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. 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

11. 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)**

12. 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.
13. 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.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.
16. All other application requirements are met.

**Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-12897 appears to be consistent with the requirements of ORS 537.705 and 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-12897 is approved, the final order may include the following:*

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 91230 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, DEC 17 2018.



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov)

*Protests should be addressed to the attention of Water Rights 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>



# Oregon

Kate Brown, Governor

Water Resources Department  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

December 11, 2018

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

SUBJECT: Water Right Transfer Application T-12897

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12897. 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 [corey.a.courchane@oregon.gov](mailto:corey.a.courchane@oregon.gov) or (503) 986-0825, if I may be of assistance.

Sincerely,

Corey Courchane  
Transfer Specialist  
Transfer and Conservation Section

cc: Transfer Application file T-12897  
Gregory M. Silbernagel, District 5 Watermaster (*via e-mail*)  
John S. Warinner, CWRE #358 (*via e-mail*)  
Teresa Kilmer, Walla Walla Irrigation District  
David E. Filippi, Stoel Rives LLP  
Hudson Bay District Improvement Company

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