

4. The portion of the first right to be transferred is as follows:

Certificate: 85703 in the name of LAKEVIEW WATER USERS, INC. (confirmed by Goose Lake (F)(S))
Use: IRRIGATION of 89.8 ACRES
Priority Date: JANUARY 21, 1907 (Drews Creek), JULY 31, 1908 (Cotton wood Creek)
Rate: 1.74 CUBIC FEET PER SECOND (Drews Creek) and 1.56 CUBIC FEET PER SECOND (Cottonwood Creek)
Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 3.30 CUBIC FEET PER SECOND (CFS); being 1.74 CFS from DREWS CREEK AND RESERVOIR and 1.56 CFS from COTTONWOOD CREEK AND RESERVOIR, or its equivalent in case of rotation, measured at the point of diversion from the source.
Sources: DREWS CREEK, tributary to GOOSE LAKE; DREWS RESERVOIR, tributary to DREWS CREEK; COTTONWOOD CREEK, tributary to THOMAS CREEK; COTTONWOOD CREEK RESERVOIR, tributary to COTTONWOOD CREEK

Authorized Points of Diversion:

TWP	RNG	MER	SEC	Q-Q	MEASURED DISTANCES
38 S	19 E	WM	29	NW SW	COTTONWOOD CREEK RESERVOIR: 580 FEET SOUTH AND 900 FEET EAST FROM W1/4 CORNER OF SECTION 29
39 S	19 E	WM	16	NE NE	COTTONWOOD CREEK: 860 FEET SOUTH AND 1120 FEET WEST FROM NE CORNER OF SECTION 16
40 S	18 E	WM	5	SW SE	DREWS CREEK RESERVOIR: 120 FEET NORTH AND 1820 FEET WEST FROM SE CORNER OF SECTION 5
40 S	18 E	WM	11	SE NW	DREWS CREEK: 1850 FEET SOUTH AND 3400 FEET WEST FROM NE CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	WM	35	NW NE	9.00
39 S	19 E	WM	35	SW NE	9.00
39 S	19 E	WM	35	SE NW	10.00
39 S	19 E	WM	35	SW SW	15.00
39 S	19 E	WM	35	SE SW	26.80
39 S	19 E	WM	35	NW SE	10.00
39 S	19 E	WM	35	SW SE	10.00
TOTAL:					89.80

5. Application T-9297 proposes to change the place of use of the right to:

IRRIGATION					
TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	WM	35	NE NE	7.00
39 S	19 E	WM	35	NW NE	3.00
39 S	19 E	WM	35	SW NE	30.00
39 S	19 E	WM	35	SE NE	39.80
39 S	19 E	WM	35	SW NW	9.00
39 S	19 E	WM	35	SE NW	1.00
TOTAL:					89.80

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

Permit: S-43956 in the name of LAKEVIEW WATER USERS, INC. (application S-37062)

Use: SUPPLEMENTAL IRRIGATION of 89.8 ACRES

Priority Date: SEPTEMBER 5, 1961

Volume: 4600 ACRE FEET OF STORED WATER

Limit/Duty: The appropriation is limited to 1/40 OF ONE CUBIC FEET PER SECOND, or its equivalent for each acre irrigated, and is further limited to a diversion not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right is limited to any deficiency in the available supply of any prior right existing for the same land.

Sources: COTTONWOOD CREEK RESERVOIR, tributary to COTTONWOOD CREEK

Authorized Point of Diversion:

TWP	RNG	MER	SEC	Q-Q	MEASURED DISTANCES
38 S	19 E	WM	29	NW SW	COTTONWOOD CREEK RESERVOIR: 2171 FEET NORTH AND 778 FEET EAST FROM SW CORNER OF SECTION 29

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	Q-Q	GLOT	DLC	ACRES
39 S	19 E	WM	35	NW NE			9.00
39 S	19 E	WM	35	SW NE			9.00
39 S	19 E	WM	35	SE NW			10.00
39 S	19 E	WM	35	SW SW			15.00
39 S	19 E	WM	35	SE SW			26.80
39 S	19 E	WM	35	NW SE			10.00
39 S	19 E	WM	35	SW SE			10.00
TOTAL:							89.80

7. Application T-9297 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	Q-Q	GLOT	DLC	ACRES
39 S	19 E	WM	35	NE NE			7.00

SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	Q-Q	GLOT	DLC	ACRES
39 S	19 E	WM	35	NW NE			3.00
39 S	19 E	WM	35	SW NE			30.00
39 S	19 E	WM	35	SE NE			39.80
39 S	19 E	WM	35	SW NW			9.00
39 S	19 E	WM	35	SE NW			1.00
TOTAL:							89.80

8. Notice of the application for transfer was published on December 24, 2002, pursuant to OAR 690-380-4000.
9. On January 24, 2003, the Department received a protest to the application from Robert Squires and the Board of Directors of Lakeview Water Users, Inc., 21394 New Idaho Road, Lakeview, Oregon, 97630.
10. On May 15, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9297 to the applicant. The draft Preliminary Determination set forth a deadline of June 19, 2009, for the applicant to respond. The applicant did not respond by the deadline.
11. On May 29, 2009, and July 8, 2009, the Department left telephone messages requesting the applicant respond. The applicant failed to respond.
12. On July 28, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9297 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 August 11, 2009. No protests were filed in response to the notice.
13. On September 11, 2009, Jorge Cobian, Manager, Lakeview Water Users, Inc. withdrew the protest to Transfer Application T-9297 on behalf of the protestant.
14. On September 25, 2009, the Director issued an order pursuant to ORS 540.505 to 540.580 and OAR Division 690, Chapter 380, approving a change in place of use and canceling a portion of a water use permit. The order is recorded in Special Order Volume 78, Pages 980 to 984.
15. On October 19, 2009, the Department received a request from applicant Lyle Garrett that the order be reconsidered. The applicant requested the supplemental water rights under Permit S-43956 in the name of Lakeview Water Users, Inc. be included in the transfer application because the intent was to transfer all the appurtenant water rights.
16. The request for reconsideration was filed within the 60-day period specified in ORS 183.484.

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

17. Water has been used within the five-year period prior to submittal of the transfer application 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.
18. A diversion structure and ditch 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-9297.
19. The proposed change would not result in enlargement of the right.
20. The proposed change would not result in injury to other water rights.

Conclusions of Law


1. The change in place of use proposed in Transfer Application T-9297 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the protest that was filed has been resolved.
2. A petition for reconsideration was filed within the 60-day period specified in ORS 183.484.

Now, therefore, it is ORDERED:

1. The final order approving application T-9297 and entered at Special Order Volume 78, pages 980 through 984 is reconsidered, withdrawn and of no further force or effect. This order supersedes the order entered at Special Order Volume 78, pages 980 through 984.
2. The change in place of use proposed in application T-9297 is approved.
3. Water right certificate 85703 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. 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 85703 and any related decree
5. Permit S-43956 is amended as described herein. All other terms and conditions of Permit S-43956 remains the same.
6. The former place of use of the transferred right shall no longer receive water under the right.
7. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2010**. A Claim of Beneficial Use prepared by a Certified Water Rights 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. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 23rd day of October 2009.


Phillip C. Ward, Director

Mailing Date: OCT 28 2009