BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application T-9297, Klamath and Lake Counties))))	RECONSIDERATION AND MODIFICATION OF A FINAL ORDER RECORDED IN SPECIAL ORDER VOLUME 78 PAGES 980 – 984 APPROVING A CHANGE IN PLACE
)	OF USE AND CANCELING A PORTION OF A WATER USE PERMIT

Authority

ORS 540.505 to 540.580 establishes 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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications. OAR 137-044-0080 describes the process for reconsideration of an order in other than contested case.

Applicant

LYLE W. AND FRANKIE GARRETT PO BOX 488 LAKEVIEW OR 97630

Findings of Fact

Background

- 1. On February 15, 2003, LYLE W. and FRANKIE GARRETT filed an application to change the place of use under Certificate 85703. The Department assigned the application number T-9297.
- 2. On December 20, 2006, the applicants, by their authorized agent Dennis Glender, amended the application and map to remove 10.0 acres proposed for irrigation in the Southeast Quarter of Section 26, Township 39 South, Range 19 East, W.M., on land owned by Mike and Tori Nunn.
- 3. The application proposed to transfer only the primary water right (Certificate 85703). The application did not propose to transfer the supplemental irrigation water right (Permit S-43956) associated with the primary right.

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.

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:

		IRRIC	GATION		
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:

		IRRI	GATION		
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	SWNW	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:

		SUPP	LEMENT	TAL IRRIG	ATION		
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
					Т	OTAL:	89.80

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

		SUPP	LEMENT	ΓAL IRRIG	ATION		
TWP	RNG	MER	SEC	Q-Q	GLOT	DLC	ACRES
39 S	19 E	WM	35	NE NE			7.00

		SUPP	LEMEN	TAL IRRIG	ATION		
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
					7	OTAL:	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.
Dat	ted at Salem, Oregon this 23d day of October 2009.
Phi	Subbloboo Blip C. Ward, Director Part Part

OCT 2 8 2009

Mailing Date:____