

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

In the Matter of Transfer Application)
T-9749, Marion County) **FINAL ORDER**
) **APPROVING A CHANGE IN**
) **CHARACTER OF USE**

Authority

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. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

Applicant

**LAKEWOOD UTILITIES LTD
LAKEWOOD HOMEOWNERS INC.
P.O. BOX 250
AURORA, OR 97002**

Findings of Fact

Background

1. On June 18, 2004, Lakewood Utilities Ltd / Lakewood Homeowners Inc. filed an application to change the character of use under Permit G-13092. The Department assigned the application number T-9749.
2. On November 21, 2008, the Department issued Water Right Certificate 84929 confirming Permit G-13092.
3. The right to be transferred is as follows:

Certificate: 84929 in the name of LAKEWOOD UTILITIES LTD; LAKEWOOD HOMEOWNERS INC. (perfected under Permit G-13092)

Use: GROUP DOMESTIC for 110 HOUSEHOLDS

Priority Date: JULY 14, 1993

Rate: 0.11 CUBIC FOOT PER SECOND (CFS) FROM EITHER WELL,
 PROVIDED THE TOTAL QUANTITY DIVERTED FROM BOTH
 WELLS DOES NOT EXCEED 0.11 CFS

Source: TWO WELLS, in the MILL CREEK BASIN

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.

Authorized Points of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|--|
| 4 S | 1 W | WM | 22 | SE SE | 52 | WELL 1 - N 74°32' E 2037 FEET FROM THE SOUTHERLY NW ANGLE CORNER (WITHIN SECTION 27) OF DLC 52 |
| 4 S | 1 W | WM | 22 | SE SE | 52 | WELL 2 - N 75°37' E 2254 FEET FROM THE SOUTHERLY NW ANGLE CORNER (WITHIN SECTION 27) OF DLC 52 |

Authorized Place of Use:

| GROUP DOMESTIC | | | | | |
|----------------|-----|-----|-----|-------|-----|
| Twp | Rng | Mer | Sec | Q-Q | DLC |
| 4 S | 1 W | WM | 22 | SW SE | 50 |
| 4 S | 1 W | WM | 22 | SW SE | 52 |
| 4 S | 1 W | WM | 22 | SE SE | 52 |

4. The applicant has submitted information that better describes the location of the authorized points of appropriation as:

| Twp | Rng | Mer | Sec | Q-Q | DLC | Measured Distances |
|-----|-----|-----|-----|-------|-----|---|
| 4 S | 1 W | WM | 22 | SE SE | 52 | WELL 1 - 270 FEET NORTH AND 630 FEET WEST FROM THE SE CORNER OF SECTION 22. |
| 4 S | 1 W | WM | 22 | SE SE | 52 | WELL 2 - 280 FEET NORTH AND 420 FEET WEST FROM THE SE CORNER OF SECTION 22. |

5. Transfer Application T-9749 proposes to change the character of use to quasi-municipal use.
6. Notice of the application for transfer was published on June 29, 2004, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On October 8, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9749 to the applicant. The cover letter for the draft Preliminary Determination set forth a deadline of November 14, 2009, for the applicant to respond. The applicant requested that the Department proceed with the issuance of the Preliminary Determination.
8. On October 12, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9749 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 October 20, 2009, and in the Woodburn Independent newspaper on October 28, November 4 and 11, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

Transfer Review Criteria (OAR 690-380-4010)

9. Water has been used within the last five years prior to the submittal of Transfer Application T-9749 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.

10. A pump, pipeline, and distribution 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-9749.
11. The proposed change in character of use would not result in enlargement of the right, provided the rate of diversion for quasi-municipal use is limited to 0.11 cubic foot per second and further limited to a total volume diverted of 79.4 acre-feet per year.
12. The proposed change would not result in injury to other water rights.


Conclusions of Law

The change in character of use proposed in Transfer Application T-9749 is consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in character of use proposed in Transfer Application T-9749 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 84929 and any related decree.
3. Water right Certificate 84929 is cancelled.
4. The rate of diversion for quasi-municipal use shall be limited to 0.11 cubic foot per second and shall be further limited to a total volume diverted of 79.4 acre-feet per year.
5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.
6. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 7th day of December 2009.



Phillip C. Ward, Director

Mailing Date: DEC 11 2009