

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

In the Matter of Transfer Application)	FINAL ORDER APPROVING A
T-11290, Lake County)	CHANGE IN PLACE OF USE AND
)	PARTIAL DIMINUTION OF
)	CERTIFICATE 63273

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.

Applicant

LAKEVIEW WATER USERS
91164 WATER USERS LANE
LAKEVIEW, OR 97630

Agent

HOLLIE CANNON
PO BOX 7449
KLAMATH FALLS, OR 97602

Findings of Fact

Background

1. On September 6, 2011, Jorge Cobians, Manager, on behalf of Lakeview Water Users filed an application to change the place of use under perfected Transfer Application T-5814. The Department assigned the application number T-11290.
2. On May 14, 2012, items addressing the resolution of layered water rights were received from Pete Talbott on behalf of Talbott Ranch, the landowner.
3. The first right to be transferred is as follows:

Order: Special Order Volume 83, Pages 755 – 756 (Order of Proper Proof of Changes in Place of Use Under T-5814) in the name of SAM FARR (LAKEVIEW WATER USERS, INC.)

Use: IRRIGATION of 9.2 ACRES

Priority Dates: JANUARY 21, 1907 FOR DREWS CREEK AND JULY 31, 1908 FOR COTTONWOOD CREEK

Rate: 0.34 CUBIC FOOT PER SECOND (CFS)

Sources: DREWS CREEK, DREWS RESERVOIR, COTTONWOOD RESERVOIR AND COTTONWOOD CREEK, tributaries to GOOSE LAKE

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 Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	19 E	WM	29	NW SW	COTTONWOOD RESERVOIR - 580 FEET SOUTH AND 900 FEET EAST FROM THE W¼ CORNER OF SECTION 29
39 S	19 E	WM	16	NE NE	COTTONWOOD CREEK - 860 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16
40 S	18 E	WM	5	SW SE	DREWS RESERVOIR - 120 FEET NORTH AND 1820 FEET WEST FROM THE SE CORNER OF SECTION 5
40 S	18 E	WM	11	SE NW	DREWS CREEK - 1850 FEET SOUTH AND 3400 FEET WEST FROM THE NE CORNER OF SECTION 11

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	29	SW SE	9.2

4. Transfer Application T-11290 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	32	SW NE	4.8
39 S	19 E	WM	32	SE NE	4.4
Total:					9.2

5. Notice of the application for transfer was published on September 13, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On June 14, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11290 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 16, 2012, 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.
7. On July 19, 2012, the Department issued a preliminary determination proposing to approve Transfer Application T-11290 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 July 24, 2012. No protests were filed in response to the notice.

Partial Diminution of a Water Right

8. On May 14, 2012, an affidavit requesting that a portion of Certificate 63273 be diminished was received by the Department. The right to be diminished is as follows:

Certificate: 63273 in the name of JIM STEWART (perfected under Permit G-9721)
Use: IRRIGATION of 9.2 ACRES
Priority Date: NOVEMBER 19, 1981

Rate: 0.115 CUBIC FOOT PER SECOND (CFS)
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-EIGHTIETH 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 3.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: A SUMP in the COTTONWOOD CREEK BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	19 E	WM	32	SE NE	1250 FEET NORTH AND 400 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 32

Authorized Place of Use to be Diminished to Supplemental Irrigation:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	32	SW NE	4.8
39S	19E	WM	32	SE NE	4.4
Total:					9.2

- Water Use Permit S-47021 is appurtenant to a portion of the proposed place of use. In order to avoid enlargement, the landowner has agreed not to perfect Permit S-47021 at the following location:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	29	SW NE	9.2

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

- 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.
- 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-11290.
- The proposed change would not result in enlargement of the right if Permit S-47021 is not perfected as detailed in Finding of Fact #7.
- The proposed changes would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in Transfer Application T-11290 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the right proposed to be diminished shall be diminished to supplemental irrigation.

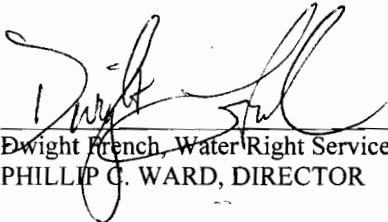
Now, therefore it is ORDERED:

1. The change in place of use proposed in Transfer Application T-11290 is approved. The portion of Certificate 63273 identified in Finding of Fact #8 is diminished.
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 the perfected portion of Transfer Application T-5814 and any related decree.
3. Special Order Volume 83, Pages 755-756 (Order of Proper Proof of Changes in Place of Use Under T 5814) is modified.
4. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
5. The former place of use of the transferred right shall no longer receive water under the rights.
6. Water Use Permit S-47021 shall not be perfected at the following location:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	29	SW NE	9.2

7. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2013. 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 changes and full beneficial use of the water.
8. After satisfactory proof of beneficial use is received and evaluated, the Department will issue a superseding certificate in the name of Lakeview Water Users describing the right when it determines that is necessary for record keeping.

Dated at Salem, Oregon this 27th day of August, 2012.


Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

Mailing Date: SEP 04 2012