

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-10790, Lake County	)	TEMPORARY CHANGE IN PLACE OF
	)	USE AND CANCELLATION OF A
	)	PORTION OF A WATER RIGHT

**Authority**

ORS 540.505 to 540.580 establish the process in which a water right holder may submit a request to temporarily transfer the place of use and, if necessary to convey the water to the temporary place of use, the point of diversion 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.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

**Applicant**

Lakeview Water Users, Inc.  
91164 Water Users Lane  
Lakeview, Or 97630

**Findings of Fact**

1. On February 25, 2009, Lakeview Water Users Inc. filed an application to temporarily change the place of use under Certificates 82202 and 47469 (previously modified by T-4209). The transfer will be in affect for period of 2 years. The Department assigned the application number T-10790.

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

**Certificate:** T-4209 in the name of Clyde W. Fenimore, recorded in Special Order Volume 32 page 399. Satisfactory proof of completion of the change was determined for T-4209 and the right is subject to transfer. T-4209 modified the right evidenced by Certificate 47469 in the name Lakeview Water Users, Inc. (confirmed by Goose Lake decree).

**Use:** IRRIGATION of 9.3 ACRES

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, 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.

**Priority Date:** JANUARY 21, 1907 from Drews Creek and JULY 31, 1908 from Cottonwood Creek  
**Rate:** 0.34 CUBIC FOOT PER SECOND (CFS) being 0.18 CFS from Drews Creek and Drews Reservoir and 0.16 CFS from Cottonwood Creek and Cottonwood Reservoir  
**Source:** Drews Creek and Drews Reservoir, Cottonwood Creek and Cottonwood Reservoir, tributary of Goose Lake

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	19 E	WM	29	NW SW	COTTONWOOD RESERVOIR-580 FEET SOUTH AND 900 FEET EAST FROM THE W1/4 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 CREEK 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	26	SE SE	9.3

3. Application T-10790 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
39 S	19 E	WM	26	SW SW	601	9.3

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

**Certificate:** 82202 in the name of Lakeview Water Users, Inc. (confirmed by Goose Lake decree)  
**Use:** IRRIGATION of 9.3 ACRES  
**Priority Date:** JANUARY 21, 1907 from Drews Creek and JULY 31, 1908 from Cottonwood Creek  
**Rate:** 0.34 CUBIC FOOT PER SECOND (CFS) being 0.18 CFS from Drews Creek and Reservoir and 0.16 CFS from Cottonwood Creek and Reservoir  
**Source:** Drews Creek and Drews Reservoir, Cottonwood Creek and Cottonwood Reservoir, tributary of Goose Lake

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	19 E	WM	29	NW SW	COTTONWOOD RESERVOIR- 580 FEET SOUTH AND 900 FEET EAST FROM THE W1/4 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 CREEK 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	26	SE SE	9.3

5. Application T-10790 also proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
39 S	19 E	WM	26	SW SW	600	9.3

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

**Permit:** 43956 in the name of Lakeview Water Users, Inc.  
**Use:** SUPPLEMENTAL IRRIGATION of 9.3 ACRES  
**Priority Date:** September 5, 1961, from Cottonwood Reservoir  
**Rate:** Maximum of 0.23 CUBIC FOOT PER SECOND (CFS) to make-up any deficiency in supply of water delivered under Certificate 82202.  
**Source:** Cottonwood Reservoir, tributary of Cottonwood Creek

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	19 E	WM	29	NW SW	COTTONWOOD RESERVOIR - 2171 FEET NORTH AND 778 FEET EAST FROM THE SW CORNER OF SECTION 29

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	26	SE SE	9.3

7. Application T-10790 also proposes to change the place of use of the right to:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Lot	Acres
39 S	19 E	WM	26	SW SW	600	9.3

8. Notice of the application for temporary transfer was published on pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.

**Temporary Transfer Review Criteria**

- 9. Water has been used within the last five years according to the terms and conditions of the rights. There is no evidence available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
- 10. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights are present.
- 11. The proposed would not result in enlargement of the rights.
- 12. The proposed change would not result in injury to other water rights. This finding is made through an abbreviated review recognizing that the transfer may be revoked under ORS 540.523(6) if the Department later finds that the transfer is causing injury to any existing water right.

**Partial Cancellation of a Water Right**

- 13. On February 25, 2009 the Department received an affidavit certifying that a portion of a water right has been abandoned and requesting cancellation of that portion of the right was received from Nicholas A Rago, owner of the water right and the property appurtenant to it. The portion of the right to be cancelled is as follows:

**Certificate:** 75750 in the name of William Ray Rogers (perfected under Permit 42347)  
**Use:** SUPPLEMENTAL IRRIGATION of 18.6 ACRES  
**Priority Date:** AUGUST 4, 1977  
**Rate:** 0.33 CUBIC FOOT PER SECOND  
**Limit/Duty:** The amount of water used for irrigation, 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 for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.50 acre-feet per acre for each acre irrigated during the irrigation season of each year. This right is limited to any deficiency in the available supply of any prior right existing for the same land.  
**Source:** UNNAMED DRAIN and ROGERS RESERVOIR CONSTRUCTED UNDER PERMIT R-6705, a tributary of COTTONWOOD CREEK

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	19 E	WM	26	SW SE	1080 FEET NORTH AND 1990 FEET WEST FROM SE THE CORNER OF SECTION 26

**Authorized Place of Use to be Cancelled:**

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	26	SE SE	18.6

**Conclusions of Law**

The temporary change in place of use proposed in application Temporary Transfer Application T-10790 is consistent with the requirements of ORS 540.523 and OAR 690-380-8000 and the abandoned portion of the right should be cancelled.

**Now, therefore, it is ORDERED:**

1. The temporary change in place of use proposed in Temporary Transfer Application T-10790 is approved.
2. The portion of the right that has been abandoned is cancelled. A new certificate will be issued describing that portion of the right not affected by the cancellation.
3. The former place of use **shall not** be irrigated as part of these water rights during the 2009, 2010, irrigation seasons.
4. The use shall revert to the authorized place of use at the end of the 2011 irrigation season.
5. Pursuant to 690-380-8002, the applicant may submit a request in writing terminating T-10790 prior to the 2011 season.
6. The approval of this temporary transfer may be revoked or modified if the Department finds the change causes injury to any existing water right.
7. The use of water at the temporary place of use authorized by this transfer shall be in accordance with the terms and conditions of Certificates 47469 and 82202 and Permit S-43956. The use of water under Permit S-43956 is limited to making-up any deficiency of supply under Certificate 82202.
8. The time during which water is used under this approved temporary transfer does not apply toward a finding of forfeiture under ORS 540.610.
9. A subsequent application for permanent transfer numbered T-10810 proposing to modify Certificates 82202 and 47469 and Permit S-43956 shall be subject to a full and complete review to determine consistency with the requirements of OAR Chapter 690, Division 380. Approval of this temporary transfer does not establish a precedent for approval of a subsequent application filed for a permanent transfer.
10. When required by the Department, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water used. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.

11. The use of the remaining water rights described by Certificates 47469 and 82202 shall continue to be in accordance with the terms and conditions of Certificates 47469 and 82202.

Dated at Salem, Oregon this 24<sup>th</sup> day of April, 2009.

  
Phillip C. Ward, Director *PH*

Mailing Date: APR 29 2009