

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

In the Matter of Transfer Application) FINAL ORDER DENYING A CHANGE
T-10894, Lake County) IN PLACE OF USE

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, INC.
91164 WATER USERS LANE
LAKEVIEW, OR 97630

Receiving Landowner

GLEN MARTIN
17819 WESTSIDE ROAD
LAKEVIEW, OR 97630

Findings of Fact

Background

1. On June 4, 2009, Lakeview Water Users, Inc. filed an application to change the place of use under Certificate 82202. The Department assigned the application number T-10894.
2. On July 28, 2008, Certificate 82202 was superseded by Certificate 85703. On September 25, 2009, Certificate 85703 was superseded by Certificate 85839.
3. The applicant initially proposed to transfer only the irrigation rights appurtenant to specific lands, but amended the application on March 24, 2011, to include additional supplemental water rights.
4. The portion of the first right to be transferred is as follows:

Certificate: 85839 in the name of Lakeview Water Users Inc. (confirmed by Goose Lake decree)

Use: IRRIGATION of 5.83 ACRES

Priority Date: JANUARY 21, 1907, Drews Creek; JULY 31, 1908 , Cottonwood Creek

Rate: 0.22 CUBIC FOOT PER SECOND (cfs)

This is an 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 either 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.

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.22 cubic foot per second (cfs) being: 0.12 cfs from Drews Creek and Reservoir and 0.10 cfs from Cottonwood Creek and Reservoir, measured at the point of diversion from the source.

Source: Drews Creek, Drews Reservoir, Cottonwood Creek, and Cottonwood Reservoir, tributaries to Goose Lake

Authorized Point of Diversion:

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

Authorized Place of Use:

TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	W.M.	13	SW SW	5.83

5. Application T-10894 also proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	W.M.	35	NE NE	5.83

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

Permit: 43956 in the name of Lakeview Water Users Inc.

Use: SUPPLEMENTAL IRRIGATION of 5.83 ACRES

Priority Date: SEPTEMBER 5, 1961

Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right for the same lands, is limited to a diversion of ONE-FORTIETH (1/40) 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.

Source: COTTONWOOD RESERVOIR ENLARGEMENT, tributary to GOOSE LAKE

Authorized Point of Diversion:

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

Authorized Place of Use:

TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	W.M.	13	SW SW	5.83

7. Application T-10894 proposes to change the place of use of the right to:

TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	W.M.	35	NE NE	5.83

8. Notice of the application for transfer was published on June 16, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On May 5, 2011, the Department mailed a cover letter and a copy of the draft preliminary determination to the applicant and receiving landowner. The Department proposed to approve Transfer Application T-10894 provided a report of landownership reflected appropriate ownership information or a notarized statement of consent was received from any identified landowner not listed on the transfer application.
10. The cover letter set a June 5, 2011, date for receipt of the ownership report.
11. On June 20, 2011, the Department received the requested ownership report. The ownership report identified the recorded landowners of the authorized place of use as individuals who were not a party to the transfer.
12. Communications by telephone and e-mail with the agent has failed to produce a notarized consent to transfer from the recorded landowners.
13. On September 21, 2011, the Department issued a Preliminary Determination proposing to deny Transfer Application T-10894 and mailed a copy to the agent and applicant(s). Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on September 27, 2011. No protests were filed in response to the notice.

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

14. 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 rights are subject to forfeiture under ORS 540.610.
15. The proposed change would not result in enlargement of the right.
16. The proposed change would not result in injury to other water rights.

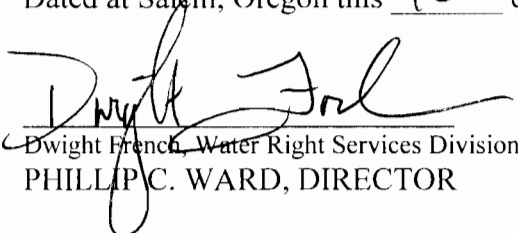
Conclusions of Law

The change in place of use proposed in application T-10894 is not consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, because the applicant has not provided the necessary documentation that the recorded owner consents to the proposed transfer. Therefore, Transfer Application T-10894 does not meet the requirements of ORS Chapter 540 and OAR 690-380-3000 for completeness.

Now, therefore it is ORDERED:

The change in place of use proposed under Transfer Application T-10894 is denied.

Dated at Salem, Oregon this 15 day of November, 2011.



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

Mailing Date: NOV 17 2011