

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10086, Lake County) CHANGE 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

Gary McManus, Agent
13277 Westside Road
Lakeview, Oregon 97630

Findings of Fact

Background

1. On February 14, 2006, Lakeview Water Users Inc. filed an application to change the place of use under Certificate 76187. The Department assigned the application number T-10086.
2. On August 22, 2006, Certificate 76187 was cancelled upon approval of T-8921 and superseded by Remaining Right Certificate 82202.
3. On April 16, 2007, in response to a letter from the Department dated Sept. 14, 2006, requesting additional information, the applicant submitted a revised map and a portion of the application, identifying 4.0 acres for transfer under Certificate 26881. The revised map also illustrated that Permit G-13659 appurtenant to the proposed place of use will remain in place and will be supplemental to the Certificate 82202 right.
4. The portion of the first right to be transferred is as follows:
Certificate: 82202 in the name of Lakeview Water Users Inc. (confirmed by Goose Lake (F)(S) decree)
Use: IRRIGATION of 14.6 ACRES

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.

Priority Date: JANUARY 21, 1907, Drews Creek; JULY 31, 1908, Cottonwood Creek
Rate: 0.53 CUBIC FOOT PER SECOND (cfs) being 0.28 cfs from Drews Creek and reservoir and 0.25 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, tributary to GOOSE LAKE

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	19 E	WM	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	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
40 S	19 E	WM	31	NE NE	7.9
40 S	19 E	WM	31	NW NE	6.7

5. Application T-10086 also proposes to change the place of use of the right to:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	19 E	WM	29	NW SW	3.0
40 S	19 E	WM	29	SW SW	7.6
40 S	19 E	WM	30	SW SE	0.8
40 S	19 E	WM	30	SE SE	3.2

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

Certificate: 26881 in the name of C. V. Fenimore (perfected under Permit S-25312)

Use: IRRIGATION of 4.0 ACRES

Priority Date: NOVEMBER 18, 1957

Rate: 0.04 CUBIC FOOT PER SECOND

Limit/Duty: ONE-FORTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year

Source: Barnes Slough, tributary to Goose Lake

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
40 S	19 E	WM	29	SE SW

Authorized Place of Use:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	19 E	WM	29	NW SW	3.0
40 S	19 E	WM	29	SW SW	1.0

7. Application T-10086 also proposes to change the place of use of the above 4.0 acre portion of the right to:

Irrigation					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	19 E	WM	29	SW SW	4.0

8. Notice of the application for transfer was published on February 28, 2006, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
9. On Sept. 14, 2006, a letter was sent from the Department informing the applicant that the transfer application and map did not meet current application and mapping standards and did not address the supplemental water under Permit G-14833 and Certificate 26881. On April 16, 2007 the applicant submitted materials that remedied these deficiencies.
10. On April 23, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10086 to the applicant. The draft Preliminary Determination set forth a deadline of May 23, 2007, for the applicant to respond. The applicant responded by the deadline and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
11. Departmental review of the original draft preliminary determination revealed that Certificate 76187 had been cancelled and was not subject to transfer, and that the draft failed to mention the future possibility that the Department may require measurement devices, if needed in order to properly distribute water among various appropriators diverting from the source and to regulate water use. This document corrects these errors and omissions.
12. On April 9, 2009, the Department mailed a draft copy of the revised Preliminary Determination proposing to approve Transfer Application T-10086 to the applicants. The draft revised Preliminary Determination set forth a deadline of May 23, 2009, for the applicant to respond with comments. The applicant did not submit any comments by the deadline, therefore this document is consistent with the revised draft.
13. On June 8, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10086 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 June 16, 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(2)]

14. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
15. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Application T-10086.
16. The proposed change would not result in enlargement of the rights.
17. 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-10086 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-10086 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 Certificates 82202 and 26881 and any related decree.
3. Water right Certificate 82202 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
4. Water right Certificate 26881 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
5. The former place of use of the transferred rights shall no longer receive water under the rights.
6. The Director may require the water user to install a totalizing a flow meter or other suitable measuring devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.
7. The approved changes 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 changes and full beneficial use of the water.

8. When satisfactory proof of the completed change is received, new certificates confirming the portions of the rights transferred will be issued.

Dated at Salem, Oregon this 28th day of July 2009.

Phillip C. Ward
Phillip C. Ward, Director *PCW*

Mailing date: AUG 17 2009