

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-9297, Klamath and Lake County	)	CHANGE IN PLACE OF USE AND
	)	CANCELING A PORTION OF A
	)	WATER USE PERMIT

**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**

LYLE W. AND FRANKIE GARRETT  
PO BOX 488  
LAKEVIEW OR 97630

**Findings of Fact**

**Background**

1. On February 15, 2003, LYLE W. and FRANKIE GARRETT filed an application to change the place of use under Certificate 85703. The Department assigned the application number T-9297.
2. On December 20, 2006, the applicants, by their authorized agent Dennis Glender, amended the application and map to remove 10.0 acres proposed for irrigation in the Southeast Quarter of Section 26, Township 39 South, Range 19 East, W.M., on land owned by Mike and Tori Nunn.
3. The application proposes to transfer only the primary water right (Certificate 85703). The application did not propose to transfer the supplemental irrigation water right (Permit S-43956) associated with the primary right. Oregon Administrative Rule (OAR) 690-380-2250(2) requires the Department to cancel the supplemental irrigation permit unless within 30 days after mailing of the draft preliminary determination, the applicant modifies the application to include the permit or withdraws the application.

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

**Certificate:** 85703 in the name of LAKEVIEW WATER USERS, INC. (confirmed by Goose Lake (F)(S) )

**Use:** IRRIGATION of 89.8 ACRES

**Priority Date:** JANUARY 21, 1907 (Drews Creek), JULY 31, 1908 (Cotton wood Creek)

**Rate:** 1.74 CUBIC FEET PER SECOND (Drews Creek) and 1.56 CUBIC FEET PER SECOND (Cottonwood Creek)

**Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 3.30 CUBIC FEET PER SECOND (CFS); being 1.74 CFS from DREWS CREEK AND RESERVOIR and 1.56 CFS from COTTONWOOD CREEK AND RESERVOIR, or its equivalent in case of rotation, measured at the point of diversion from the source.

**Sources:** DREWS CREEK, tributary to GOOSE LAKE; DREWS RESERVOIR, tributary to DREWS CREEK; COTTONWOOD CREEK, tributary to THOMAS CREEK; COTTONWOOD CREEK RESERVOIR, tributary to COTTONWOOD CREEK

**Authorized Points of Diversion:**

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

**Authorized Place of Use:**

IRRIGATION					
TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	WM	35	NW NE	9.00
39 S	19 E	WM	35	SW NE	9.00
39 S	19 E	WM	35	SE NW	10.00
39 S	19 E	WM	35	SW SW	15.00
39 S	19 E	WM	35	SE SW	26.80
39 S	19 E	WM	35	NW SE	10.00
39 S	19 E	WM	35	SW SE	10.00
TOTAL:					89.80

5. Application T-9297 proposes to change the place of use of the right to:

IRRIGATION					
TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	WM	35	NE NE	7.00
39 S	19 E	WM	35	NW NE	3.00
39 S	19 E	WM	35	SW NE	30.00
39 S	19 E	WM	35	SE NE	39.80
39 S	19 E	WM	35	SW NW	9.00
39 S	19 E	WM	35	SE NW	1.00
TOTAL:					89.80

6. Notice of the application for transfer was published on December 24, 2002, pursuant to OAR 690-380-4000.
7. On January 24, 2003, the Department received a protest to the application from Robert Squires and the Board of Directors of Lakeview Water Users, Inc., 21394 New Idaho Road, Lakeview, Oregon, 97630.
8. On May 15, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9297 to the applicant. The draft Preliminary Determination set forth a deadline of June 19, 2009, for the applicant to respond. The applicant did not respond by the deadline.
9. On May 29, 2009, and July 8, 2009, the Department left telephone messages requesting the applicant respond. The applicant failed to respond.
10. On July 28, 2009, the Department issued a Preliminary Determination proposing to approve Transfer Application T-9297 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 August 11, 2009. No protests were filed in response to the notice.
11. On September 11, 2009, Jorge Cobian, Manager, Lakeview Water Users, Inc., withdrew the protest to Transfer Application T-9297 on behalf of the protestant.

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

12. 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 right is subject to forfeiture under ORS 540.610.
13. 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-9297.
14. The proposed change would not result in enlargement of the right.
15. The proposed change would not result in injury to other water rights.

**Partial Cancellation of Permit S-43956**

16. ORS 540.510(1) and OAR 690-380-2250(5) provide that the order approving the transfer of a primary right shall cancel the portion of a supplemental right appurtenant to the same lands if the supplemental right is not included in the transfer. The supplemental right under Permit S-43956 is not included in transfer application T-9297, and will be cancelled upon issuance of a final order approving T-9297, unless the applicant amends the application to include the supplemental rights in the transfer, or to withdraw those lands from the transfer.
17. Consistent with OAR 690-380-2250, the Department notified the applicant in the Draft Preliminary Determination of the Department's intent to cancel the portions of the supplemental water right described below unless within 30 days of the date of this notification the applicant modified the application to include the supplemental right or withdrew the application. The applicant did not modify the transfer to include the supplemental right.

**Permit:** S-43956 in the name of LAKEVIEW WATER USERS, INC. (application S-37062)

**Use:** SUPPLEMENTAL IRRIGATION of 89.8 ACRES

**Priority Date:** SEPTEMBER 5, 1961

**Volume:** 4600 ACRE FEET OF STORED WATER

**Limit/Duty:** The appropriation is limited to 1/40 OF ONE CUBIC FEET PER SECOND, or its equivalent for each acre irrigated, and is further limited to a diversion not to exceed 2.5 acre feet per acre for each acre irrigated during the irrigation season of each year, provided further that the right is limited to any deficiency in the available supply of any prior right existing for the same land.

**Sources:** COTTONWOOD CREEK RESERVOIR, tributary to COTTONWOOD CREEK

**Authorized Point of Diversion:**

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

**Authorized Place of Use:**

SUPPLEMENTAL IRRIGATION							
TWP	RNG	MER	SEC	Q-Q	GLT	DLC	ACRES
39 S	19 E	WM	35	NW NE			9.00
39 S	19 E	WM	35	SW NE			9.00
39 S	19 E	WM	35	SE NW			10.00
39 S	19 E	WM	35	SW SW			15.00
39 S	19 E	WM	35	SE SW			26.80
39 S	19 E	WM	35	NW SE			10.00
39 S	19 E	WM	35	SW SE			10.00
TOTAL:							89.80

**Conclusions of Law**

The change in place of use proposed in Transfer Application T-9297 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the protest that was filed has been resolved. The portion of the supplemental permit appurtenant to the lands proposed for transfer should be canceled.

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

1. The change in place of use proposed in application T-9297 is approved.
2. Water right certificate 85703 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 85703 and any related decree
4. The portion of Permit S-43956 appurtenant to the lands proposed for transfer described in Finding of Fact #17 is canceled.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The approved change 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 change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 25<sup>th</sup> day of September 2009.

  
Phillip C. Ward, Director *PCW*

Mailing Date: SEP 29 2009