# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	FINAL ORDER APPROVING A
T-12985, Lake County	)	CHANGE IN PLACE OF USE AND
	)	PARTIAL DIMINISHMENT OF A
	)	PORTION OF A WATER RIGHT

## Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement 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**

PETER TALBOTT AND PAMELA TALBOTT AS TRUSTEES OF THE TALBOTT FAMILY REVOCABLE LIVING TRUST 17614 TUNNEL HILL ROAD LAKEVIEW, OR 97630

## Findings of Fact

- 1. On July 23, 2018, PETER TALBOTT AND PAMELA TALBOTT, AS TRUSTEES OF THE TALBOTT FAMILY REVOCABLE LIVING TRUST, filed an application to change the place of use under Certificate 93497. The Department assigned the application number T-12985.
- On July 23, 2018, the applicant submitted with the application a request to partially diminish
  water right Certificate 87729 and provided an affidavit for the voluntary partial diminution of
  the right.
- 3. Notice of the application for transfer was published on July 31, 2018, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

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.

- 4. On March 9, 2020, the Department sent a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12985Error! Reference source not found. to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 10, 2020, for the applicants to respond. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicants are authorized to pursue the transfer.
- 5. On April 7, 2021, the Department issued a Preliminary Determination proposing to approve Transfer T-12985 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 April 13, 2021, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

**Certificate:** 93497 in the name of LAKEVIEW WATER USERS INC.

(confirmed by decree)

Use: IRRIGATION of 5.25 ACRES

Priority Date: JANUARY 21, 1907, DREWS CREEK AND JULY 31, 1908, for

COTTONWOOD CREEK

Rate: 0.065 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled is limited to an amount

actually beneficially used and shall not exceed 0.065 CUBIC FOOT PER

SECOND (CFS); being 0.035 CFS from DREWS CREEK AND RESERVOIR and 0.030 CFS from COTTONWOOD CREEK AND

RESERVOIR, or its equivalent in case of rotation, measured at the point of

diversion from the source.

Source: DREWS CREEK and DREWS CREEK RESERVOIR, COTTONWOOD

CREEK and COTTONWOOD RESERVOIR tributary to GOOSE LAKE

#### **Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
40 S	18 E	WM	11	SE NW	DREWS CREEK - 1850 FEET SOUTH AND 3400 FEET WEST FROM THE NE CORNER OF SECTION 11
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
39 S	19 E	WM	16	NE NE	COTTONWOOD CREEK - 860 FEET SOUTH AND 1120 FEET WEST FROM THE NE CORNER OF SECTION 16
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

#### Authorized Place of Use:

		IR	RIGATI	ON	
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	19 E	WM	6	SW SE	2.00
40 S	19 E	WM	8	NE SE	0.44
40 S	19 E	WM	8	NE SE	0.56
40 S	19 E	WM	16	SW NE	2.05
40 S	19 E	WM	17	NE NE	0.20
				Total	5.25

7. Transfer Application T-12985 proposes to change the place of use of the right to:

Гwр	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	32	SW NE	2.32
39 S	19 E	WM	32	SE NE	2.93
				Total	5.25

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

- 8. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
- 9. 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-12985.
- 10. The proposed change would not result in injury to other water rights.
- 11. The proposed change would not result in enlargement of the water rights.
- 12. All other application requirements are met.

#### Partial Diminution of a Water Right

13. On July 23, 2018, an affidavit requesting that a portion of Certificate 87729 be diminished from primary irrigation to supplemental irrigation was received from Peter and Pamela Talbott as Trustees of the Talbott Family Revocable Living Trust. The right to be diminished is as follows:

Certificate:

87729 in the name of JIM STEWART (perfected under Permit G-9721)

Use:

**IRRIGATION of 5.25 ACRES** 

Priority Date: NOVEMBER 19, 1981

Rate:

0.065 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-EIGHTIETH 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 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 Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	19 E	WM	32	SE NE	1250 FEET NORTH AND 400 FEET WEST FROM E1/4 CORNER, SECTION 32

#### **Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	32	SW NE	2.32
39 S	19 E	WM	32	SE NE	2.93

#### Conclusions of Law

The change in place of use proposed in Transfer Application T-12985 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The transfer application is approved and the portion of the right to be diminished is diminished.

### Now, therefore, it is ORDERED:

- 1. The change in place of use proposed in Transfer Application T-12985 is approved.
- 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 93497 and any related decree.
- 3. Water right Certificate 93497 is cancelled. A new certificate will be issued describing those portions of the right not affected by this transfer.
- 4. Water Right Certificate 87729 is cancelled. A new certificate will be issued to confirm the diminishment.
- 5. The former place of use of the transferred right shall no longer receive water under the right.
- 6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2022.** 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 change and full beneficial use of the water.

7. After satisfactory proof of beneficial use is received, a new certificate confirming the right transferred will be issued in the name of Lakeview Water Users Inc.

Dated in Salem, Oregon on

JUN 3 0 2021

Lisa J. Jaramillo Transfer and Conservation Section Manager, for

THOMAS M BYLER, DIRECTOR Oregon Water Resources Department

Mailing date:

JUN 3 0 2021