# BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10810, Lake County	)	PROPOSING APPROVAL OF A
	)	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

# **Receiving Landowner**

NICHOLAS A. RAGO 17734 BUCK ROAD LAKEVIEW, OR 97630

## **Findings of Fact**

### Background

- 1. On March 9, 2009, Lakeview Water Users, Inc. filed an application to change the place of use under Certificate 82202 and Transfer Application T-4209. The Department assigned the application number T-10810.
- 2. Transfer Application T-4209 modified a portion of the water rights described in Certificate 47469 issued in the name of Lakeview Water Users, Inc. Certificate 47469 preceded Certificate 82202.
- 3. On July 28, 2008, Certificate 82202 was superseded by Certificate 85703. On September 25, 2009, Certificate 85703 was superseded by Certificate 85839.
- 4. On April 8, 2011, the Department issued an order recorded at Special Order Volume 83, Pages 932 to 933, determining proper proof of changes in place of use under Transfer Application T-4209. The determination of proper proof established the authorized place of use for some of the lands proposed for transfer in Transfer Application T-10810.
- 5. The applicant initially proposed to transfer only the irrigation rights appurtenant to specific lands, but amended the application on April 27, 2011, to include additional supplemental water rights.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

6. 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) and the right confirmed under T-4209

**Use: IRRIGATION of 18.60 ACRES** 

**Priority Date:** JANUARY 21, 1907, Drews Creek; JULY 31, 1908, Cottonwood Creek **Limit/Duty:** The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.68 cubic foot per second (cfs) being; 0.36 cfs from Drews Creek and Reservoir and 0.32 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	10 E	W.M.	29	NW SW	COTTONWOOD CREEK	580 FEET SOUTH AND 900 FEET EAST FROM	
38.5	19 E	W.IVI.	29	IM 2 M	RESERVOIR	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	
393	196	W .IVI.	10	NENE	COTTON WOOD CREEK	FROM THE NE CORNER OF SECTION 16	
40 S	18 E	W.M.	5	SW SE	DREWS CREEK	120 FEET NORTH AND 1820 FEET WEST	
40.5	10 E	W .IVI.	3	SWSE	RESERVOIR	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	
40.5		10 E	10 E	w.M.	11	SENW	DREWS CREEK

#### Authorized Place of Use:

WATER RIGHT	TWP	RNG	MER	SEC	Q-Q	ACRES
CERTIFICATE 85839	39 S	19 E	W.M.	26	SE SE	9.30
T-4209	39 S	19 E	W.M.	26	SE SE	9.30
					TOTAL:	18.60

7. Application T-10810 also proposes to change the place of use of the right to:

WATER RIGHT	TWP	RNG	MER	SEC	Q-Q	ACRES
CERTIFICATE 85839	39 S	19 E	W.M.	26	SW SW	9.30
T-4209	39 S	19 E	W.M.	26	SW SW	9.30
	<u>-</u>				TOTAL:	18.60

8. 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 9.30 ACRES

Priority Date: SEPTEMBER 5, 1961

Rate:

**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	S 19 E	W.M.			COTTONWOOD CREEK	2171 FEET NORTH AND 778 FEET EAST
363	1915	VV .1V1.	29	INW SW	RESERVOIR	NWOOD CREEK 2171 FEET NORTH AND 778 FEET EAST

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

TWP	RNG	MER	SEC	Q-Q	ACRES
39 S	19 E	W.M.	26	SE SE	9.30

9. Application T-10810 also proposes to change the place of use of the right to:

	TWP	RNG	MER	SEC	Q-Q	ACRES
ſ	39 S	19 E	W.M.	26	SW SW	9.30

- 10. Notice of the application for transfer was published on March 17, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- 11. On May 5, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10810 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of June 6, 2011, for the applicants to respond. The applicants requested the Department proceed with issuance of a Preliminary Determination and the Department verified the applicant is authorized to pursue the transfer.

## 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 rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-10810.
- 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.

# **Determination and Proposed Action**

The change in place of use proposed in application T-10810 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

If application T-10810 is approved, the final order will include the following:

1. The change in place of use proposed in application T-10810 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 Special Order Volume 83, Pages 932 to 933 for T-4209, Certificate 85839, Permit 43956 and any related decree.
- 3. The water rights described by T-4209, Certificate 85839 and Permit 43956 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.
- 4. The former place of use of the transferred rights shall no longer receive water under the rights.
- 5. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**.
- 6. 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.

Dated at Salem, Oregon this \_\_\_\_\_\_\_ day of June, 2011.

Dwight French, Water Right Services Division Administrator for

PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Greg Nelson. If you have questions about the information in this document, you may reach me at 503-986-0888 or Greg.L.Nelson@wrd.state.or.us

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.