

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

In the Matter of Transfer Application) PRELIMINARY DETERMINATION
T-10894, Lake County) PROPOSING DENIAL 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

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 On July 28, 2008, Certificate 82202 was superseded by Certificate 85703. On September 25, 2009, Certificate 85703 was superseded by Certificate 85839.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)

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

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.

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 Points 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 have failed to produce a notarized consent to transfer from the recorded landowners.

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

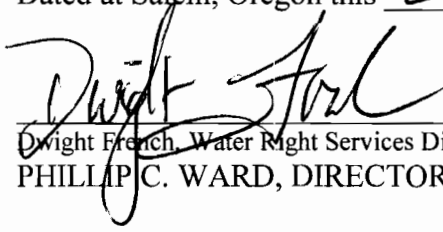
13. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. A diversion structure and 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-10894.
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.

Determination and Proposed Action

The change in place of use proposed in application T-10894 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000, with the exception that 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, OAR 690-380-3000 for completeness.

The Department intends to deny Transfer Application T-10894.

Dated at Salem, Oregon this 21 day of September, 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@wrds.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.