

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

In the Matter of Transfer Application)
T-11290, Lake County)
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)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF A
CHANGE IN PLACE OF USE AND
PARTIAL DIMINUTION OF
CERTIFICATE 63273

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
91164 WATER USERS LANE
LAKEVIEW, OR 97630

Agent

HOLLIE CANNON
PO BOX 7449
KLAMATH FALLS, OR 97602

Findings of Fact

Background

1. On September 6, 2011, Jorge Cobians, Manager, on behalf of Lakeview Water Users filed an application to change the place of use under perfected Transfer Application T-5814. The Department assigned the application number T-11290.
2. On May 14, 2012, items addressing the resolution of layered water rights were received from Pete Talbott on behalf of Talbott Ranch, the landowner.
3. The first right to be transferred is as follows:

Order: Special Order Volume 83, Pages 755 – 756 (Order of Proper Proof of Changes in Place of Use Under T-5814) in the name of SAM FARR (LAKEVIEW WATER USERS, INC.)
Use: IRRIGATION of 9.2 ACRES
Priority Dates: JANUARY 21, 1907 FOR DREWS CREEK AND JULY 31, 1908 FOR COTTONWOOD CREEK
Rate: 0.34 CUBIC FOOT PER SECOND (CFS)
Sources: DREWS CREEK, DREWS RESERVOIR, COTTONWOOD RESERVOIR AND COTTONWOOD CREEK, tributaries to GOOSE LAKE

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.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
38 S	19 E	WM	29	NW SW	COTTONWOOD RESERVOIR - 580 FEET SOUTH AND 900 FEET EAST FROM THE W¼ 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 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
39 S	19 E	WM	29	SW SE	9.2

4. Transfer Application T-11290 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	32	SW NE	4.8
39 S	19 E	WM	32	SE NE	4.4
Total:					9.2

5. Notice of the application for transfer was published on September 13, 2011, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
6. On June 14, 2012, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-11198 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of July 16, 2012, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer.

Partial Diminution of a Water Right

6. On May 14, 2012, an affidavit requesting that a portion of Certificate 63273 be diminished was received by the Department. The right to be diminished is as follows:

Certificate: 63273 in the name of JIM STEWART (perfected under Permit G-9721)
Use: IRRIGATION of 9.2 ACRES
Priority Date: NOVEMBER 19, 1981
Rate: 0.115 CUBIC FOOT PER SECOND (CFS)
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-

EIGHTIETH of one cubic foot per second per acre, 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 Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
39 S	19 E	WM	32	SE NE	1250 FEET NORTH AND 400 FEET WEST FROM THE E¼ CORNER OF SECTION 32

Authorized Place of Use to be Diminished to Supplemental Irrigation:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	32	SW NE	4.8
39S	19E	WM	32	SE NE	4.4
Total:					9.2

- Water Use Permit S-47021 is appurtenant to a portion of the proposed place of use. In order to avoid enlargement, the landowner has agreed not to perfect Permit S-47021 at the following location:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	29	SW NE	9.2

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

- Water has been used within the last five years 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.
- 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-11290.
- The proposed change would not result in enlargement of the right if Permit S-47021 is not perfected as detailed in Finding of Fact #7.
- The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in place of use proposed in Transfer Application T-11290 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 transfer application will be approved and the right proposed to be diminished shall be diminished to supplemental irrigation.

If Transfer Application T-11290 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-11290 is approved. The portion of Certificate 63273 identified in Finding of Fact #6 is diminished.*
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 the perfected portion of Transfer Application T-5814 and any related decree.*
3. *Special Order Volume 83, Pages 755-756 (Order of Proper Proof of Changes in Place of Use Under T 5814) is modified.*
4. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
5. *The former place of use of the transferred right shall no longer receive water under the rights.*
6. *Water Use Permit S-47021 shall not be perfected at the following location:*

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39S	19E	WM	29	SW NE	9.2

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before October 1, 2013. 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 changes and full beneficial use of the water.*
8. *After satisfactory proof of beneficial use is received and evaluated, the Department will issue a superseding certificate in the name of Lakeview Water Users describing the right when it determines that is necessary for record keeping.*

Dated at Salem, Oregon this 19th day of July, 2012.

E. Timothy Wall. for

Dwight French, Water Right Services Administrator, for
PHILLIP C. WARD, DIRECTOR

This Preliminary Determination was prepared by Susan Douthit. If you have questions about the information in this document, you may reach me at 503-986-0858 or Susan.M.Douthit@wrdd.state.or.us.

Protests should be addressed to the attention of the Transfer and Conservation Section, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.