

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

In the Matter of Transfer Application)
T-9986, Lake County)
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PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF
CHANGES IN POINT OF
APPROPRIATION, PLACE OF USE,
AND CORRECTION OF A
SCRIVENER'S ERROR IN A WATER
RIGHT CERTIFICATE

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 appropriation, 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.
C/O Harvey and Vickie Childress
327 South E St
Lakeview, Oregon 97630

Receiving Landowners

David and Jody Jones 94214 Stock Dr Lakeview, Oregon 97630	Charles and Vickie Drinkwater 18794 Lake Ridge Rd Lakeview, Oregon 97630	Gary and Raveill Deniz P.O. Box 110 Lakeview, Oregon 97630
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Findings of Fact

Background

1. On July 29, 2005, Harvey and Vickie Childress filed an application to change the points of appropriation and place of use under Certificates 22861, 26875, 40196, 76187 and Permit S-43956. The Department assigned the application number T-9986.
2. On December 19, 2001, T-7585 was approved and recorded in Special Order Volume 55, page 1354. This order modified Certificate 76187.

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.

3. On December 28, 2001, T-8315 was approved and recorded in Special Order Volume 55, page 1403. This order modified Certificate 76187.
4. On August 22, 2006, T-8921 was approved and recorded in Special Order Volume 69, page 643. This order modified Certificate 76187.
5. On October 20, 2006, T-9658 was approved and recorded in Special Order Volume 70, page 360. This order canceled Certificate 76187. Certificate 82202 superseded Certificate 76187.
6. On April 24, 2009, T-10790 (Temporary Transfer) was approved and recorded in Special Order Volume 77, page 578. This order modified Certificate 82202. The temporary transfer application expires at the end of the 2011 irrigation season.
7. On August 17, 2009, T-10086 was approved and recorded in Special Order Volume 78, page 672. This order canceled Certificate 82202. Certificate 85703 superseded Certificate 82202.
8. On September 25, 2009, T-9297 was approved and recorded in Special Order Volume 78, pages 980-984. This order modified Certificate 85703.
9. On October 23, 2009, an order was issued withdrawing, reconsidering and superseding the order recorded at Special Order Volume 78, pages 980-984. The superseding order was recorded in Special Order Volume 79, pages 120-125. This order canceled Certificate 85703 and Certificate 85839 was issued.
10. Certificate 85839 superseded Certificates 76187, 82202 and 85703.
11. The portion of the first right to be transferred under T-9986 is as follows:

Certificate: 85839 in the name of Lakeview Water Users Inc. (confirmed by Goose Lake Decree)

Use: IRRIGATION of 20.2 ACRES

Priority Date: JANUARY 21, 1907 and JULY 31, 1908

Rate: 0.74 CUBIC FOOT PER SECOND

Limit/Duty: The amount of water to which this right is entitled is limited to an amount actually used beneficially, and shall not exceed 0.74 cubic feet per second CFS being 0.39 from Drews Creek and Reservoir and 0.35 CFS from Cottonwood Creek and Reservoir, or its equivalent in case of rotation, measured at the points of diversion.

Source: DREWS CREEK, DREWS CREEK RESERVOIR COTTONWOOD CREEK, COTTONWOOD CREEK RESERVOIR, tributary to GOOSE LAKE

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Source	Survey Coordinates
38 S	19 E	WM	29	NW SW	Cottonwood Creek 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 Creek 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	13	NW SE	1.1	
39 S	19 E	WM	13	SW SE	13.5	
39 S	19 E	WM	24	NW NE	5.6	

12. Application T-9986 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Receiving Landowner
39 S	19 E	WM	24	NE NE	5402	5.8	Gary and Raviell Deniz
39 S	19 E	WM	24	NW NE	5402	12.7	Gary and Raviell Deniz
39 S	19 E	WM	24	SW NE	5402	1.7	Gary and Raviell Deniz

13. There were two scrivener errors found in Certificate 85839. The place of use in Section 24, T 40 S, R 18 E in the SE¼ listed on the prior Certificate 85703 was excluded when Certificate 85839 was issued. There was also an error found in T 40 South, R 18 East, SW¼ NW¼, Section 1. Transfer application T-7160 transferred 2.44 acres from the authorized 4.87 acres, leaving 2.43 acres that were not affected by the transfer. Certificate 85839 lists an incorrect figure of 2.40 acres. The following table lists the corrected place of use.

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
40 S	18 E	WM	1	SW NW	2.43
40 S	18 E	WM	24	NE SE	32.70
40 S	18 E	WM	24	NW SE	3.00
40 S	18 E	WM	24	SE SE	0.30

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

Certificate: 26875 in the name of Elmo Angele (perfected under Permit S-24489)
Use: SUPPLEMENTAL IRRIGATION 4.5 ACRES
Priority Date: MAY 31, 1950
Rate: 0.11 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-FORTIETH 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: DRAINAGE DITCHES, tributary to Goose Lake

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q
39 S	19 E	WM	13	NE SE
39 S	19 E	WM	13	SW SE

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
39 S	19 E	WM	13	SW SE	4.5	1600

15. A scrivener’s error was found in Certificate 26875. The Certificate says that the right is for SUPPLEMENTAL IRRIGATION. Correspondence in the water right application file shows that Elmo Angele submitted Application S-24791 for Irrigation. The department’s records show no other water rights filed within the place of use for this right, however Permit S-24489 was issued for SUPPLEMENTAL IRRIGATION. Certificate 26875 was subsequently issued for supplemental irrigation, perpetuating the error, even though there was no other irrigation water right on the place of use. Considering that there is no evidence for the right to have been supplemental to another right at any time in its history, the Department considers the designation of “supplemental” to be a scrivener’s error that should be corrected. Certificate 26875 should state that the right is for IRRIGATION.

16. Application T-9986 proposes to change the place of use of the right to:

IRRIGATION						
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot
39 S	19 E	WM	13	SW SE	4.5	1600

17. The third right to be transferred is as follows:

Certificate: 40196 in the name of Elmo M. Angele (perfected under Permit G-4743)

Use: IRRIGATION of 19.4 ACRES

Priority Date: NOVEMBER 3, 1969

Rate: 0.24 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 WELL tributary to THOMAS CREEK

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
39 S	19 E	WM	13	SW SE	75 FEET NORTH AND 775 FEET EAST FROM THE S¼ CORNER OF SECTION 13

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	24	NE NE	2.5
39 S	19 E	WM	24	NW NE	14.6
39 S	19 E	WM	24	SW NE	2.3

18. Transfer Application T-9986 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	Receiving Landowner
39 S	19 E	WM	13	SW SE	19.4	1600	Charles and Vickie Drinkwater

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

Certificate: 22861 in the name of Elmo M. Angele (perfected under Permit U-330)
Use: IRRIGATION 8.2 ACRES
Priority Date: MARCH 22, 1950
Rate: 0.1 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 WELL

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q
39 S	19 E	WM	13	SW SE

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
39 S	19 E	WM	24	NE NE	6.0
39 S	19 E	WM	24	NW NE	2.2

20. Certificate 22861 does not give a detailed description to the location of the point of appropriation, however information is available from the application map that indicates that the point of appropriation is located as follows:

Authorized Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
39 S	19 E	WM	13	SW SE	1600	WELL #1: 75 FEET NORTH AND 775 FEET EAST FROM THE S¼ CORNER OF SECTION 13

21. Transfer Application T-9986 proposes to change the place of use and point of appropriation of the right to:

IRRIGATION								
Twp	Rng	Mer	Sec	Q-Q	Acres	Tax Lot	POA	Receiving Landowners
39 S	19 E	WM	13	SE SE	2.6	1800	WELL #1	Charles and Vickie Drinkwater
39 S	19 E	WM	24	NW NE	5.6	5400	WELL #2	David and Jody Jones

22. The proposed point of appropriation (WELL #2), described below is located approximately 250 feet from the authorized point of appropriation (WELL #1 described in Finding of Fact #20). The proposed well is located as follows:

Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Survey Coordinates
39 S	19 E	WM	24	NW NE	5400	WELL #2: 172 FEET SOUTH AND 716 FEET EAST FROM THE S¼ CORNER OF SECTION 13

23. The portion of the fifth right (an underlying permit) to be transferred is as follows:

Permit: S-43956 in the name of Lakeview Water Users Inc. (Proof to the satisfaction of the director was made on March 22, 2004)

Use: SUPPLEMENTAL IRRIGATION of 20.2 ACRES

Priority Date: SEPTEMBER 5, 1961

Rate: 21.6 ACRE FEET

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-FORTIETH 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

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
38 S	19 E	WM	29	NW SW	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	Acres
39 S	19 E	WM	13	NW SE	1.1
39 S	19 E	WM	13	SW SE	13.5
39 S	19 E	WM	24	NW NE	5.6

24. Application T-9986 proposes to change the place of use of the right to:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Tax Lot	Acres	Receiving Landowner
39 S	19 E	WM	24	NE NE	5402	5.8	Gary and Raviell Deniz
39 S	19 E	WM	24	NW NE	5402	12.7	Gary and Raviell Deniz
39 S	19 E	WM	24	SW NE	5402	1.7	Gary and Raviell Deniz

25. Notice of the application for transfer was published on August 16, 2005, pursuant to OAR 690-380-4000 comments were filed in response to the notice.
26. On June 21, 2006, a draft Preliminary Determination was issued to deny T-9986 due to the potential for enlargement. There was a discrepancy in the total acres proposed for Certificate 76187 and Supplemental Permit S-43956.
27. On January 1, 2007, the water right examiner requested approval to use a non-standard scale pursuant to OAR 690-380-3100 (E) on the amended transfer application map for T-9986.
28. On January 2, 2007, an amended application map was submitted for T-9986. The discrepancy identified in the June 21, 2006, draft Preliminary Determination identified in Finding of Fact # 26 was corrected.
29. On January 11, 2007, the Watermaster sent an e-mail to the water right examiner discussing an additional water right conflict that he found with certificate 26875 and the proposed place of use under Certificate 76187 and Permit S-43956.
30. On January 31, 2007, a second draft Preliminary Determination was issued to approve T-9986. It addressed an underlying water right conflict within the authorized place of use identified in Certificate 26875 and the proposed place of use under Certificate 76187 and Permit S-43956.
31. On January 31, 2007, a letter was sent to the applicant requesting consent from the new landowners who purchased property previously owned by Harvey and Vickie Childress, applicants for T-9986.
32. On February 13, 2007, the Department received a letter of consent from Charles Drinkwater and Harvey Childress, approving the changes made in the application and application map for T-9986.
33. On February 1, 2010, the Department received a modified application and map resolving the water right conflict addressed in Finding of Fact #29 and the second draft Preliminary Determination in Finding of Fact #30.
34. On February 8, 2010, the department received an e-mail from David and Jody Jones, owners of the property previously owned by Harvey and Vickie Childress, consenting to the changes requested in T-9986.
35. On February 8, 2010, a letter was sent to Harvey and Vickie Childress requesting review and approval of the modification of the application and application map for T-9986.
36. On March 19, 2010 the department received an amended application from Harvey and Vickie Childress requesting that David and Judy Jones be the receiving landowners of their portion of the transfer.

37. On March 31, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-9986 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of April 30, 2010, 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.

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

38. 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.
39. A pump, pipeline, and sprinkler system 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-9986.
40. The proposed changes would not result in enlargement of the rights.
41. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in points of diversion, place of use proposed in Transfer Application T-9986 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the scrivener's error in Certificate 26875 should be corrected. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If application T-9986 is approved, the final order will include the following:

- 1. The changes in points of appropriation and place of use proposed in application T-9986 are 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 Permit S-43956, Certificates 22861, 26875, 40196 and 85839 and any related decree.*
- 3. Water right Certificates 22861 and 26875 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.*
- 4. The certificate issued to describe the portion of Certificate 26875 not affected by this transfer will correct the scrivener's error by stating the use as "irrigation", rather than "supplemental irrigation".*
- 5. Water right Certificate 85839 is modified. The Department will issue a superseding certificate describing those modifications when determined it is necessary for record*

keeping and will complete the processing of pending transfers T-10810 and T-10894 which also modify Certificate 85839.

6. Permit S-43956 is modified. The Department will issue a certificate describing those modifications when determined it is necessary for record keeping.
7. The quantity of water diverted at the new point of appropriation shall not exceed the quantity of water lawfully available at the original point of appropriation.
8. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at the new point of appropriation. If the Director notifies the water user to install a totalizing flow meter or other measuring device, the water user shall install such device specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
9. The former place of use of the transferred rights shall no longer receive water under the rights.
10. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
11. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued. A certificate issued to confirm the portion of Certificate 26875 affected by this transfer will correct the scrivener's error by stating the use as "irrigation", rather than "supplemental irrigation".

Dated at Salem, Oregon this 14 day of May 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by Carrie Jones. If you have questions about the information in this document, you may reach me at 541-523-8224 x 36 or Carrie.R.Jones@wrdd.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.