

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

In the Matter of Transfer Application) **FINAL ORDER APPROVING A**
T-10301, Polk, Yamhill County) **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

CONFEDERATED TRIBES OF
THE GRAND RONDE COMMUNITY
9615 GRAND RONDE RD
GRAND RONDE OR 97347-9712

Agent

ERIC SCOTT
9615 GRAND RONDE RD
GRAND RONDE OR 97347-9712

Findings of Fact

Background

1. On January 29, 2007, Eric Scott filed an application on behalf of the Confederated Tribes of The Grand Ronde Community to change the place of use under Certificate 30833. The Department assigned the application number T-10301.

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

Certificate: 30833 in the name of LESTER MAHURIN (perfected under Permit S-26036)
Use: IRRIGATION of 7.24 ACRES
Priority Date: MARCH 9, 1959
Rate: 0.08 CUBIC FOOT PER SECOND
Limit/Duty: ONE-EIGHTIETH cfs per acre, not to exceed 2.5 acre-feet per acre per year
Source: SOUTH YAMHILL RIVER, tributary to YAMHILL RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	1	SW SW	NONE SPECIFIED ON CERTIFICATE

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	8 W	WM	1	SW SW	4.42
6 S	8 W	WM	1	SE SW	2.82

3. Application T-10301 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	8 W	W.M.	1	SE SW	3.31
6 S	8 W	W.M.	1	NE SW	3.60
6 S	8 W	W.M.	1	NW SW	0.33

4. Notice of the application for transfer was published on February 6, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice, however the Oregon Department of Fish and Wildlife did indicate that no change to fish screening or bypass devices is currently needed at the point of diversion.
5. The transfer application did not include a map meeting current mapping standards, or the standards which were in effect at the time the application was filed, being OAR 690-380-3100.
6. On June 6, 2007, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10301 to the applicants. The cover letter accompanying the draft Preliminary Determination requested submittal of a revised map, documentation and use and a report of ownership and lien information. On June 19, 2007 the applicants submitted a revised map meeting current mapping standards, and on July 18, 2007 they submitted documentation of use. The applicants requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary land ownership information to demonstrate that the applicant is authorized to pursue the transfer.
7. On August 17, 2007, the Department issued a Preliminary Determination proposing to approve Transfer T-10301 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 August 21, 2007, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
8. Department review revealed that the Preliminary Determination proposed a diversion rate for the transferred portion of the right (0.09 cfs of the original total 0.5 cfs under the right) that was not proportional to the fraction of the right being affected by the transfer. Eric Scott, agent for the Confederated Tribes of the Grand Ronde Community, was notified. On September 25, 2007 he requested the Department to modify the final order so as to transfer 0.08 cfs, leaving 0.42 cfs for the remaining part of the right.

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

9. Water has been used within the last five years according to the terms and conditions of the right, as modified by temporary transfer T-8801, (Special Order Volume 55, Pages 721-723), and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
10. 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 Application T-10301.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

Conclusions of Law

The change in place of use proposed in application T-10301 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in application T-10301 is approved.
2. Water right certificate 30833 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.
3. 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 30833 and any related decree.
4. The former place of use of the transferred right shall no longer receive water under the right.
5. Prior to diverting water, the water user shall install an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.
6. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2008**. 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.
7. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 27 day of September, 2007.



PCW
Phillip C. Ward, Director

OCT 01 2007

Mailing date: _____