

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

In the Matter of Transfer Application	)	FINAL ORDER APPROVING AN
T-10028, Polk County	)	ADDITIONAL POINT OF DIVERSION,
	)	CHANGE IN PLACE OF USE AND
	)	CHARACTER OF USE

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 OF OREGON  
9615 GRAND RONDE RD  
GRAND RONDE OR 97347-9712

**Findings of Fact**

1. On 11-17-05, Eric Scott, Agent, filed a transfer application on behalf of the Confederated Tribes of the Grand Ronde Community of Oregon, to change the character of use and place of use and add a point of diversion under Certificate 14538. The Department assigned the application number T-10028.

2. The right to be transferred is as follows:

**Certificate:** 14538 in the name of COASTAL LUMBER CO. (perfected under Permit S-15049)

**Use:** MAINTAINING A LOG POND

**Priority Date:** AUGUST 9, 1941

**Rate:** 0.40 CUBIC FOOT PER SECOND

**Source:** ROGUE RIVER, tributary to SOUTH YAMHILL RIVER

**Authorized Point of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
6 S	8 W	WM	12	NW SW	Not specified on certificate

**Authorized Place of Use:**

**MANUFACTURING USES (maintaining a log pond)**

Twp	Rng	Mer	Sec	Q-Q
6 S	8 W	WM	12	SW SW

This final order is subject to judicial review under ORS 183.482. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.482(1). Pursuant to ORS 536.075(2), judicial review of this order is by the Court of Appeals.

3. Application T-10028 proposes to add an authorized point of diversion approximately 1.25 mile downstream to:

Twsp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
6 S	7 W	WM	17	SW NW	57	South 61 Degrees 42'20" West 2703 feet from the SE Corner of Kuykendal DLC 57

4. Application T-10028 also proposes to change the place of use of the right to:

**QUASI-MUNICIPAL USE AREA**

Twsp	Rng	Mer	Sec	Q-Q
5 S	6W	WM	31	ALL
5 S	6 W	WM	30	W 1/2
5 S	6 W	WM	32	W 1/2
5 S	7 W	WM	27, 28, 30- 36	ALL
5 S	8 W	WM	25, 29- 36	ALL
6 S	6 W	WM	6,7, 15- 22, 27- 29, 32- 34	ALL
6 S	6 W	WM	5	W 1/2
6 S	6 W	WM	8	W 1/2
6 S	7 W	WM	1- 18, 21- 28	ALL
6 S	8 W	WM	1-3, 10- 15	ALL
6 S	8 W	WM	4,5	N 3/4
6 S	8 W	WM	6	E ½ NE 1/4
6 S	8 W	WM	6	NE ¼ SE 1/4

5. Application T-10028 proposes to change the character of use to QUASI-MUNICIPAL.
6. The area in which the use of water is proposed is the same as the area described in water rights held by the Grand Ronde Community Water Association. The authorization for use of water within this area will provide the Applicant the flexibility to provide an alternate source of water to other Tribal lands in the area that are currently served by the Association and provide a backup supply to the Association in the event that the diversion or transmission line from the springs has to be shutdown for repairs.

7. Approval of Transfer Application T-10028 will not affect the ownership and control of the Grand Ronde Community Water Association or place the Association, or the patrons thereof, under Tribal jurisdiction.
8. On November 22, 2005, notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens.
9. On March 17, 2006, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10028 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination was published in the Department's Weekly Notice on March 21, 2006 and in the Sun newspaper on March 22, March 29, and April 5, 2006, pursuant to ORS 540.520 and OAR 690-380-4020.
10. On May 1, 2006, Kathy Thole, Greg Thole, and Darrell Mahurin filed a timely protest to approval of Transfer Application T-10028. Greg Thole subsequently withdrew as a protestant.
11. On October 24, 2006, the Department referred the case to the Office of Administrative Hearings. Prehearing Conferences were held on February 9, 2007 and April 30, 2007.
12. On July 20, 2007, the Protestants, the Applicant, and the Department entered into a Settlement Agreement under which the case was resolved and the protest was withdrawn.
13. Water has been used within the last five years according to the terms and conditions of the right, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
14. A pump, pipelines and delivery system sufficient to use the full amount of water allowed under the existing right are present.
15. The water right of record does not specify an annual duty limitation, however, beneficial use is the measure of a water right. The quantity that could reasonably be beneficially used under the right for the authorized use at the lumber mill operation is estimated to be 168.8 acre-feet (55 million gallons) per year. The proposed change would not result in enlargement of the right, provided that the diversion of water for quasi-municipal use is limited to 168.8 acre-feet per year.
16. The proposed change would not result in injury to other water rights.


### **Conclusions of Law**

The changes in use, place of use and an additional point of diversion proposed in application T-10028 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

**Now, therefore, it is ORDERED:**

1. The changes in use, place of use and an additional point of diversion proposed in application T-10028 are approved.
2. Water right certificate 14538 is cancelled.
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 14538 and any related decree, further limited to a maximum total quantity of 168.8 acre-feet (55 million gallons) per year, as measured at the points of diversion.
4. 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 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.
5. The quantity of water diverted at the additional point of diversion, together with that diverted at the old point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
6. Prior to diverting water, the water user shall install and maintain a headgate, 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 headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
7. The water user shall install and maintain a fish screen or fish by-pass device, as appropriate, at the new point of diversion. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
8. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued

Dated at Salem, Oregon this 20<sup>th</sup> day of July, 2007.

  
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Phillip C. Ward, Director

Mailing date: July 23, 2007