

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

In the Matter of Transfer Application            )  
T-10707, Crook County                            )  
  )  
  )  
  )

PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF  
CHANGES IN POINT OF  
APPROPRIATION, PLACE OF USE  
AND CHARACTER OF USE

**Authority**

ORS 537.705 and 540.505 to 540.580 establish 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**

Ochoco Lumber Company  
P.O. Box 668  
Prineville, OR 97754

**Findings of Fact**

**Background**

1. On August 28, 2008, Ochoco Lumber Company filed an application to change the character of use, place of use, and point of appropriation under Certificate 45481. The Department assigned the application number T-10707.
2. The right to be transferred is as follows:

**Certificate:** 45481 in the name of OCHOCO LUMBER CO. (perfected under Permit G-4986)  
**Use:** STEAM (BOILER MAKEUP WATER)  
**Priority Date:** MAY 12, 1972  
**Rate:** 0.45 CUBIC FOOT PER SECOND  
**Source:** WELL NO 1 in the OCHOCO CREEK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	16 E	WM	4	SW NW	1,800 FEET SOUTH AND 1,020 FEET EAST FROM THE NW CORNER OF SECTION 4

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 Place of Use:**

<b>STEAM BOILER MAKEUP</b>				
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>
15 S	16 E	WM	4	SW NW

- Transfer Application T-10707 proposes to move the authorized point of appropriation approximately 900 feet northwest to:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Measured Distances</b>
15S	16E	WM	4	SW NW	1,062.9 FEET NORTH AND 146 FEET EAST FROM THE W ¼ CORNER OF SECTION 4

- Transfer Application T-10707 proposes to change the character of use to quasi-municipal.
- Transfer Application T-10707 also proposes to change the place of use of the right to:

<b>QUASI-MUNICIPAL USES</b>				
<b>TWP</b>	<b>RNG</b>	<b>MER</b>	<b>SEC</b>	<b>Q-Q</b>
15S	16E	WM	4	NW NW
15S	16E	WM	4	SW NW
15S	16E	WM	4	NW SW
15S	16E	WM	4	NE SW
15S	16E	WM	4	SE NW
15S	16E	WM	4	NE NW
15S	16E	WM	4	SE NW
15S	16E	WM	4	NE NW

- Notice of the application for transfer was published on September 16, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
- The Affidavit of Use submitted with the application indicates the well was in use through 2004; however, the proofs of water use provided by the applicant included a March 2004 mill sale flyer that did not show boiler water use; a copy of a 2004 electric bill that did not clearly indicate water use for steam boiler makeup; a 2005 aerial photograph of the site that did not show active use of the water right; and a DEQ letter that indicates the mill was closed in 2001. To be subject to transfer, the right must have been used under the terms and conditions of the water right within the five years (2003-2007) prior to submission of the transfer application, or not be subject to forfeiture.
- On February 27, 2009, the Department mailed to the applicant a copy of the draft Preliminary Determination proposing to deny Transfer Application T-10707 because the information provided in the transfer application was inadequate to establish that the right was subject to transfer (used under the terms and conditions of the water right within the five years (2003-2007)). The draft Preliminary Determination cover letter set forth a deadline of April 15, 2009, for the applicant to respond. On April 15, 2009, the applicant asked that the Department allow additional time for response to the draft Preliminary Determination.

9. On April 24, 2009, Elizabeth Dickson, attorney for the applicant, submitted a letter requesting that the Department reconsider the denial. The letter stated that Ochoco Lumber did not abandon its use of the industrial water right, but instead used it for other “general industrial” purposes as allowed by ORS 540.520(9), and that Ochoco Lumber was prohibited by the Department of Environmental Quality (DEQ) from using the water for purposes other than those needed for the decommissioning of the mill under a program being supervised by DEQ.
10. On April 24, 2009 the Department sent an email request to Elizabeth Dickson for documentation of the statement that Ochoco Lumber was prohibited by DEQ from using the water for the authorized use (steam boiler make-up water). On April 26, 2010, an email request was sent to Sheila Monroe of DEQ, requesting documentation of specific water use or non-use instructions given to Ochoco Lumber during decommissioning and site clean up. On April 28, 2010 a further email request for information about water use between 2001 and 2008 was sent to Donna Barnes of Ochoco Lumber.
11. On May 18, 2010, the Department received from Donna Barnes a letter with explanation of how water was used at the mill up to 2001 when mill operations ceased and until 2004 during shut-down when power was shut off. Also included were copies of tax lot maps, copies of the November 25, 2008 “No Further Action” letter, “Final Guidance for Conducting Beneficial Water Use Determinations at Environmental Cleanup Sites” and the “Soil Management Plan” for the Ochoco Lumber Mill.
12. On June 7, 2010, the Department accessed an October 2008 DEQ Staff Report for the Former Ochoco Lumber Company which confirmed that the mill was operated until 2001 and that between 2005 and 2007 structures were removed and the log pond was filled during soil and groundwater investigations and cleanup operations supervised by DEQ at the site identified as ECSI #2483. A significant quantity of contaminated soil was removed down to the groundwater table depth and disposed of, so that the remaining heavy oil and diesel contamination is at a depth below the current and future risk pathway exposure depths of concern for future development plans. Monitoring wells have been installed at the three areas of remaining contamination to indicate any future impact to groundwater that might result from past mill operations.
13. On June 15, 2010, a letter was received from David Anderson, Project Manager of the Orphan Cleanup program in the Site Response Section, Land Quality Division of DEQ. Mr. Anderson confirmed that DEQ had decided any potential water use from the site, except for specific purposes such as emergency fire suppression, should not be conducted during the investigation and cleanup phases, due to a possibility of contamination exacerbating environmental conditions at the site. Thus, the non-use of water for the character of use authorized by Certificate 45481 during the period between 2005 and 2007 appears consistent with a rebuttal of forfeiture under ORS 540.610(2)(k).

14. No notification for a Specific to General Industrial water use change had been filed at the time when the change occurred, however, on April 24, 2009, Elizabeth A. Dickson, attorney, submitted a notification of the change in use, citing ORS 540.520(9) and referring to documentation submitted with the T-10707 application to show that the change met the statutory criteria. The Department acknowledges that the description of the change in water use at the mill site between 2001 and 2004 appears to meet the criteria in ORS 540.520(9) and OAR 690-380-2340.
15. On June 25, 2010, the Department mailed to the applicant a copy of a revised Preliminary Determination proposing to approve Transfer Application T-10707. The revised Preliminary Determination cover letter set forth a deadline of July 26, 2010, for the applicant to respond. The applicant provided the necessary information to demonstrate that the applicant is the owner of the lands included in the transfer and indicated that Ochoco Lumber understands the need to bear responsibility to operate a water supply system in anticipation of approval of the water right transfer to quasi-municipal use.

***Transfer Review Criteria (OAR 690-380-4010)***

16. Water has been used within the last five years prior to the submittal of Transfer Application T-10707 according to the terms and conditions of the right, as modified by the specific to general industrial use notification during the shutdown of the mill from 2001 to 2004. Though water has not been used under the right during the DEQ-supervised clean-up in 2005-2007, there is information in the record that would demonstrate that the right is not subject to forfeiture under ORS 540.610.
17. A pump, pipeline, and industrial system 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-10707.
18. Since the original specific character of use for Steam Boiler Make-up Water is potentially a fully consumptive use, the proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.
20. OAR 690-300 states that "Quasi-Municipal Water Use" means the delivery and use of water through the water service system of a corporation other than a public corporation created for the purpose of operating a water supply system, for those uses usual and ordinary to municipal water use, or a federally recognized Indian tribe that operates a water supply system for uses usual and ordinary to a municipal water use. A change to quasi-municipal use may be approved, however, before quasi-municipal water use begins, the applicant must have documentation that it is a corporation that meets the criteria above.

## **Determination and Proposed Action**

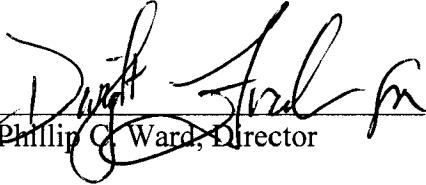
The changes in character of use, place of use, and point of appropriation proposed in application T-10707 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000, provided the applicant qualifies for a Quasi-Municipal use. If sufficient documentation is provided and protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If Transfer Application T-10707 is approved, the final order will include the following:*

- 1. The change in point of appropriation, change in place of use and change in character of use proposed in Transfer Application T-10707 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 Certificate 45481 and any related decree.*
- 3. Water right certificate 45481 is cancelled.*
- 4. Water shall be acquired from the same aquifer (water source) as the original point of appropriation.*
- 5. 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.*
- 6. Water use measurement conditions:*
  - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at the point of appropriation.*
  - b. The water user shall maintain the meter or measuring device in good working order.*
  - c. The water user shall allow the Watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the Watermaster shall request access upon reasonable notice.*
- 7. Before quasi-municipal water use may begin under this order, the water user shall submit documentation to demonstrate that it is (or includes) a corporation other than a public corporation formed for the purpose of operating a water supply system for those uses usual and ordinary to municipal water use.*
- 8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.*

9. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 2 day of August 2010.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or [Dorothy.I.Pedersen@wrp.state.or.us](mailto:Dorothy.I.Pedersen@wrp.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.