

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

In the Matter of Transfer Application)
T-7819, Lane County)
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)
)

PRELIMINARY DETERMINATION
PROPOSING DENIAL OF A CHANGE
IN POINT OF DIVERSION, CHANGES
IN PLACES OF USE, AND CHANGES
IN CHARACTER 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

WEYERHAUSER CO.
P.O. BOX 907
ALBANY, OR 97321

Findings of Fact

Background

1. On July 22, 1997, WEYERHAUSER CO. filed an application to change the point of diversion, change places of use and changes in character of use under Certificates 27995 and 27996. The Department assigned the application number T-7819.

2. The first right to be transferred is as follows:

- Certificate:** 27995 in the name of RICKINI LUMBER COMPANY (perfected under Permit S-25135)
- Use:** MILL USE AND MAINTENANCE OF LOG POND CONSTRUCTED UNDER PERMIT R-2077
- Priority Date:** MARCH 23, 1955
- Rate:** 0.21 CUBIC FOOT PER SECOND (CFS), BEING 0.2 CFS FOR MILL USE AND 0.01 CFS FOR MAINTENANCE OF POND
- Source:** COAST FORK WILLAMETTE RIVER, tributary to the WILLAMETTE RIVER

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 Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q
20 S	3 W	WM	15	SE NW

Authorized Place of Use:

MILL USE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
20 S	3 W	WM	15	SW NW		
20 S	3 W	WM	15	SE NW	4	

POND MAINTENANCE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
20 S	3 W	WM	15	NW NW	6	
20 S	3 W	WM	15	NW NW		52
20 S	3 W	WM	15	SW NW		

3. The applicant submitted information that more accurately describes the authorized point of diversion as being:

Twp	Rng	Mer	Sec	Q-Q	GLot	Measured Distances
20 S	3 W	WM	15	SE NW	4	1409.8 FEET SOUTH AND 1527.4 FEET EAST OF THE NW CORNER OF SECTION 15.

4. Transfer Application T-7819 proposes to move the authorized point of diversion approximately 1782 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
20 S	3 W	WM	10	SW SW	52	134 FEET NORTH AND 1050 FEET EAST OF THE NW CORNER OF SECTION 15.

5. Transfer Application T-7819 proposes to change the character of use to industrial/mill use.
 6. Transfer Application T-7819 proposes to change the place of use of the right to:

INDUSTRIAL/MILL USE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
20 S	3 W	WM	10	SW SW		52
20 S	3 W	WM	15	NE NW		52
20 S	3 W	WM	15	NE NW	5	
20 S	3 W	WM	15	NW NW		52
20 S	3 W	WM	15	NW NW	6	
20 S	3 W	WM	15	SW NW		
20 S	3 W	WM	15	SE NW	4	

7. The second right to be transferred is as follows:

Certificate: 27996 in the name of RICKINI LUMBER COMPANY (perfected under Permit R-2077)
Use: RICKINI MILL POND AND STORAGE OF WATER FOR MILL POND
Priority Date: MARCH 23, 1955
Quantity: 10.6 ACRE FEET
Source: COAST FORK WILLAMETTE RIVER, tributary to the WILLAMETTE RIVER, APPROPRIATED UNDER PERMIT S-25135

Authorized Place of Use:

RICKINI MILL POND					
Twp	Rng	Mer	Sec	Q-Q	DLC
20 S	3 W	WM	15	NW NW	52
20 S	3 W	WM	15	SW NW	

8. Transfer Application T-7819 proposes to move the authorized point of diversion approximately 1782 feet downstream to:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
20 S	3 W	WM	10	SW SW	52	134 FEET NORTH AND 1050 FEET EAST OF THE NW CORNER OF SECTION 15.

9. Transfer Application T-7819 proposes to change the character of use to industrial/mill use.
 10. Transfer Application T-7819 proposes to change the place of use of the right to:

INDUSTRIAL/MILL USE						
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC
20 S	3 W	WM	10	SW SW		52
20 S	3 W	WM	15	NE NW		52
20 S	3 W	WM	15	NE NW	5	
20 S	3 W	WM	15	NW NW		52
20 S	3 W	WM	15	NW NW	6	
20 S	3 W	WM	15	SW NW		
20 S	3 W	WM	15	SE NW	4	

11. Notice of the application for transfer was published on July 29, 1997, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
 12. On January 5, 2006, the applicant submitted information that the lands involved in this transfer were sold to Westwood Industries, Inc. However, an assignment form was not filed, so the transfer application has not been assigned to the new landowner.
 13. On December 10, 2007, a deficiency letter was mailed to Westwood Industries outlining the issues described in Finding Nos. 12, 18, 19, and 20. The letter requested a completed assignment form, removal of Certificate 27996, and information regarding the quantity of water used under Certificate 27995. The deficiency letter set forth a date of February 10, 2008 to receive the requested items. No response was received by the Department.

14. On December 10, 2010, a second deficiency letter was mailed to Westwood Industries. The letter set forth a deadline of February 11, 2011 for the Department to receive a response. No response was received by the deadline date.
15. On June 16, 2011, a third deficiency letter was mailed to Westwood Industries (Westwood LLC). The letter set forth a deadline of August 11, 2011 for the Department to receive a response. No response was received by the deadline date.
16. On June 16, 2011, the Department mailed a copy of the draft Preliminary Determination proposing to deny Transfer Application T-7819 to the applicant. The draft Preliminary Determination set forth a deadline of August 11, 2011, for the applicant to respond. The applicant did not respond by the deadline.

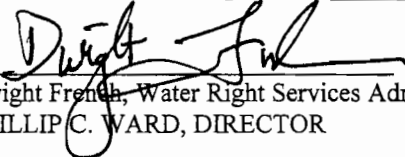
Transfer Review Criteria [OAR 690-380-4010(2)]

17. 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.
18. No information was submitted with the transfer application to establish that a water delivery system sufficient to use the full amount of water allowed under the existing right is present.
19. The proposed change in character of use proposed for Certificate 27996 cannot be approved because the Department does not have statutory authority to authorize a change in character of use of a water right issued for storage of water to a non-storage use.
20. The proposed changes would result in enlargement of the rights. The proposed change in character of use to industrial/mill use under Certificate 27995 may use more water than what was beneficially used without waste for log pond maintenance. Information was not supplied with the transfer application to show what quantity of water was used for log pond maintenance during a time period of one year.
21. The proposed changes would not result in injury to other water rights.

Determination and Proposed Action

The change in point of diversion, changes in places of use and change in character of use proposed in Transfer Application T-7819 appear to be **not** 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 denied unless all the deficiencies in Findings No. 12, 18, 19, and 20 are remedied and Certificate 27996 is removed from the transfer.

Dated at Salem, Oregon this 12 day of August 2011.


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

This Preliminary Determination was prepared by Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@wrds.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.