BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

| In the Matter of Transfer Application |) | CORRECTED FINAL ORDER |
|---------------------------------------|---|--------------------------------|
| T-11179, Jackson County |) | APPROVING A DISTRICT |
| |) | PERMANENT TRANSFER AND |
| |) | PARTIAL CANCELLATION OF |
| |) | WATER RIGHT CERTIFICATES 19643 |
| |) | AND 84273 |

Authority

ORS 540.570 to 540.580 establishes the process in which a district may submit a request to transfer a water right within district boundaries. OAR Chapter 690, Division 385 implements the statutes and provides the Department's procedures and criteria for evaluating district transfer applications.

ORS 540.621 establishes the process for the owner of land to which a water right is appurtenant to certify under oath that the water right, or a portion thereof, has been abandoned and to voluntarily request that it be cancelled.

Applicant

EAGLE POINT IRRIGATION DISTRICT PO BOX 157 EAGLE POINT, OR 97524

Findings of Fact

- 1. This Corrected Final Order is issued to correct errors in paragraphs 14 and 15 of the Final Order issued on April 7, 2011, Special Order Volume 83, Pages 967 through 972.
- 2. On December 29, 2010, Eagle Point Irrigation District (EPID) filed a permanent district transfer application to change the place of use under Certificates 68741 and 75429. The Department assigned the application number T-11179.
- 3. On January 4, 2011, notice of the application for transfer was published pursuant to ORS 540.580 and OAR 690-385-4400. No comments were filed in response to the notice.
- 4. On February 8, 2011, the Department received from EPID clarification of a portion of the place of use involved in the transfer.
- 5. The portion of the first right to be transferred is as follows:

Certificate: 68741 in the name of EAGLE POINT IRRIGATION DISTRICT

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 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.

Use: Irrigation of 35.4 acres
Priority Date: APRIL 21, 1915

Limit: The amount of water used for irrigation under this right, 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) and 4.5 acre-feet

for each acre irrigated during the irrigation season of each year.

Source: Big Butte Creek, a tributary of the Rogue River

Authorized Points of Diversion:

| POD# | Twp | Rng | Mer | Sec | Lot | Q-Q | Measured Distances |
|------|------|-----|-----|-----|-----|-------|--|
| 1 | 35 S | 2 E | WM | 10 | | NE NE | 1130 FEET SOUTH AND 700 FEET WEST FROM |
| | | | | | | | THE NE CORNER OF SECTION 10 |
| 2 | 35 S | 2 E | WM | 3 | 4 | NW NW | 1030 FEET SOUTH AND 290 FEET EAST FROM |
| | | | | | | | THE NW CORNER OF SECTION 3 |

Authorized Places of Use:

| | | | | | | Irr | igation | | | | | | |
|------|------------|-----|-----|-------|-----|------|---------|---------|-------------------------|---------|--|--|--|
| Twp | Rng | Mer | Sec | Q-Q | DLC | GLot | Acres | Tax Lot | User Name | Notice | | | |
| 35 S | 1 W | WM | 34 | SW NE | | | 1.4 | 1301 | Peterson | 002-10 | | | |
| 35 S | 1 W | WM | 34 | NW SE | | 2 | 0.6 | 1301 | Peterson | 002-10 | | | |
| 35 S | 1 W | WM | 34 | SW NE | | | 4.7 | 800 | Future Concepts | 002A-10 | | | |
| 35 S | 1 W | WM | 34 | SW NE | | | 6.0 | 802 | So. Oregon Development | 002A-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 0.4 | 501 | So. Oregon Development | 004-10 | | | |
| 35 S | 1 W | WM | 34 | SW NE | | | 2.3 | 802 | So. Oregon Development | 004-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 0.8 | 502 | So. Oregon Development | 004-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 10.0 | 511 | Echoes of the Ponderosa | 008-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 1.1 | 511 | Echoes of the Ponderosa | 008-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 2.1 | 511 | Echoes of the Ponderosa | 008-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 1.5 | 511 | Echoes of the Ponderosa | 008-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 2 | 3.5 | 511 | Echoes of the Ponderosa | 008-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 1 | 0.2 | 108 | K & S Johnson | 009-10 | | | |
| 36 S | 1 W | WM | 10 | SE NW | | 1 | 0.3 | 109 | Jerald Wilson | 009-10 | | | |
| 36 S | 1 E | WM | 7 | SW SW | 39 | | 0.5 | 1102 | J & W Roberts | 010-10 | | | |
| | Total 35.4 | | | | | | | | | | | | |

6. Transfer Application T-11179 proposes to change the places of use to:

| | | | | | | Irr | igation | | | | | | |
|------|-----------------------------|------------|-----|-------|-----|------|---------|---------|----------------|---------|--|--|--|
| Twp | Rng | Mer | Sec | Q-Q | DLC | GLot | Acres | Tax Lot | User Name | Notice | | | |
| 36 S | 1 W | WM | 5 | SE NE | | | 1.4 | 200 | E & D Gros | 002-10 | | | |
| 36 S | 1 W | WM | 5 | NE NE | | | 0.6 | 200 | E & D Gros | 002-10 | | | |
| 36 S | 1 W | WM | 5 | NW NE | | | 10.7 | 300 | E & D Gros | 002A-10 | | | |
| 35 S | 1 E | WM | 8 | NE NW | | | 2.3 | 3503 | M & D Hueners | 004-10 | | | |
| 35 S | 1 E | WM | 8 | NE NW | | | 1.2 | 3503 | M & D Hueners | 004-10 | | | |
| 35 S | 1 E | WM | 18 | NW NE | | | 10.0 | 7300 | D & C Veach | 008-10 | | | |
| 34 S | 1 E | WM | 32 | SE SW | | | 1.5 | 1100 | B & A Sinclair | 008-10 | | | |
| 34 S | 1 E | WM | 33 | SE NE | | | 2.1 | 202 | Teddy Grisham | 008-10 | | | |
| 34 S | 1 E | WM | 33 | SE NE | | | 1.1 | 205 | A & D Grisham | 008-10 | | | |
| 34 S | 1 E | WM | 32 | SE NE | | | 3.5 | 400 | Gary Bedell | 008-10 | | | |
| 34 S | 1 E | WM | 32 | SE NE | | | 0.2 | 400 | Gary Bedell | 009-10 | | | |
| 34 S | 1 E | WM | 32 | SE NE | | | 0.3 | 400 | Gary Bedell | 009-10 | | | |
| 36 S | 36 S 1 E WM 7 SW SW | | | | | | 0.5 | 1701 | J & W Roberts | 010-10 | | | |
| | | Total 35.4 | | | | | | | | | | | |

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

Certificate: 75429 in the name of EAGLE POINT IRRIGATION DISTRICT

Use: IRRIGATION of 37.0 acres Priority Date: April 21, 1915

Limit: The amount of water used for irrigation under this right, 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) and 4.5 acre-feet

for each acre irrigated during the irrigation season of each year.

Source: Big Butte Creek, a tributary of the Rogue River

Authorized Points of Diversion:

| POD# | Twp | Rng | Mer | Sec | Lot | Q-Q | Measured Distances |
|------|------|-----|-----|-----|-----|-------|--|
| 1 | 35 S | 2 E | WM | 10 | | NE NE | 1130 FEET SOUTH AND 700 FEET WEST FROM |
| | | | | | | | THE NE CORNER OF SECTION 10 |
| 2 | 35 S | 2 E | WM | 3 | 4 | NW NW | 1030 FEET SOUTH AND 290 FEET EAST FROM |
| | | | | | | | THE NW CORNER OF SECTION 3 |

Authorized Places of Use:

| | | | | | | Irr | igation | | | |
|------|-----|---|-----|-------|---------|-------|---------|---------|--------------------------|---------|
| Twp | Rng | Mer | Sec | Q-Q | DL C | GLot | Acres | Tax Lot | User Name | Notice |
| 36 S | 1 W | WM | 10 | NW SW | 49 | | 0.6 | 404 | S & M Thurston | 001-10 |
| 36 S | 1 W | WM | 10 | SW NW | | 3 | 0.7 | 404 | S & M Thurston | 001-10 |
| 36 S | 1 W | WM | 10 | SW NW | 49 | | 2.3 | 404 | S & M Thurston | 001-10 |
| 36 S | 1 W | WM | 10 | SW NW | | 3 | 1.0 | 404 | S & M Thurston | 001-10 |
| 35 S | 1 W | WM | 34 | SE NW | | | 1.6 | 1301 | Arnold Peterson | 002-10 |
| 35 S | 1 W | WM | 34 | NE SW | | 3 | 0.9 | 1301 | Arnold Peterson | 002-10 |
| 35 S | 1 W | WM | 34 | NE SW | 40 | | 2.2 | 1204 | Vernon House | 002A-10 |
| 35 S | 1 W | WM | 34 | SE NW | | | 0.2 | 400BD | Samuel Glass | 002A-10 |
| 36 S | 1 W | WM | 3 | NW NW | | | 2.2 | 200 | Clarence Greg | 003-10 |
| 36 S | 1 W | WM | 3 | NW NW | | | 1.0 | 200 | Clarence Greg | 003-10 |
| 36 S | 1 W | WM | 3 | NW NW | | | 3.7 | 200 | Clarence Greg | 003-10 |
| 36 S | 1 W | WM | 10 | SW NE | | 1 | 0.6 | 501 | So. Oregon Development | 004-10 |
| 36 S | 1 W | WM | 10 | SW NE | | 1 | 0.5 | 502 | So. Oregon Development | 004-10 |
| 35 S | 1 W | WM | 34 | SE NW | | | 0.9 | 300 | McFall | 005-10 |
| 36 S | 1 W | WM | 10 | SW NW | | 3 | 3.4 | 408 | Lystra & Broberg | 005-10 |
| 36 S | 1 W | WM | 10 | SW NW | 49 | | 3.0 | 408 | Lystra & Broberg | 005-10 |
| 36 S | 1 W | WM | 10 | NW SW | 49 | | 0.2 | 408 | Lystra & Broberg | 005-10 |
| 35 S | 1 W | WM | 34 | SE NW | | | 3.0 | 1300 | Pacific Crest Properties | 007-10 |
| 36 S | 1 W | WM | 11 | NE SW | | | 0.4 | 1800 | A. Hodges | 009-10 |
| 36 S | 1 W | WM | 11 | NE SW | | | 0.2 | 1801 | Kevin Walch | 009-10 |
| 36 S | 1 W | WM | 10 | SW NE | | 1 | 1.0 | 800 | Maxine Williams | 009-10 |
| 36 S | 1 W | WM | 10 | SW NE | | 1 | 0.9 | 500 | Everett Keller | 009-10 |
| 36 S | 1 E | WM | 7 | SW SE | 39 | | 3.3 | 1102 | J & R Roberts | 010-10 |
| 36 S | 1 E | WM | 7 | SE SW | 39 | | 2.2 | 1102 | J & R Roberts | 010-10 |
| 36 S | 1 E | WM | 7 | NW SW | 39 | | 0.2 | 1102 | J & R Roberts 010 | |
| 36 S | 1 E | WM | 7 | NW SW | 40 | | 0.5 | 1102 | 02 J & R Roberts 010-10 | |
| 36 S | 1 E | 1 E WM 7 NW SW 39 0.3 1103 J & R Roberts 010-10 | | | | | | | | |
| | • | | | | | Total | 37.0 | | | |

8. Transfer Application T-11179 proposes to change the place of use to:

Proposed Places of Use:

| | | | | | - | Irrig | ation | | | | | |
|------|------------|-----|-----|-------|-----|-------|-------|---------|------------------|--------|--|--|
| Twp | Rng | Mer | Sec | Q-Q | DLC | GLot | Acres | Tax Lot | User Name | Notice | | |
| 34 S | 1 E | WM | 34 | SE NE | | | 0.6 | 400 | D & S Ford | 001-10 | | |
| 34 S | 1 E | WM | 34 | SE NE | | | 0.7 | 400 | D & S Ford | 001-10 | | |
| 34 S | 1 E | WM | 34 | SE NE | | | 2.3 | 400 | D & S Ford | 001-10 | | |
| 34 S | 1 E | WM | 34 | SE NE | | | 1.0 | 500 | D & S Ford | 001-10 | | |
| 36 S | 1 W | WM | 5 | NE NE | | | 2.5 | 200 | E & D Gros | 002-10 | | |
| 36 S | 1 W | WM | 5 | NW NE | | | 2.4 | 300 | E & D Gros | 003-10 | | |
| 35 S | 1 W | WM | 21 | SE SW | | | 2.2 | 729 | M & A Stone | 003-10 | | |
| 35 S | 1 W | WM | 21 | SW SE | | | 1.0 | 729 | M & A Stone | 003-10 | | |
| 35 S | 1 W | WM | 34 | NW NW | | | 3.7 | 3000 | E & E Pariani | 003-10 | | |
| 35 S | 1 E | WM | 8 | NE NW | | | 1.1 | 3503 | M & D Hueners | 004-10 | | |
| 34 S | 1 E | WM | 35 | SW NW | ٠ | | 6.6 | 701 | Bradley Mitchell | 005-10 | | |
| 34 S | 1 E | WM | 35 | SW NW | | | 0.9 | 701 | Bradley Mitchell | 005-10 | | |
| 34 S | 1 E | WM | 36 | NW NW | | | 3.0 | 300 | D & R Carter | 007-10 | | |
| 34 S | 1 E | WM | 32 | SE NE | | | 2.5 | 400 | Gary Bedell | 009-10 | | |
| 36 S | 1 E | WM | 7 | SW SW | 39 | | 6.5 | 1701 | J & W Roberts | 010-10 | | |
| | Total 37.0 | | | | | | | | | | | |

- 9. The district permanent transfer application satisfies the criteria of OAR 690-385-4000 contains the information required under OAR 690-385-2000 and includes maps meeting the requirements of OAR 690-385-2200.
- 10. The water rights are subject to transfer as defined in OAR 690-385-0100(17).
- 11. The proposed change in places of use will not result in enlargement of the rights.
- 12. The proposed change in places of use will not result in injury to other water rights.

Partial Cancellation of Water Rights

13. On February 10, 2011, affidavits certifying that portions of water right Certificate 19643 have been abandoned and requesting cancellation of the right were received from Eagle Point Irrigation District. The right to be cancelled is as follows:

Certificate: 19643 in the name of EAGLE POINT IRRIGATION DISTRICT

Use: SUPPLEMENTAL IRRIGATION of 10.4 ACRES

Priority Date: MARCH 2, 1948

Rate: 0.131 CUBIC FOOT PER SECOND, being 0.096 CFS from LITTLE BUTTE

CREEK, and 0.338 CFS from WASTE WATER

Limit: The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season from April 2 to October 31, of each year; provided further that the amount of water allowed herein, together

with the amount secured under any other right existing for the same lands shall not exceed the limitation allowed herein, and shall also be limited to the water available at the proposed point of diversion of waste water, and shall not carry with it the right to compel the continuance of the waste water.

Source: Little Butte Creek, a tributary of the Rogue River, and Waste Water

Authorized Points of Diversion:

| Twp | Rng | Mer | Sec | Q-Q | Description |
|------|-----|-----|-----|-------|--------------------|
| 36 S | 1 W | WM | 3 | SW SW | LITTLE BUTTE CREEK |
| 36 S | 1 W | WM | 10 | SW NW | WASTE WATER |

Authorized Places of Use to be Cancelled:

| | Supplemental Irrigation | | | | | | | | | | | | |
|------|---|----|----|-------|----|---|-----|-----|------------------|--------|--|--|--|
| Twp | Twp Rng Mer Sec Q-Q DLC GLot Acres Tax Lot User Name Notice | | | | | | | | | | | | |
| 36 S | 1 W | WM | 10 | SW NW | 49 | 3 | 4.0 | 404 | S & M Thurston | 001-10 | | | |
| 36 S | 1 W | WM | 10 | SWNW | 49 | 3 | 6.4 | 408 | Lystra & Broberg | 005-10 | | | |

14. On April 6, 2011, affidavits certifying that portions of water right Certificate 84273 have been abandoned and requesting cancellation of the right were received from the following:

| | | PA | RTIAL | CANCELL | ATIONS for | CERTIF | TICATE 84273 |
|----------------------|----------------|-----|-------|---------|------------|--------|-------------------------------|
| Twp | Rng | Mer | Sec | SWNE | SENW | Tax | User Name |
| | | | | Acres | Acres | Lot | |
| 36 S | 1 W WM 10 | | 10 | 0.13 | 0.05 | 303 | Dry Creek Construction, Inc. |
| 36 S | 1 W | WM | 10 | | 0.14 | 310 | John Kowalksi |
| 36 S | 1 W | WM | 10 | 0.05 | 0.15 | 305 | James J. & Nancy M. Sullivan |
| 36 S 1 W WM 10 | | | | 0.20 | 0.13 | | City of Eagle Point |
| 36 S | 36 S 1 W WM 10 | | 10 | 0.04 | 0.17 | 300 | Henry & Michele Evans |
| 36 S | 1 W | WM | 10 | 0.18 | | 314 | Steven Gregg |
| 36 S | 1 W | WM | 10 | 0.22 | | 315 | Mark & Denise Bartlett |
| 36 S | 1 W | WM | 10 | 0.07 | 0.16 | 301 | Evan & Michelle Malepsy |
| 36 S | 1 W | WM | 10 | 0.05 | | 306 | Robert Fairrington |
| 36 S | 1 W | WM | 10 | 0.11 | 0.12 | 302 | John & Jozelle Neal McDearmid |
| 36 S | 36 S 1 W WM 10 | | 10 | | 0.13 | 311 | Travis A. Landen |
| 36 S | 1 W | WM | 10 | 0.05 | 0.15 | 304 | Katherine Coles |
| | | TC | TALS | 1.10 | 1.20 | | |

15. The right to be cancelled is as follows:

Certificate: 84273 in the name of ALA VISTA ORCHARDS (perfected under Permit

S-15987)

Use: IRRIGATION and SUPPLEMENTAL IRRIGATION of **2.3** ACRES

Priority Date: SEPTEMBER 19, 1944

Rate: 0.03 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

4.5 FOR IRRIGATION acre-feet per acre for each acre irrigated during the

irrigation season of each year.

Period of Use: April 2 to October 31

Source: LITTLE BUTTE CREEK, tributary to the ROGUE RIVER

Authorized Point of Diversion:

| Twp | Rng | Mer | Sec | Q-Q |
|------|-----|-----|-----|-------|
| 36 S | 1 W | WM | 3 | SW SW |

Authorized Place of Use to be Cancelled:

| IRRIGAT | TON AND S | SUPPLE | EMEN | Γ <mark>AL IRRI</mark> GΑ | ATION |
|---------|-----------|--------|------|---------------------------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 36 S | 1 W | WM | 10 | SW NE | 1.10 |
| 36 S | 1 W | WM | 10 | SE NW | 1.20 |

Conclusions of Law

The proposed changes in place of use as proposed in Transfer Application T-11179 satisfy the requirements of ORS 540.574(3) and 540.580. The partial cancellations are consistent with ORS 540.621 and the abandoned lands are cancelled.

Now, therefore, it is ORDERED:

- 1. The proposed changes in place of use to the water rights evidenced by Certificates 68741 and 75429 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 Certificates 68741 and 75429 and any related decree.
- 3. The former places of use shall no longer be irrigated as part of these water rights.
- 4. The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2011.
- 5. A Claim of Beneficial Use (COBU) shall be submitted by the applicant to the Department by October 1, 2012.
- 6. Water right certificates 68741 and 75429 are modified. The Department will issue superseding certificates describing the rights when it determines that is necessary for record keeping.
- 7. Water Right Certificates 19643 and 84273 are cancelled. Water Right Certificate 87003, describes that portion of Certificate 19643 not affected by this transfer and cancellation, remains in full force and effect.
- 8. Water Right Certificate 87004, describing that portion of Certificate 84273 not affected by this transfer and cancellation, is cancelled. A new certificate will be issued correcting the errors in the remaining right of Certificate 84273.

| 9. This Corrected Final Order supersedes the Final Order issued on April 7, 2011, Special Order Volume 83, Pages 967 through 972. |
|---|
| 10. |
| Dated at Salem, Oregon this 26 day of April 2011. |
| Just And |
| Dwight French, Water Services Division Administrator for |
| PHILLIP C. WARD, DIRECTOR |
| |
| Mailing Date: APR 2 9 2011 |