

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

In the Matter of Transfer Application)
T-10160, Jackson County)
)
)
)

FINAL ORDER APPROVING AN
ADDITIONAL POINT OF DIVERSION,
AND CHANGES IN PLACE OF USE
AND 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

Rogue River Valley Irrigation District
3139 Merriman Rd.
Medford, OR 97501

Receiving Landowner

City of Eagle Point
P.O. Box 779
Eagle Point, OR 97524

Findings of Fact

Background

1. On April 28, 2006, Rogue River Valley Irrigation District filed a transfer application to change the character of use, place of use, and add an additional point of diversion for a portion of Certificate 80573. The Department assigned the application number T-10160.
2. Certificate 80573 was superseded by Certificate 81635.
3. The portion of the right to be transferred is as follows:

Certificate: 81635 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT AND MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)
Use: MANUFACTURING USES
Priority Date: MARCH 31, 1910
Rate: 1.25 CUBIC FEET PER SECOND (cfs)

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

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.

Sources: FOUR MILE LAKE RESERVOIR within the KLAMATH RIVER BASIN, waters draining or flowing into CASCADE CANAL and FISH LAKE RESERVOIR (constructed under Permit R-50) within the ROGUE RIVER BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP
36 S	2 E	WM	20	SE NE	NORTH LITTLE FORK BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM - 3600 FEET NORTH AND 4200 FEET EAST FROM THE SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM - 4000 FEET SOUTH AND 600 FEET EAST FROM THE NE CORNER OF SECTION 4

Authorized Place of Use:

MANUFACTURING USES				
Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	30	NE NE
37 S	1 W	WM	7	NW SW

- Application T-10160 proposes to add a new point of diversion approximately 16 miles west (downstream) of the closest existing point of diversion associated with the portion of the certificate for transfer (North Fork Little Butte Creek Diversion). The additional point of diversion is located at:

Twp	Rng	Mer	Sec	Q-Q	DLC	Survey Coordinates
36 S	2 W	WM	13	SW NW	41	SOUTH 25 DEGREES 25 MINUTES 28 SECONDS EAST, 4386.6 FEET FROM THE NE CORNER OF DLC 42 THAT IS WITHIN SECTION 11

- Application T-10160 proposes to change the place of use of this portion of the right to the city limits of the City of Eagle Point, which includes:

Township	Range		Meridian	Sec	¼ ¼
35	S	1 W	W.M.	34	SW NE
35	S	1 W	W.M.	34	SE NE
35	S	1 W	W.M.	34	SE NW
35	S	1 W	W.M.	34	NE SW
35	S	1 W	W.M.	34	SE SW
35	S	1 W	W.M.	34	SE ¼
35	S	1 W	W.M.	35	SW NW
35	S	1 W	W.M.	35	NW SW
35	S	1 W	W.M.	35	SW SW

Township	Range		Meridian	Sec	¼ ¼
36	S	1	W	W.M	2 NW NW
36	S	1	W	W.M	2 SW NW
36	S	1	W	W.M	2 SE NW
36	S	1	W	W.M	2 SW ¼
36	S	1	W	W.M	3 NE ¼
36	S	1	W	W.M	3 NW ¼
36	S	1	W	W.M	3 SW ¼
36	S	1	W	W.M	3 SE ¼
36	S	1	W	W.M	4 SE NE
36	S	1	W	W.M	4 NE SE
36	S	1	W	W.M	4 SE SE
36	S	1	W	W.M	9 NE NE
36	S	1	W	W.M	9 SE NE
36	S	1	W	W.M	10 NE ¼
36	S	1	W	W.M	10 NW ¼
36	S	1	W	W.M	10 NE SW
36	S	1	W	W.M	10 NW SW
36	S	1	W	W.M	11 NW NE
36	S	1	W	W.M	11 SW NE
36	S	1	W	W.M	11 NW ¼
36	S	1	W	W.M	11 NE SW
36	S	1	W	W.M	11 NW SW
36	S	1	W	W.M	11 NW SE

6. Jackson County Airport Authority submitted a quitclaim deed dated September 28, 2005, releasing their claim and responsibility to Rogue River Valley Irrigation District for 89.22 acre-feet of the Rogue River Valley Irrigation District manufacturing water right appurtenant to lands located in Section 7, Township 39 South, Range 1 West, W.M. White City Steel and Supply, Inc. submitted a quitclaim deed dated March 8, 2005 releasing their claim and responsibility to Rogue River Valley Irrigation District for 267.72 acre-feet of the Rogue River Valley Irrigation District manufacturing water right appurtenant to lands located in Section 30, Township 36 South, Range 1 West, W.M. Therefore, the quantity of water being transferred is limited to an annual volume of 356.94 acre-feet.

7. Application T-10160 proposes to change the character of use to MUNICIPAL. The season of use under the right will continue to be limited to the irrigation season and the annual volume will be limited so as not to exceed 356.94 acre-feet per year.

8. The residents of the City of Eagle Point, represented by the City of Eagle Point, are the receiving landowners. The City of Eagle Point will be responsible for completion of the proposed changes after the final order is issued.
9. Notice of the application for transfer was published on May 9, 2006, 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.
10. The Oregon Department of Fish and Wildlife (ODFW) has determined that an adequate fish screening and/or by-pass device is necessary at the new point of diversion to prevent fish from entering the diversion and/or safely transport fish back to the body of water from which the fish were diverted and that the diversion is not currently equipped with an appropriate fish screening and/or by-pass device. The diversion may be eligible for screening cost share funds. However, funds may not be currently available.
11. On August 10, 2006, a draft preliminary determination was issued to the applicant and copies were sent to the applicant's agent, the City of Eagle Point and Medford Irrigation District, setting a date of September 15, 2006 for submission of comments. In response, on August 16, 2006, Hollie Cannon, on behalf of the applicant, requested reconsideration of the time allowed for completion, because it may take as long as seven years to bring the intake and fish screen at the proposed Medford Water Commission diversion point into compliance with ODFW standards.
12. On August 15, 2006, Rogue River Valley Irrigation District submitted a letter from Medford Irrigation District (MID) indicating no objection to the transfer of the water right. However, on September 14, 2006, Carol Bradford, manager of Medford Irrigation District, indicated by telephone that MID was also concerned about the timing of the fish screening condition in the draft preliminary determination.
13. On September 14, 2006, Steven L. Shropshire, a lawyer representing both the applicant and the City of Eagle Point, requested the applicant to be allowed to perfect the transfer prior to completion of the fish screen, and to lease the water instream until such time as the user obtains written approval from ODFW that the required fish screening and/or by-pass device meets ODFW's criteria.
14. On October 31, 2006, the Department responded to Steve Shropshire by email, offering a "linked lease" option for consideration by the applicant. Under this option, the applicant would lease instream the portion of the right proposed for transfer (for a term of up to five years, renewable for additional five year increments) The order approving T-10160 would acknowledge that the lease was in effect, and provide that the terms of the transfer would be effective upon termination of the instream lease. This option was not acceptable to the applicants.

15. On December 19, 2006, the City of Eagle Point submitted a request to be allowed to divert water prior to upgrade of the fish screen in order to submit a Claim of Beneficial Use for the transfer, with the intent to lease the water right instream upon issuance of a certificate. In response, the Water Resources Department (WRD), in consultation with ODFW, proposed revisions to the conditions for fish screening and/or bypass devices which would allow perfection of the transfer during a specified time period prior to upgrade of the fish screen and issuance of a confirming certificate, conditioned to require lease of the water instream and installation of ODFW-approved fish screening and/or by-pass devices before diversion of water for municipal use may begin. On February 23, 2007 agreement with this proposal by Rogue River Valley Irrigation District and the City of Eagle Point was communicated to the Department, and the conditions in this transfer document have been modified accordingly.
16. On March 28, 2007, the Department issued a preliminary determination proposing to approve T-10160 and mailed a copy to the applicants. Additionally, notice of the preliminary determination was published on the Department's weekly notice on April 3, 2007 and in a local newspaper on April 9, 16 and 23, 2007, pursuant to ORS540.520 and OAR 690-380-4000. No protests were filed in response to the Department's weekly notice or to the newspaper notice.
17. Water has been used within the five years prior to the date the transfer was filed according to the terms and conditions of the right, and there is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
18. 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-10160.
19. The proposed change, as conditioned, would not result in enlargement of the right.
20. The proposed change would not result in injury to other water rights.

Conclusions of Law

The proposed changes in character of use, place of use, and an additional point of diversion proposed in application T-10160 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

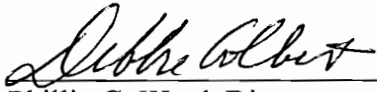
Now, therefore, it is ORDERED:

1. The changes in character of use, place of use and an additional point of diversion proposed in application T-10160 are approved.
2. Certificate 81635 is cancelled. A new certificate will be issued describing the 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 81635 and any related decree.
4. The quantity of water diverted at the additional point of diversion, together with that diverted at the old points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion.
5. The season of use under the right shall be limited to the irrigation season, and the annual volume shall not exceed 356.94 acre-feet per year.
6. The former place of use of the transferred water shall no longer receive water as part of this right.
7. Prior to diverting water, the water user shall install and maintain a 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. The Lake Creek gaging station on Little Butte Creek (Station number 14346700) is an acceptable measuring point for use in fulfillment of this requirement.
8. The water user shall install a fish screening and/or by-pass device, as appropriate, at the new point of diversion consistent with the Oregon Department of Fish and Wildlife's (ODFW) design and construction standards. Prior to installation, the water user shall obtain written approval from ODFW that the required fish screening and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without an adequate fish screening or by-pass device for one continuous four hour period between September 1 and October 1, 2007, for the purposes of proving up the transfer. After October 1, 2007, no further diversion of water will be allowed until adequate fish screening and/or by-pass devices have been installed and approved by ODFW. The water user shall maintain and operate the fish screen and/or by-pass device, as appropriate, at the point of diversion consistent with ODFW's operational and maintenance standards.
9. The approved changes associated with Transfer T-10160 shall be completed and full beneficial use of the water shall be made on or before October 1, 2012. 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.
10. If a claim of beneficial use is submitted prior to installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require installation of a fish screening and/or by-pass device prior to diversion of any water under the certificate.

11. If a claim of beneficial use is submitted prior to installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require that the water right be leased instream prior to diversion of any water.
12. If a claim of beneficial use is submitted after the installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require operation and maintenance of the fish screen consistent with ODFW standards.

Dated at Salem, Oregon this 5th day of June 2007.


for Phillip C. Ward, Director

Mailing date: 6-8-07