

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

In the Matter of Transfer Application)	FINAL ORDER
T-10465, Jackson County)	APPROVING AN ADDITIONAL POINT
)	OF DIVERSION, CHANGES IN PLACE
)	OF USE, AND A CHANGE 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

Rogue River Valley Irrigation District
3139 Merriman Road
Medford, OR 97501

Receiving Municipality

City of Central Point
140 S. Third
Central Point, OR 97524

Findings of Fact

Background

1. On September 27, 2007, Rogue River Valley Irrigation District filed a transfer application for an additional point of diversion and to change the character of use and place of use for portions of Certificates 80566, 80567, 80569, 80571, 80574, and 80576. The Department assigned the application number T-10465.
2. On February 26, 2008, the Department requested additional information from the applicant.
3. On August 21, 2008, the applicant requested to remove Certificate 80576 from Transfer Application T-10465.
4. On September 16, 2008, the applicant submitted two revised transfer maps. A revised map showing the area of municipal coverage with corrected section numbers and a revised map of supplemental water rights (map 2 of 4) excluding Certificate 80567.

This final order is subject to judicial review by the Court of Appeals 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 and OAR 137-003-0675, 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.

5. The portion of the first right to be transferred is as follows:

Certificate: 80566 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT confirmed by decree entered of record at Salem in the Order Record of the State Engineer in Volume 14, Page 498
Use: PRIMARY IRRIGATION OF 14.8 ACRES
Priority Date: SEPTEMBER 14, 1899
Rate: 0.11 CUBIC FOOT PER SECOND
Source: NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributaries to LITTLE BUTTE CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CREEK - 780 FEET SOUTH AND 400 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 29
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	SW NW	14.8

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

Certificate: 80567 in the name in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT and MEDFORD IRRIGATION DISTRICT confirmed by decree entered of record at Salem in the Order Record of the Sate Engineer in Volume 14, Page 498
Use: PRIMARY IRRIGATION OF 15.2 ACRES
Priority Date: SEPTEMBER 14, 1899
Rate: 0.11 CUBIC FOOT PER SECOND
Source: NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributaries to LITTLE BUTTE CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CREEK - 780 FEET SOUTH AND 400 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 29
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 20

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	NE SW	10.0
37 S	1 W	WM	5	NW SW	5.2
Total					15.2

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

Certificate: 80569 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT perfected under Permit E-19.

Use: PRIMARY IRRIGATION OF 97.9 ACRES AND SUPPLEMENTAL IRRIGATION OF 30.0 ACRES

Priority Date: JULY 23, 1909

Rate: 0.66 CUBIC FOOT PER SECOND

Source: NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributaries to LITTLE BUTTE CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CREEK - 780 FEET SOUTH AND 400 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 29
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E ¹ / ₄ CORNER OF SECTION 20

Authorized Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	SW NW	18.0
37 S	1 W	WM	5	SE NW	37.7
37 S	1 W	WM	5	NE SW	16.1
37 S	1 W	WM	5	NW SW	26.1
Total					97.9

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	SW NW	14.8
37 S	1 W	WM	5	NE SW	10.0
37 S	1 W	WM	5	NW SW	5.2
Total					30.0

8. The portion of the fourth right to be transferred is as follows:

Certificate: 80571 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT perfected under Permit S-407.
Use: SUPPLEMENTAL IRRIGATION OF 127.9 ACRES
Priority Date: MARCH 31, 1910
Rate: 0.66 CUBIC FOOT PER SECOND
Sources: FOURMILE LAKE RESERVOIR, within the KLAMATH RIVER BASIN; and water draining or flowing into the CASCADE CANAL; and FISH LAKE RESERVOIR; within the ROGUE RIVER BASIN

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	5 E	WM	9	SW NW	FOURMILE 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
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E $\frac{1}{4}$ CORNER OF SECTION 20
36 S	1 E	WM	8	SW SW	BRADSHAW DROP

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	SW NW	32.8
37 S	1 W	WM	5	SE NW	37.7
37 S	1 W	WM	5	NE SW	26.1
37 S	1 W	WM	5	NW SW	31.3
Total					127.9

9. There is an apparent scrivener's error in two of the point of diversion descriptions in Certificate 80571 (described in Finding of Fact No. 9 above). The Fourmile Lake Dam point of diversion (POD) description should give the coordinates from the *SE* Corner of Section 9, not the *SW* Corner as currently described in Certificate 80571. Additionally, the Fish Lake Dam POD description states "600 feet *East* from NE corner", this should be "600 feet *West* from NE corner". Corrections to the POD coordinates are based on the maps and correspondence from the applicant and confirmation from an aerial photo and other maps of the area. The authorized points of diversion under the right evidenced by Certificate 80571 should be described as follows:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK - 40 FEET NORTH AND 620 FEET WEST FROM THE E¼ CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	FOURMILE LAKE DAM - 3600 FEET NORTH AND 4200 FEET WEST FROM THE SE CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM - 4000 FEET SOUTH AND 600 FEET WEST FROM THE NE CORNER OF SECTION 4
36 S	1 E	WM	8	SW SW	BRADSHAW DROP

10. The portion of the fifth right to be transferred is as follows:

Certificate: 80574 in the name of ROGUE RIVER VALLEY IRRIGATION DISTRICT perfected under Permit S-1705.
Use: SUPPLEMENTAL IRRIGATION OF 127.9 ACRES
Priority Date: JUNE 24, 1913
Rate: 0.66 CUBIC FOOT PER SECOND
Source: ANTELOPE CREEK, tributary to LITTLE BUTTE CREEK

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	30	SW NE	HOPKINS CANAL - 770 FEET NORTH AND 1650 FEET WEST FROM THE E¼ CORNER OF SECTION 30

Authorized Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	5	SW NW	32.8
37 S	1 W	WM	5	SE NW	37.7
37 S	1 W	WM	5	NE SW	26.1
37 S	1 W	WM	5	NW SW	31.3
Total					127.9

11. Transfer Application T-10465 proposes to change the character of use to municipal use.

12. Transfer Application T-10465 proposes an additional point of diversion approximately 15 miles downstream from the closest existing point of diversion associated with Certificate 80574 (Hopkins Ditch POD). The additional point of diversion is located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
36S	2W	W.M.	13	SW NW	42	MEDFORD WATER COMMISSION DUFF TREATMENT PLANT - 3961.8 FEET SOUTH AND 1883.3 FEET EAST FROM THE NE CORNER OF DLC 42 IN SECTION 11

13. Transfer Application T-10465 proposes to change the place of use to within the city limits of the City of Central Point, described as:

MUNICIPAL						
Twp	Rng	Mer	Sec	Q-Q		
36	S	2	W	WM	34	NE SW
36	S	2	W	WM	34	SE SW
36	S	2	W	WM	34	NE SE
36	S	2	W	WM	34	NW SE
36	S	2	W	WM	34	SW SE
36	S	2	W	WM	34	SE SE
36	S	2	W	WM	35	SW SW
36	S	2	W	WM	35	SE SE
36	S	2	W	WM	36	SE NW
36	S	2	W	WM	36	NE SW
36	S	2	W	WM	36	SW SW
36	S	2	W	WM	36	SE SW
37	S	2	W	WM	1	NE NW
37	S	2	W	WM	1	NW NW
37	S	2	W	WM	1	SW NW
37	S	2	W	WM	1	SE NW
37	S	2	W	WM	1	NE SW
37	S	2	W	WM	1	NW SW
37	S	2	W	WM	1	SW SW
37	S	2	W	WM	1	SE SW
37	S	2	W	WM	2	NE NE
37	S	2	W	WM	2	SE NE
37	S	2	W	WM	2	NW NW
37	S	2	W	WM	2	SW NW
37	S	2	W	WM	2	SE NW
37	S	2	W	WM	2	NE SW
37	S	2	W	WM	2	NW SW

MUNICIPAL							
Twp		Rng		Mer	Sec	Q-Q	
37	S	2	W	WM	2	SW	SW
37	S	2	W	WM	2	SE	SW
37	S	2	W	WM	2	NE	SE
37	S	2	W	WM	2	NW	SE
37	S	2	W	WM	2	SW	SE
37	S	2	W	WM	2	SE	SE
37	S	2	W	WM	3	NE	NE
37	S	2	W	WM	3	NW	NE
37	S	2	W	WM	3	SW	NE
37	S	2	W	WM	3	SE	NE
37	S	2	W	WM	3	NE	NW
37	S	2	W	WM	3	NW	NW
37	S	2	W	WM	3	SW	NW
37	S	2	W	WM	3	SE	NW
37	S	2	W	WM	3	NE	SW
37	S	2	W	WM	3	NW	SW
37	S	2	W	WM	3	SW	SW
37	S	2	W	WM	3	SE	SW
37	S	2	W	WM	3	NE	SE
37	S	2	W	WM	3	NW	SE
37	S	2	W	WM	3	SW	SE
37	S	2	W	WM	3	SE	SE
37	S	2	W	WM	10	NE	NE
37	S	2	W	WM	10	NW	NE
37	S	2	W	WM	10	SW	NE
37	S	2	W	WM	10	SE	NE
37	S	2	W	WM	10	NE	NW
37	S	2	W	WM	10	NW	NW
37	S	2	W	WM	10	SW	NW
37	S	2	W	WM	10	SE	NW
37	S	2	W	WM	10	NE	SW
37	S	2	W	WM	10	NW	SW
37	S	2	W	WM	10	SW	SW
37	S	2	W	WM	10	SE	SW
37	S	2	W	WM	10	NE	SE
37	S	2	W	WM	10	NW	SE
37	S	2	W	WM	10	SW	SE

MUNICIPAL							
Twp		Rng		Mer	Sec	Q-Q	
37	S	2	W	WM	10	SE	SE
37	S	2	W	WM	11	NE	NE
37	S	2	W	WM	11	NW	NE
37	S	2	W	WM	11	SW	NE
37	S	2	W	WM	11	SE	NE
37	S	2	W	WM	11	NE	NW
37	S	2	W	WM	11	NW	NW
37	S	2	W	WM	11	SW	NW
37	S	2	W	WM	11	SE	NW
37	S	2	W	WM	11	NE	SW
37	S	2	W	WM	11	NW	SW
37	S	2	W	WM	11	SW	SW
37	S	2	W	WM	11	SE	SW
37	S	2	W	WM	11	NE	SE
37	S	2	W	WM	11	NW	SE
37	S	2	W	WM	11	SW	SE
37	S	2	W	WM	11	SE	SE
37	S	2	W	WM	12	NE	NW
37	S	2	W	WM	12	NW	NW
37	S	2	W	WM	12	SW	NW
37	S	2	W	WM	12	SE	NW
37	S	2	W	WM	12	NE	SW
37	S	2	W	WM	12	NW	SW
37	S	2	W	WM	12	SW	SW
37	S	2	W	WM	12	SE	SW

14. Notice of the application for transfer was published on October 16, 2007, pursuant to ORS 540.520 and OAR 690-380-4000. The Bureau of Reclamation submitted comments regarding the proposal to transfer Certificate 80576. Water Right Certificate 80576 has been subsequently withdrawn from Transfer Application T-10465.
15. The City of Central Point will be the recipient of the transferred water rights. The City will be responsible for completion of the proposed changes after the final order is issued.
16. 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.

17. Because of the absence of adequate fish screens at the proposed additional point of diversion, ODFW has suggested the following conditions be included in Transfer Application T-10465:
 - A. The water user may withdraw water at the new point of diversion without adequate fish screening or by-pass device for one continuous four hour period between September 1 and October 1, 2009, for the purposes of proving up Transfer Application T-10465. After October 1, 2009, 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.
 - B. 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 rights be leased instream prior to diversion of any water.
 - C. 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.
18. On March 26, 2008, the Department received a letter from Talent Irrigation District stating that the acreage proposed for transfer is not able to receive water from the sources listed under Permit S-25915. The permit will not be proved up on the lands included in this transfer application.
19. On April 15, 2008, the Department received a letter from Medford Irrigation District (MID) stating that MID consents to the transfer of the water rights to the City of Central Point proposed in Transfer Application T-10465.
20. On April 1, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10465 to the applicant. The cover letter for the draft Preliminary Determination pointed out Findings 17 and 23 and Conditions 5,6,7,and 10. The cover letter also set forth a deadline of May 1, 2009, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
21. On April 29, 2009, the Department issued a preliminary determination proposing to approve Transfer T-10465 and mailed a copy to the applicant. Additionally, notice of the preliminary determination for the transfer application was published on the Department's weekly notice on May 5, 2009, and in the Medford Mail Tribune on May 14, 21 and 28, 2009, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notices.

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

22. 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 no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
23. Diversion structures and ditches sufficient to use the full amount of water allowed under the existing rights are present.
24. The proposed change in character of use would not result in enlargement of the rights, provided:
 - A. The rate of diversion for municipal use under the right evidenced by Certificate 80566 for primary irrigation and Certificates 80569, 80571, and 80574 for supplemental irrigation, shall be limited to a maximum combined diversion of 0.35 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 51.8 acre feet during the time period of April 1 to October 1.
 - B. The rate of diversion for municipal use under the right evidenced by Certificate 80567 for primary irrigation and Certificates 80569, 80571, and 80574 for supplemental irrigation, shall be limited to a maximum combined diversion of 0.35 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 53.2 acre feet during the time period of April 1 to October 1.
 - C. The rate of diversion for municipal use under the right evidenced by Certificate 80569 for primary irrigation and Certificates 80571 and 80574 for supplemental irrigation, shall be limited to a maximum combined diversion of 0.50 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 342.6 acre feet during the time period of April 1 to October 1.
25. The proposed changes, as conditioned, would not result in injury to other water rights.

Conclusions of Law

The proposed additional point of diversion, change in character of use and place of use proposed in Transfer Application T-10465 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional point of diversion, change in character of use and places of use proposed in Transfer Application T-10465 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 80566, 80567, 80569, 80571, and 80574 and any related decree.

3. Certificates 80566, 80567, 80569, 80571, and 80574 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.
4. The quantity of water diverted at the proposed 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 rate of diversion for municipal use under the rights evidenced by Certificate 80566 for primary irrigation and Certificates 80569, 80571, and 80574 for supplemental irrigation, shall be limited to a maximum combined rate of diversion of 0.35 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 51.8 acre feet during the time period of April 1 to October 1.
6. The rate of diversion for municipal use under the right evidenced by Certificate 80567 for primary irrigation and Certificates 80569, 80571, and 80574 for supplemental irrigation, shall be limited to a maximum combined rate of diversion of 0.35 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 53.2 acre feet during the time period of April 1 to October 1.
7. The rate of diversion for municipal use under the right evidenced by Certificate 80569 for primary irrigation and Certificates 80571 and 80574 for supplemental irrigation, shall be limited to a maximum combined rate of diversion of 0.50 cubic foot per second (cfs) and shall be further limited to a total combined volume diverted of 342.6 acre feet during the time period of April 1 to October 1.
8. The former places of use of the transferred water shall no longer receive water for irrigation as part of these rights.
9. 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.
10. Prior to diverting water, 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 adequate fish screening or by-pass device for one continuous four hour period between September 1 and October 1, 2009, for the purposes of proving up Transfer Application T-10465. After October 1, 2009, 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.

11. The approved changes associated with Transfer T-10465 shall be completed and full beneficial use of the water shall be made on or before October 1, 2014. 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.
12. 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 rights be leased instream prior to diversion of any water.
13. 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 29th day of June 2009.



Phillip C. Ward, Director *tc*

Mailing Date: JUL 14 2009