

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

In the Matter of Transfer Application	)	FINAL ORDER
T-10527, Jackson County	)	APPROVING AN ADDITIONAL,
	)	POINT OF DIVERSION, AND
	)	CHANGES IN CHARACTER OF USE,
	)	AND PLACE 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**

MEDFORD IRRIGATION DISTRICT  
1340 MYERS LANE  
MEDFORD, OREGON 97501-3646

**Receiving Landowner**

CITY OF EAGLE POINT  
P.O. BOX 779  
EAGLE POINT, OREGON 97524

**Findings of Fact**

**Background**

1. On January 30, 2008, Medford Irrigation District filed an application to change the character of use, place of use, and add an additional point of diversion under Certificate 81635. The Department assigned the application number T-10527. The City of Eagle Point is the receiving water right holder and will be responsible for completion of the proposed changes after the final order is issued.
2. On June 7, 2007, Certificate 81635 was cancelled by Special Order Volume 72, Pages 255-261, approving transfer application T-10160. Certificate 83263 was issued to supersede Certificate 81635 and describe the portions of the right not involved in T-10160.

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.

3. On June 18, 2008, the Department contacted Medford Irrigation District by written correspondence to notify the applicant of deficiencies in the application. The Department requested that the deficiencies be resolved by July 21, 2008. The Department received a written response by the applicant to all identified issues by August 11, 2008.

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

**Certificate:** 83263 in the names of MEDFORD IRRIGATION DISTRICT and ROGUE RIVER VALLEY IRRIGATION DISTRICT (perfected under Permit S-407)  
**Use:** MANUFACTURING  
**Priority Date:** MARCH 31, 1910  
**Rate:** 0.5 CUBIC FOOT PER SECOND  
**Source:** FOURMILE LAKE RESERVOIR, within the KLAMATH RIVER BASIN, and waters draining or flowing into the CASCADE CANAL AND FISH LAKE RESERVOIR, within the ROGUE RIVER BASIN; constructed under Permit R-50

**Authorized Points of Diversion:**

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	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
37 S	1 W	WM	31	NE ¼
37 S	1 W	WM	31	SE ¼
37 S	1 W	WM	32	SW ¼

5. There is an apparent scrivener's error in two of the POD descriptions on Certificate 83263 (described in Finding #4 above). The Four Mile Lake Dam point of diversion (POD) description should give the coordinates from the "SE corner", not the "SW corner" as currently listed. 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 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	FOUR MILE 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

6. Transfer Application T-10527 proposes to add an additional point of diversion approximately 16 miles downstream from the closest existing POD associated with the portion of the certificate proposed for transfer (North Fork Little Butte Creek POD). The proposed additional POD, the Medford Water Commission Duff Treatment Plant, is located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured distances
36 S	2 W	WM	13	SW NW	41	3,961.8 FEET SOUTH AND 1,883.3 FEET EAST FROM THE NE CORNER OF DLC 42 IN SEC. 11 (ALSO DESCRIBED AS SOUTH 25°25'28" EAST 4,385.6 FEET FROM THE NE CORNER OF DLC 41 IN SECTION 11)

7. Transfer Application T-10527 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.
8. Transfer Application T-10527 also 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:

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
35 S	1 W	WM	34	SE ¼ NE ¼
35 S	1 W	WM	34	SW ¼ NE ¼
35 S	1 W	WM	34	SE ¼ NW ¼
35 S	1 W	WM	34	NE ¼ SW ¼
35 S	1 W	WM	34	SE ¼ SW ¼
35 S	1 W	WM	34	SE ¼
35 S	1 W	WM	35	SW ¼ NW ¼
35 S	1 W	WM	35	NW ¼ SW ¼
35 S	1 W	WM	35	SW ¼ SW ¼
36 S	1 W	WM	2	NW ¼ NW ¼
36 S	1 W	WM	2	SW ¼ NW ¼

MUNICIPAL USE				
Twp	Rng	Mer	Sec	Q-Q
36 S	1 W	WM	2	SE ¼ NW ¼
36 S	1 W	WM	2	SW ¼
36 S	1 W	WM	3	ALL
36 S	1 W	WM	4	SE ¼ NE ¼
36 S	1 W	WM	4	NE ¼ SE ¼
36 S	1 W	WM	4	SE ¼ SE ¼
36 S	1 W	WM	9	NE ¼ NE ¼
36 S	1 W	WM	9	SE ¼ NE ¼
36 S	1 W	WM	10	N ½
36 S	1 W	WM	10	NE ¼ SW ¼
36 S	1 W	WM	10	NW ¼ SW ¼
36 S	1 W	WM	11	NW ¼ NE ¼
36 S	1 W	WM	11	SW ¼ NE ¼
36 S	1 W	WM	11	NW ¼
36 S	1 W	WM	11	NE ¼ SW ¼
36 S	1 W	WM	11	NW ¼ SW ¼
36 S	1 W	WM	11	NW ¼ SE ¼

9. KOGAP Enterprises signed a quitclaim deed #2006-02353 to transfer the water rights, releasing their claim and responsibility, to Medford Irrigation District on April 19, 2006. The quitclaim deed was recorded in the Jackson County deed records on May 5, 2006.
10. Notice of the application for transfer was published on February 12, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
11. The Oregon Department of Fish and Wildlife (ODFW) has determined that a 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. This diversion may be eligible for screening cost share funds.
12. A letter from the Medford Irrigation District dated, August 20, 2008, stated that water was used at the KOGAP mill for dust control on roads and for keeping the logs in approximately 30 acres of log decks wet. The system included a small pond, from which water was pumped to the sprinklers and water trucks were filled. These uses could beneficially consume the full volume of water allowed under the right to be transferred, being 181.5 acre-feet, with the balance needed to meet the demand supplied by another water right (Certificate 15667).
13. On August 20, 2008, the Department received letters dated July 15, 2008 from Medford Irrigation District and from Rogue River Valley Irrigation District, requesting modifications to better describe portions of Certificate 83263 not involved in T-10527. The affected portions are the two portions of the right for Jackson County Roads and Parks, currently listed as "manufacturing" uses in Township 37S, Range 1W, Sections 9 and 16; Township 37S, Range 2W, Section 16; and Township 36S, Range 1W, E½ of Section 27. The letters explained that the use is consistent with manufacturing purposes on roads and land owned or

maintained by Jackson County Roads and Parks within the mapped boundaries of the irrigation districts, as shown by an accompanying map. The submitted map identified points in each district where water is delivered for use on the roads.

14. On September 2, 2008, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10527 to the applicant. The applicant responded by providing the necessary information to demonstrate that the applicant is authorized to pursue the transfer.
15. On October 28, 2008, the Department issued a Preliminary Determination proposing to approve Transfer Application T-10527 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 November 4, 2008, and in the Upper Rogue Independent newspaper on November 18, 25, and December 2, 2008, pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.

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

16. Water has been used within the last five years according to the terms and conditions of the right, as evidenced by issuance of Certificate 81635 on May 25, 2006, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
17. A pump, pipeline, and sprinkler 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 Application T-10527.
18. The proposed change from manufacturing to municipal use would not result in enlargement of the right.
19. The proposed changes would not result in injury to other water rights.

**Conclusions of Law**

The changes in character of use, place of use, and an additional point of diversion proposed in Transfer Application T-10527 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 use, place of use, and an additional point of diversion proposed in Transfer Application T-10527 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 83263 and any related decree.

3. Water right Certificate 83263 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer and incorporating the corrections in Finding of Fact No. 5 and the descriptions contained in Finding of Fact No. 13 above.
4. The former place of use of the transferred right shall no longer receive water under this right.
5. The maximum quantity of water diverted at the additional point of diversion for the transferred portion of the right, 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, being 0.5 cfs, not to exceed 181.5 acres-feet per year.
6. 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 screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. 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.
7. The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.
8. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2013**. 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.
9. When satisfactory proof of the completed changes is received, a new certificate confirming the portion of the right transferred will be issued.

Dated at Salem, Oregon this 17<sup>th</sup> day of March 2009.



✓ Phillip C. Ward, Director

Mailing date: MAR 24 2009