

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

In the Matter of Transfer Application)
T-9973, Jackson County)
)
)

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

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

1. On July 18, 2005, 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 under Certificate 80573. The Department assigned the application number T-9973.

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

- Certificate:** 80573 in the name of Rogue River Valley Irrigation District and Medford Irrigation District
- Use:** Manufacturing
- Priority Date:** March 31, 1910
- Quantity:** 0.9 cubic foot per second (cfs)
- Source:** Four Mile Lake Reservoir within the Klamath River Basin, and Fish Lake Reservoir within the Rogue River Basin.

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.

Authorized Points of Diversion:

Township		Range		Meridian	Sec	¼ ¼		Survey Coordinates
36	S	5	E	W.M.	9	SW	NW	Four Mile Lake Dam—3,600 feet North and 4,200 feet East of SW corner of Section 9.
37	S	4	E	W.M.	4	SE	SE	Fish Lake Dam—4,000 feet South and 600 feet East of NE corner of Section 4.
36	S	2	E	W.M.	20	SE	NE	North Fork Little Butte Creek—40 feet North and 620 feet West from E ¼ corner of Section 20.

Authorized Place of Use:

Jackson County Roads and Parks

Township		Range		Meridian	Sec	¼ ¼	
36	S	1	W	W.M.	27	E 1/2	

- Application T-9973 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 proposed for transfer (North Fork Little Butte Creek Diversion). The additional point of diversion is located:

Township		Range		Meridian	Sec	¼ ¼		DLC	Survey Coordinates
36	S	2	W	W.M.	13	SW	SW	41	South 25°25'28" East, 4,386.6 feet from the NE corner of DLC 42 in Sec. 11, T36S, R2W, W.M.

- Application T-9973 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
36	S	1	W	W.M.	2	NW	NW
36	S	1	W	W.M.	2	SW	NW

Township		Range		Meridian	Sec	¼ ¼
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

5. Application T-9973 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 321.3 acre-feet per year.
6. Jackson County Roads and Parks submitted a quitclaim deed on July 7, 2004 releasing their claim and responsibility to Rogue River Valley Irrigation District for 321.30 acre feet of the Rogue River Valley Irrigation District manufacturing water right appurtenant to lands located in E ½, Section 27, Township 36 South, Range 1 West, W.M.
7. On February 22, 2006, Rogue River Valley Irrigation District submitted a letter from Medford Irrigation District indicating no objection to the transfer of the water right.
8. Notice of the application for transfer was published 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 note that the fish screens at the proposed POD (Medford Water Commission Duff Treatment Plant) are not in compliance with current standards, and requested inclusion of a condition requiring installation of proper fish screens at that diversion.

9. The City of Eagle Point (on behalf of landowners within the city) is the receiving water right holder, and will be responsible for completion of the proposed changes after the final order is issued.
10. Water has been used within the last five years according to the terms and conditions of the right, as evidenced by issuance of Certificate 80573 on January 28, 2004, and no evidence is available that would demonstrate that the right is subject to forfeiture under ORS 540.610.
11. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing right are present.
12. The proposed changes would not result in enlargement of the right.
13. The proposed changes would not result in injury to other water rights.
14. Notice of the Preliminary Determination was published on the Department's Weekly Public Notice on March 7, 2006, and in the Upper Rogue Independent newspaper on March 28, April 4 and April 11, 2006. No protests were received in response to the notice.
15. Certificate 80573 contained a clerical omission of the place of use description for manufacturing use by Boise Cascade Corp. and a scrivener's error in the place of use description for manufacturing use by Hawkins Gunite. On May 18, 2006, the Rogue River Valley Irrigation District submitted a request to include a place of use description for Boise Cascade Corp. and to correct the place of use description for Hawkins Gunite, as follows:

Township	Range	Mer.	Section	Q-Q	Tax Lot	Water User
37S	1W	W.M.	5	NW NW	301	Hawkins Gunite
37S	2W	W.M.	14	SW NE NE SE	100	Boise Cascade Corp.

Conclusions of Law

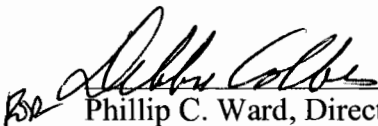
The proposed changes in character of use, place of use, and add an additional point of diversion in application T-9973 are consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The changes proposed in T-9973 are approved.
2. Water right certificate 80573 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer, and incorporating the corrections in Finding of Fact #15 above.
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 80573 and any related decree.

4. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2011**. 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.
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 0.9 cfs, not to exceed 321.3 acre-feet per year.
6. The maximum quantity of water authorized annually for manufacturing use at the former place of use of the transferred water, (Jackson County Roads and Parks in the E½ of Section 27, T36S, R1W, W.M.), shall be reduced by 321.3 acre-feet, with a maximum diversion rate limited to 0.1 cfs for manufacturing use at that site.
7. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other 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.
8. Before use of the water transferred under the provisions of the T-9973 order may begin, the water user shall install and maintain a fish screen or fish by-pass device, as appropriate, certified by the Oregon Department of Fish and Wildlife (ODFW), at the new point of diversion (Medford Water Commission Duff Treatment Plant). The type and plans of the screen or by-pass device must be approved by ODFW prior to beginning of construction, and shall be installed under the supervision of the Department of Fish and Wildlife.
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 25th day of May 2006.


Phillip C. Ward, Director

Mailing Date JUN 01 2006