



Oregon

Kate Brown, Governor

Water Resources Department

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June 22, 2016

Applicant

DELTA WATERS PROPERTIES LLC
PO BOX 430
MEDFORD, OR 97501

Receiving Landowner

CITY OF EAGLE POINT
PO BOX 779
EAGLE POINT, OR 97524

SUBJECT: Water Right Transfer Application T-12221

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12221. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the Medford Mail Tribune newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

Please do not hesitate to contact me at 503-986-0890 or Sarah.A.Henderson@ wrd.state.or.us if I may be of assistance.

Sincerely,

Sarah Henderson
Transfer Specialist
Transfer and Conservation Section

cc: Transfer Application file T-12221
Travis N. Kelly, District 13 Watermaster (*via e-mail*)
Kirk Maag, Agent for the applicant (*via e-mail*)
Herbert Farber, CWRE #45 (*via e-mail*)

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12221, Jackson County)	PROPOSING APPROVAL OF AN
)	ADDITIONAL POINT OF DIVERSION
)	AND CHANGES IN PLACE OF USE,
)	AND CHARACTER OF USE AND
)	PARTIAL CANCELLATION OF A
)	WATER RIGHT

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department's procedures and criteria for evaluating 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.

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Findings of Fact

1. On December 22, 2015, DELTA WATERS PROPERTIES LLC filed an application for an additional point of diversion and to change the place of use and the character of use under Certificates 83381 and 83383. The Department assigned the application number T-12221.
2. The City of Eagle Point is the receiving landowner who will be responsible for completion of the changes.
3. Notice of the application for transfer was published on December 29, 2015, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
4. On May 12, 2016, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12221 to the applicants. The draft Preliminary Determination cover letter set forth a deadline of June 12, 2016, for the applicants to respond.

Pursuant to OAR 690-380-4030, any person may file a protest or standing statement within 30 days after the last date of publication of notice of this preliminary determination.

5. On June 10, 2016, the applicant's agent requested that the Department proceed with issuance of a Preliminary Determination and provided the necessary information to demonstrate that the applicant is authorized to pursue the transfer, identified some errors in the draft Preliminary Determination and requested an extended completion date.

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

Certificate: 83381 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit E-19)
Use: IRRIGATION of 56.3 ACRES
Priority Date: JULY 23, 1909
Rate: 0.41 CUBIC FEET PER SECOND (CFS) into Medford Canal at Bradshaw Drop. The total diversions through the Main Canal from North Fork and South Fork of the Little Butte Creek shall not exceed 140 cfs at any one time, being 50 cfs for Rogue River Valley Irrigation District and 90 cfs for Medford Irrigation District. The total diversion from North Fork Little Butte Creek shall not exceed 125 cfs at any one time. The total diversion from South Fork Little Butte Creek shall not exceed 100 cfs at any one time.
Limit/Duty: The amount of water used for irrigation is limited to a diversion of ONE-HUNDREDTH of one cubic foot per second, or its equivalent for each acre irrigated, during the irrigation season of each year.
Source: NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	1 E	WM	8	SW SW	NOT SPECIFIED ON CERTIFICATE
36 S	2 E	WM	20	SE NE	40 FEET NORTH AND 620 FEET WEST FROM THE E1/4 CORNER OF SECTION 20
36 S	2 E	WM	29	NE SE	780 FEET SOUTH AND 400 FEET WEST FROM THE E1/4 CORNER OF SECTION 29

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	8	NE SE	27.2
37 S	1 W	WM	8	NW SE	29.1
Total					56.3

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

Certificate: 83383 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)
Use: SUPPLEMENTAL IRRIGATION of 56.3 ACRES
Priority Date: MARCH 31, 1910
Rate: 0.41 CUBIC FEET PER SECOND (CFS) into Medford Irrigation District Canal at Bradshaw Drop, or its equivalent in case of rotation, measured at the point of diversion from the source. Water is conveyed from Four Mile Lake via the Cascade Canal, and held, and stored in Fish Lake. Water is

rediverted and released into the Main Canal shared by Rogue River Valley and Medford Irrigation Districts. At Bradshaw Drop the water is split between the Hopkins Canal and the Medford Canal. Total diversions through the Main Canal from North Fork and South Fork of Little Butte Creek shall not exceed 140 cfs at any one time.

Limit/Duty: The amount of water used for irrigation, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated during the irrigation season of each year.

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 as constructed under PERMIT R-50.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2 E	WM	8	SW SW	NOT SPECIFIED ON CERTIFICATE
36 S	2 E	WM	20	SE NE	40 FEET NORTH AND 620 FEET WEST FROM THE E1/4 CORNER OF SECTION 20
36 S	5 E	WM	9	SW NW	3600 FEET NORTH AND 4200 FEET EAST FROM THE SW CORNER OF SECTION 9
37 S	4 E	WM	4	SE SE	4000 FEET SOUTH AND 600 FEET EAST FROM THE NE CORNER OF SECTION 4

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	8	NE SE	27.2
37 S	1 W	WM	8	NW SE	29.1
Total					56.3

8. The water rights described in Finding of Fact Nos. 4 and 5 are appurtenant to parcel 1 (tax lot 1100), Parcel 2 (tax lot 1101), and Parcel 3 (tax lot 1102), as shown on the Partition Plat filed in the office of the Jackson County Oregon Surveyor as No. 21564, and recorded as partition Plat No. P-26-2014 of "Record of Partition Plats" in Jackson County, Oregon. The applicant owns Parcels 2 and 3 (tax lots 1101 and 1102). The applicant conveyed Parcel 1 (tax lot 1100) to Hayden Homes, LLC by Statutory Warranty Deed but reserved to itself its interest in the water rights described in Finding of Fact Nos. 4 and 5. As provided under an agreement between the applicant and Hayden Homes, the applicant is authorized to pursue this transfer without further approval from Hayden Homes.

Landowner	Twp	Rng	Sec	Q-Q	Tax Lot at time Conveyed	Current Tax Lot(s)	Acres
Hayden Homes, LLC	37 S	1 W	8	NE SE	1100	1100, 1101, 1102	27.2
Hayden Homes, LLC	37 S	1 W	8	NW SE	1100	1100, 1101, 1102	29.1

9. Transfer Application T-12221 proposes to add an additional point of diversion approximately 16 miles downstream from the closest existing POD associated with the portion of the certificates proposed for transfer (North Fork Little Butte Creek POD). The proposed additional POD is the Medford Water Commission Duff Treatment Plant, located:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
36 S	2 W	WM	13	SW NW	41	3961.8 FEET SOUTH AND 1883.3 FEET EAST FROM THE NE CORNER OF DLC 42 IN SECTION 11

10. Transfer Application T-12221 also proposes to change the place of use of the rights to the city limits of the City of Eagle Point, which include:

Twp	Rng	Mer	Sec	Q-Q
35 S	1 W	WM	34	SE NE
35 S	1 W	WM	34	SW NE
35 S	1 W	WM	34	SE NW
35 S	1 W	WM	34	NE SW
35 S	1 W	WM	34	SE SW
35 S	1 W	WM	34	SE ¼
35 S	1 W	WM	35	SW NW
35 S	1 W	WM	35	NW SW
35 S	1 W	WM	35	SW SW
36 S	1 W	WM	2	NW NW
36 S	1 W	WM	2	SW NW
36 S	1 W	WM	2	SE NW
36 S	1 W	WM	2	SW ¼
36 S	1 W	WM	3	ALL
36 S	1 W	WM	4	SE NE
36 S	1 W	WM	4	NE SE
36 S	1 W	WM	4	SE SE
36 S	1 W	WM	9	NE NE
36 S	1 W	WM	9	SE NE
36 S	1 W	WM	10	N ½
36 S	1 W	WM	10	NE SW
36 S	1 W	WM	10	NW SW
36 S	1 W	WM	11	NW NE
36 S	1 W	WM	11	SW NE
36 S	1 W	WM	11	NW ¼
36 S	1 W	WM	11	NE SW
36 S	1 W	WM	11	NW SW
36 S	1 W	WM	11	NW SE

11. Transfer Application T-12221 proposes to change the character of use for the above portions of both of the rights to Municipal Use for the City of Eagle Point. The season of use under the rights will continue to be limited to the irrigation season.
12. The Oregon Department of Fish and Wildlife has determined that a fish screen is necessary at the new point of diversion to prevent fish from entering the diversion and that the diversion is currently equipped with an appropriate fish screen.

13. Certificate 83383 is supplemental to Certificate 83381 on the lands proposed for transfer. The total diversion for all the rights appurtenant to 56.3 acres with Certificates 83381 and 83383 has been limited to a rate of 1/80 cfs per acre from all sources. Thus, the combined theoretical maximum diversion rate from all the rights being transferred is 56.3 acres x 1/80 cfs per acre = 0.70 cfs.
14. The maximum annual volume that could be diverted and beneficially used for irrigation is considered by the Department to be the lesser of the face value rate and duty of the right, or the amount that the best available research indicates would be needed to be diverted to raise the most water-intensive crop that could realistically be raised during at least 8 out of 10 years in this climate region. The best currently available data (from *Oregon Crop Water Use and Irrigation Requirements*, OSU Extension Service publication 8530, reprinted 1999) indicates a water-intensive crop of apples in the Medford-Grants Pass area would require a net irrigation requirement of 3.35 acre-feet in 8 out of 10 years. Adding a 10% loss factor to cover inefficiencies in system delivery of water to the crop would equal a maximum annual diversion of 3.68 acre-feet of water per acre for each acre irrigated.
15. To avoid enlargement of the rights, the maximum annual volume of water that could be diverted for municipal use from the transferred portions of all the rights in combination would thus be 3.68 acre-feet per acre x 56.3 acres = 207.2 acre-feet per year.
16. The season of delivery and use of water under these rights is the irrigation season, being April 1 to October 1 for the right from North and South Forks of Little Butte Creek (evidenced by Certificate 83381), and April 1 through October 31 of each year for the right evidenced by Certificate 83383.

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

17. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are 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 rights were present within the five-year period prior to submittal of Transfer Application T-12221.
19. The proposed changes would not result in enlargement of the rights, provided the diversion rate and annual volume for municipal use do not exceed a total of 0.70 cfs and 207.2 acre-feet, respectively, during the irrigation season of each year. Of the total rate and volume, the maximum that can be diverted from each of the transferred rights without enlargement is:

Current Certificate	Maximum Instantaneous Diversion Rate from Individual Right	Total Combined Rate from All Rights	Maximum Annual Volume from Individual Right	Total Combined Annual Volume from All Rights
83381	0.41 cfs	0.70 cfs	207.2 acre-feet	207.2 acre-feet
83383	0.41 cfs		207.2 acre-feet	

20. The proposed changes, as conditioned, would not result in injury to other water rights.

Partial Cancellation of a Water Right

- 21. There is an existing supplemental permit S-4951, appurtenant to the lands on which Certificate 83381 is proposed for transfer to municipal use. Supplemental water rights (layered water rights) must be included in a transfer application or be cancelled.
- 22. Consistent with OAR 690-380-2250, the Department provided notice (as part of the draft Preliminary Determination) to the applicant of the Department's intent to cancel the portion of the supplemental permit described below.
- 23. That portion of the supplemental permit to be cancelled is as follows:

Water Use Permit: S-4951, in the names of Rogue River Valley Irrigation District and Medford Irrigation District

Use: Supplemental Irrigation of 56.3 acres

Priority Date: June 18, 1920

Source: The source of the proposed appropriation is waste, return, seepage, spring underflow, storm waters arising, or which may in the future arise on lands lying above each of the following canals: Little Butte, District, Phoenix, Hopkins, Oakleigh, Junction, Agate, Bear Creek and from all sources of supply referred to in Permits E-19, S407 and R-50.

Limit/Duty: ONE-EIGHTIETH of one cfs for each acre irrigated.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
36 S	1 W	WM	3	---	--	AGATE CANAL (LITTLE BUTTE CREEK):2000 FEET NORTH FROM THE E¼ CORNER OF SECTION 3.
36 S	1 W	WM	10	SW SW	--	AGATE CANAL (ANTELOPE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED</i>
37 S	1 W	WM	19	---	--	BEAR CREEK CANAL (BEAR CREEK): NORTH 45 DEGREES EAST 1400 FEET FROM THE SW CORNER OF SECTION 19.
36 S	1 E	WM	31	SE	--	DISTRICT CANAL (ANTELOPE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	1 W	WM	36	SE	--	DISTRICT CANAL (DRY CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	1 E	WM	29	NW	--	DISTRICT CANAL (YANKEE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	1 E	WM	30	SW NE*	--	HOPKINS CANAL (ANTELOPE CREEK): SOUTH 24 DEGREES 30 MINUTES WEST 980 FEET FROM THE CENTER OF THE NE¼ OF SECTION 30.
36 S	1 W	WM	23	SE	--	HOPKINS CANAL (DRY CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
38 S*	2 W*	WM	2*	---	--	HOPKINS CANAL (GRIFFIN CREEK): NORTH 22 DEGREES 30 MINUTES WEST 1965 FEET FROM THE SE CORNER OF DLC 66.
37 S	2 W	WM	16	NE NE	--	HOPKINS CANAL (HORN CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>

Twp	Rng	Mer	Sec	Q-Q	Lot	Measured Distances
36 S*	2 W*	WM	29*	---	--	HOPKINS CANAL (JACKSON CREEK): 2060 FEET NORTH FROM THE SW CORNER OF DLC 66.
36 S	2 W	WM	32	NE SW	--	HOPKINS CANAL (WILLOW CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	1 E	WM	19	SE SE	--	HOPKINS CANAL (YANKEE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
37 S	2 W	WM	2	---	--	JUNCTION CANAL (BEAR CREEK):NORTH 87 DEGREES 15 MINUTES WEST 1335 FEET FROM THE E¼ CORNER OF SECTION 2.
36 S	2 E	WM	30	NE	--	LITTLE BUTTE CANAL (LAKE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	1 E	WM	25	NE NW	--	LITTLE BUTTE CANAL (OSBORNE CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
37 S	2 W	WM	2	---	--	OAKLEIGH CANAL (BEAR CREEK):NORTH 87 DEGREES 15 MINUTES WEST 1335 FEET FROM THE E¼ CORNER OF SECTION 2.
37 S	1 W	WM	30	NE NW	--	**OAKLEIGH CANAL (BEAR CREEK):445 FEET NORTH AND 135 FEET EAST FROM THE SW CORNER OF THE NE¼ NW¼ OF SECTION 30.
36 S	2 W	WM	34	SE SW	--	OAKLEIGH CANAL (GRIFFIN CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
36 S	2 W	WM	33	NE SE	--	OAKLEIGH CANAL (JACKSON CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
38 S	1 W	WM	15	NE SW	--	PHOENIX CANAL (ANDERSON CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
38 S	1 W	WM	23	SW NE*	--	PHOENIX CANAL (BEAR CREEK): NORTH 24 DEGREES 46 MINUTES EAST, 716 FEET FROM THE CENTER OF SECTION 23.
38 S	1 W	WM	9	SE SW	--	PHOENIX CANAL (COLEMAN CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
38 S	2 W***	WM	2	---	4	PHOENIX CANAL (GRIFFIN CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
37 S	2 W	WM	21	NW NW	--	PHOENIX CANAL (HORN CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
37 S	2 W	WM	29	NE SE	--	PHOENIX CANAL (JACKSON CREEK): <i>MEASURED DISTANCES NOT SPECIFIED.</i>
* Denotes information not specified in Permit S-4951, but included by the Department to better describe the location of this authorized point of diversion.						
** Denotes the point of diversion added to Permit S-4951 through a permit amendment (T-7439) approved on November 8, 1995 by Special Order Volume 49 at Pages 401-402.						
*** Permit S-4951 indicates Range 1 West; however, the Department determined that the application map, which indicates Range 2 West, more accurately depicts the location of the authorized point of diversion.						

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	8	NE SE	27.2
37 S	1 W	WM	8	NW SE	29.1
Total					56.3

Determination and Proposed Action


The additional point of diversion, change in place of use and change in character of use proposed in Transfer Application T-12221 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000 and the abandoned right should be cancelled. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved and the abandoned right(s) will be cancelled.

If Transfer Application T-12221 is approved, the final order will include the following:

- 1. The additional point of diversion and change in place of use and change in character of use proposed in Transfer Application T-12221 are approved. The portion of the right that has been abandoned is cancelled.*
- 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 83381 and 83383 and any related decree.*
- 3. Water right certificates 83381 and 83383 and Permit S-4951 are modified. The Department will issue superseding certificates describing the portions of the rights not affected by this transfer when it determines that is necessary for record keeping.*
- 4. The quantity of water diverted at the additional point of diversion, together with that diverted at the original points of diversion, shall not exceed the quantity of water lawfully available at the original points of diversion, further limited as follows:*
 - a) The transferred portion of the right evidenced by current Certificate 83381 shall be limited to a maximum diversion of 0.41 cfs, limited to an annual volume of 207.2 acre-feet during the period April 1 to October 1 of each year, and further limited, in combination with the transferred portions of the right evidenced by current Certificate 83383 to a maximum aggregate diversion of 0.70 cfs and an annual volume of 207.2 acre-feet from the two rights.*
 - b) The transferred portion of the right evidenced by current Certificate 83383 shall be limited to a maximum diversion of 0.41 cfs, limited to an annual volume of 207.2 acre-feet during the period April 1 through October 31 of each year, and further limited, in combination with the transferred portions of the right evidenced by current Certificate 83381 to a maximum aggregate diversion of 0.70 cfs and an annual volume of 207.2 acre-feet from the two rights.*
- 5. The water user shall operate and maintain an approved fish screen at the new point of diversion. If Oregon Department of Fish and Wildlife (ODFW) determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.*
- 6. The former place of use of the transferred rights shall no longer receive water under the rights.*

7. *Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2030**. A Claim of Beneficial Use prepared by a Certified Water Right 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.*
8. *After satisfactory proof of beneficial use is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 22 day of June 2016.


Dwight French, Water Right Services Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

This Preliminary Determination was prepared by Sarah Henderson. If you have questions about the information in this document, you may reach me at 503-986-0890 or Sarah.A.Henderson@wrp.state.or.us.

Protests should be addressed to the attention of Water Rights Services Division, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>