

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

In the Matter of Transfer Application)
T-10614, Jackson County)
)
)
)

PRELIMINARY DETERMINATION
PROPOSING APPROVAL OF 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

JACKSON COUNTY ROADS AND PARKS;
200 ANTELOPE ROAD
WHITE CITY, OR 97503

Receiving Landowner

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

Findings of Fact

Background

1. On April 28, 2008, JACKSON COUNTY ROADS AND PARKS filed an application for an additional point of diversion and to change the place of use and the character of use under Certificate 81635. The Department assigned the application number T-10614. 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.
3. On March 17, 2009, Certificate 83263 was cancelled by Special Order Volume 77, Pages 384-389, approving transfer application T-10527. Certificate 84949 was issued to supersede Certificate 83263, correct the locations for the Four Mile Lake Dam and Fish Lake Dam points of diversion and the place of use description for Jackson County Roads and Parks, and describe the portions of the right not involved in T-10527.

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.
--

4. On May 28, 2010, the applicants submitted information to quantify the annual volume of water that could maximally have been used beneficially for manufacturing on the county roads and parks within the Medford Irrigation District boundaries.

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

Certificate: 84949 in the names of ROGUE RIVER VALLEY IRRIGATION DISTRICT and MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)
Use: MANUFACTURING
Priority Date: MARCH 31, 1910
Rate: 1.15 CUBIC FEET PER SECOND
Limit: 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.
Source: 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; as constructed under Permit R-50.

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	2E	WM	20	SE NE	NORTH FORK LITTLE 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	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 NE CORNER OF SECTION 4

Authorized Place of Use:

MANUFACTURING USES						
Twp	Rng	Mer	Sec	Q-Q	Name of User	
37 S	1 W	WM	9 (point of delivery from irrigation district)	County roads and park land within the mapped boundaries of Medford Irrigation District	Jackson County Roads and Parks	
37 S	1 W	WM	16 (point of delivery from irrigation district)			
37 S	2 W	WM	9 (point of delivery from irrigation district)			

6. Transfer Application T-10614 proposes 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	Measured Distances
36 S	2W	WM	13	SW NW	SOUTH 25° 25' 28" EAST, 4385.6 FEET FROM THE NE CORNER OF DLC 42 IN SECTION 11.

7. Transfer Application T-10614 proposes to change the character of use to municipal.
8. Application T-10614 also proposes to change the place of use of the right to:

MUNICIPAL USES				
Twp	Rng	Mer	Sec	Q-Q
35 S	1 W	WM	34	SW NE
35 S	1 W	WM	34	SE 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

9. Notice of the application for transfer was published on May 6, 2008, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
10. 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.
11. On May 6, 2010, the Department mailed a copy of the Preliminary Determination proposing to approve Transfer Application T-10614 to the applicant. The Preliminary Determination cover letter set forth a deadline of June 7, 2010, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination and provided a letter from Rogue River Valley Irrigation District to demonstrate that the applicant is authorized to pursue the transfer.

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

12. Water has been used within the five-year period prior to submittal of the transfer application according to the terms and conditions of the right. There is no information in the record that would demonstrate that the right is subject to forfeiture under ORS 540.610.
13. 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 Transfer Application T-10614.
14. In order to avoid enlargement of the annual quantity of water used under the right if the character of use is changed from manufacturing to municipal, the maximum annual volume that could have been used for manufacturing by Jackson County Roads and Parks on county roads and park land within the mapped boundaries of the Medford Irrigation District needs to be established. The best available information indicates that 297.5 acre-feet represents the total estimated maximum volume (at a diversion rate of 1.25 cfs) that could have been beneficially used for manufacturing on the county roads and park land within the Medford Irrigation District boundaries within the irrigation season. The portion of that total that is proposed to be transferred is 273.7 acre-feet at a diversion rate of 1.15 cfs, leaving 0.10 cfs (23.8 acre-feet per year) for manufacturing.
15. The proposed changes would not result in enlargement of the right, provided the rate and annual quantity is limited as stated below.
16. The proposed changes, as limited, would not result in injury to other water rights.

Determination and Proposed Action

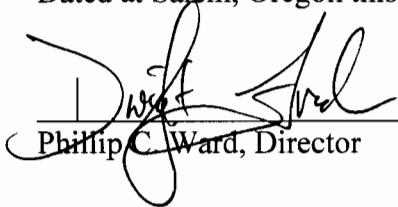
The additional point of diversion and changes in place of use and character of use proposed in Transfer Application T-10614 appear to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the transfer application will be approved.

If Transfer Application T-10614 is approved, the final order will include the following:

1. *The additional point of diversion and changes in place of use and character of use proposed in Transfer Application T-10614 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 84949 and any related decree.*
3. *Water right Certificate 84949 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The season of use of the right will continue to be limited to the irrigation season.*

5. *The former place of use of the transferred right shall no longer receive water under the right.*
6. *The quantity of water diverted at the additional point of diversion for the transferred portion of the right, 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, being 1.15 cfs, not to exceed 273.7 acre-feet per year.*
7. *The water user shall maintain and operate the existing measurement device and shall make such improvements as may be required by the Department.*
8. *The water user shall maintain the existing headgate and shall make such improvements as may be required by the Department.*
9. *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.*
10. *The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2015**. 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.*
11. *When satisfactory proof of the completed changes is received, a new certificate confirming the right transferred will be issued.*

Dated at Salem, Oregon this 7 day of June 2010.


Phillip C. Ward, Director

This Preliminary Determination was prepared by a Reimbursement Authority contractor. If you have questions about the information in this document, you may reach Dorothy Pedersen at 503-986-0890 or Dorothy.I.Pedersen@wrdd.state.or.us.

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