

RESOLUTION NO. 1704

A RESOLUTION APPROVING AN INTERGOVERNMENTAL AGREEMENT FOR A COORDINATED WATER RIGHTS MANAGEMENT AND WATER SHARING PLAN AND AUTHORIZING CITY MANAGER TO EXECUTE SAME

Recitals:

- A. Medford Water Commission (MWC) and the cities of Central Point, Ashland, Eagle Point, Jacksonville, Phoenix and Talent (collectively the "Cities") recognize the importance of providing a reliable source of water to their respective customers and constituents;
- B. MWC and the Cities desire to work together to coordinate a Water Rights Strategy (WRS) to improve current and long-term reliability of individual and collective water supplies;
- C. The City, has authority to enter into intergovernmental agreements pursuant to ORS Chapter 190;
- D. The Intergovernmental Agreement establishes Phase 1 of the WRS which includes a water rights certification strategy for water rights diverted at the Duff Water Treatment Plant and a sharing framework for the water between the Cities;
- E. The WRS recommends a Phase II for the coordinated water rights management and sharing plan, that would continue the water rights certification strategy and would require a separate IGA to be developed and approved for that phase.
- F. The proposed agreement provides that each City shall retain ownership of its own water rights and the agreement does not have the effect of conveying rights to other entities; rather it provides for a sharing strategy that will manage the timing of certification of water rights and use and sharing of excess water.
- G. The City, as well as all other parties to the agreement may withdraw from the agreement by providing written notice no later than October 1 of each year.
- H. It is in the best interest of the City to enter into this agreement and work with MWC and the other Cities to develop a collective strategy to help preserve this limited resource.

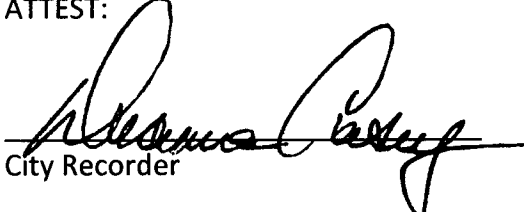
The City of Central Point resolves as follows:

Section 1. The Intergovernmental Agreement for a Coordinated Water Rights Management and Water Sharing Plan attached hereto as Exhibit "A" is approved and the City Manager is authorized to execute said agreement and such further documents as necessary to effectuate this agreement.

Passed by the Council and signed by me in authentication of its passage this 28th day of April, 2022.


Mayor Hank Williams

ATTEST:


City Recorder

**INTERGOVERNMENTAL AGREEMENT FOR
A COORDINATED WATER RIGHTS MANAGEMENT AND WATER SHARING PLAN**

I. Parties

This Intergovernmental Agreement (IGA) is between the Medford Water Commission (MEDFORD WATER) and the Cities of Ashland, Central Point, Eagle Point, Jacksonville, Phoenix, and Talent, hereinafter PARTNERS when referred to collectively, and MEDFORD WATER, ASHLAND, CENTRAL POINT, EAGLE POINT, JACKSONVILLE, PHOENIX, and TALENT when referred to individually, and PARTNER CITIES when referring to ASHLAND, CENTRAL POINT, EAGLE POINT, JACKSONVILLE, PHOENIX, and TALENT.

II. Recitals

- A. The PARTNERS all own and operate water systems that supply water to their respective customers;
- B. The PARTNERS recognize the vital importance of providing a reliable source of water to all their respective customers for public health, safety, and welfare and for sustaining economic development;
- C. The PARTNERS recognize the importance of water conservation, and each take actions to conserve their water supply.
- D. The PARTNERS have invested in and each hold water right(s) that are diverted and treated at the Duff Water Treatment Plant (WTP) located on the Rogue River, and understand the importance of strategically managing those water rights;
- E. The Duff WTP, owned by MEDFORD WATER, provides treated water to the PARTNERS and is a critical regional water supply facility.
- F. The PARTNER CITIES receive water treated at the Duff WTP under Treat and Transport contracts with MEDFORD WATER. These contracts include rates of water that the PARTNER CITIES can receive from the MEDFORD WATER's water supply system during identified time periods.
- G. The PARTNERS value the important role each utility plays in meeting the water supply needs of the Rogue Valley Region;
- H. The PARTNERS entered into a cooperative agreement for developing a water rights strategy in 2019, which resulted in development of a Final Report entitled WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS (February 2020). The cooperative agreement and report executive summary are included in **Attachment 1**;
- I. The WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS recommends Phase I of the Coordinated Water Rights Management and Sharing Plan, which includes a coordinated water rights certification strategy for water rights diverted at the Duff WTP and a PARTNER CITIES water sharing framework;
- J. The WATER RIGHTS STRATEGY FOR PARTNER WATER PROVIDERS recommends a Phase II of the Coordinated Water Rights Management and Sharing Plan to continue the water rights certification strategy for water rights diverted at the Duff

- WTP and a PARTNER CITIES and MEDFORD WATER water sharing framework. A separate IGA will need to be developed and approved for Phase II;
- K. The PARTNERS recognize that this IGA is related to Phase I of the Coordinated Water Rights Management and Sharing Plan; and
 - L. The PARTNERS enter this agreement in a spirit of good will and mutual cooperation, understanding that entering this IGA for Phase I of a Cooperative Water Rights Management and Water Sharing Plan is intended to improve the current and long-term reliability of individual and collective water supplies and is in the highest public interest.

III. Scope and Purpose

To develop, refine and implement Phase I of a Coordinated Water Rights Management and Water Sharing Plan that includes a coordinated water rights certification strategy for water rights diverted at the Duff WTP and a PARTNER CITIES water sharing framework. This IGA does not address Phase II of a Coordinated Water Rights Management and Water Sharing Plan, which would be established in a separate IGA. Being a signatory to this IGA does not require a PARTNER to become a signatory to an IGA developed for Phase II.

IV. Retention of Asset Ownership

- A. Each Partner will retain ownership of its water right(s). Nothing in this IGA will have the effect of conveying a water right to any other entity.
- B. MEDFORD WATER will retain ownership of the Duff WTP, the associated intake on the Rogue River, and all related infrastructure. Nothing in this IGA will have the effect of conveying any of MEDFORD WATER's water system to any other entity.

V. Water Right Certification Coordination

- A. The PARTNERS developed a strategy for managing the timing of certification of their existing water use permits and transfers, which is described in the Water Rights Certification Strategy Table provided in **Attachment 2**. The table identifies the water rights that have been or can be certificated at the current Duff WTP capacity (70 cfs), and the permits and transfers to be certificated at each subsequent WTP capacity (100 cfs, 131 cfs, 162 cfs and 193 cfs). Except as provided in subsection D of this section, only the portion of the Water Rights Certification Strategy Table for the Duff WTP's existing capacity of 70 cfs is applicable to this IGA for Phase I of the Water Rights Management and Water Sharing Plan.
- B. The PARTNERS agree to submit claims of beneficial use (COBUs) and requests for water right certificates to the Oregon Water Resources Department (OWRD) only at times consistent with the portion of the Water Rights Certification Strategy Table for the Duff WTP's existing capacity of 70 cfs, except as provided in subsection D of this section.
- C. At least 14 days prior to submitting a COBU and request for water right certificate to OWRD, PARTNERS agree to provide the Managing Agency with written notice of their intention to file a COBU.

- D. The Water Rights Certification Strategy Table will be reviewed by the PARTNERS annually as described in Section VIII, and will be updated to reflect the issuance of water right certificates consistent with Water Rights Certification Strategy.
- E. Each PARTNER will continue to be responsible for maintaining its own water rights, which will include but is not limited to filing water use reports with OWRD, developing claims of beneficial use and requesting water right certificates, and developing water management and conservation plans.

VI. Water Sharing

- A. Consistent with the PARTNER CITIES' contracts with MEDFORD WATER, each PARTNER CITY will use water under its individual water rights beginning May 1 of each year and ending September 30 of each year.
- B. By November 15 of each year, MEDFORD WATER will calculate the total volume of water used by each PARTNER CITY during the period of May 1 through September 30 based on meter readings for each city, referred to as each city's "Annual Metered Volume." The meters used to determine each PARTNER CITY'S "Annual Metered Volume" are listed in **Attachment 3**.
 - 1. The owner of each meter will ensure its meter(s) are calibrated to manufacturer standards.
 - 2. If a meter breaks or malfunctions the PARTNERS will use the best practicable information available to estimate water use.
- C. MEDFORD WATER will compare each PARTNER CITY'S Annual Metered Volume to the total volume of water authorized by each PARTNER CITY'S water rights (referred to as each PARTNER CITY'S "Total Authorized Water Volume") as shown in **Attachment 4**.
- D. The PARTNER CITIES will notify MEDFORD WATER of any changes to their Total Authorized Water Volume that occur during the May 1 through September 30 period.
- E. If a PARTNER CITY'S Annual Metered Volume exceeds its Authorized Water Volume, as provided in VI. C., MEDFORD WATER will subtract the Authorized Water Volume from the Annual Metered Volume to obtain that PARTNER CITY'S "Volume of Excess Use" for the year.
- F. If a PARTNER CITY'S Annual Metered Volume is less than that city's Authorized Water Volume, as provided in VI. C., MEDFORD WATER will subtract the Annual Metered Volume from the Authorized Water Volume to obtain that PARTNER CITY'S "Excess Water Right Volume" for the year.
- G. For each PARTNER CITY with a Volume of Excess Use, MEDFORD WATER will allocate the Volume of Excess Use equally among all PARTNER CITIES with an Excess Water Right Volume for that year. MEDFORD WATER will allocate the Volume of

Excess Use equally up to, but not in excess of, the PARTNER CITIES' Authorized Water Volumes. If equal allocation of a PARTNER CITY'S Volume of Excess Use would exceed one or more PARTNER CITY'S Authorized Water Volume, the Volume of Excess Use will be allocated equally among the PARTNER CITIES in the amount of the smallest Excess Water Right Volume. The remaining Volume of Excess Use will then be allocated equally among the remaining PARTNER CITIES with Excess Water Right Volume. This process will be repeated until the PARTNER CITY'S entire Volume of Excess Use has been allocated to other PARTNER CITIES. **Attachment 5** provides an example of the intended process.

- H. Any PARTNER CITY with a Volume of Excess Use will provide compensation to PARTNER CITIES with Excess Water Right Volume according to the volume of water allocated to that PARTNER CITY, and the Method of Cost Allocation provided in Section VII.

VII. Method of Cost Allocation

- A. By March 1 of each year, each PARTNER CITY will provide to MEDFORD WATER a copy of any Statement of Account or other invoices from the U.S. Army Corps of Engineers, or annual assessment from the Medford Irrigation District and/or Rogue River Irrigation District the PARTNER CITY received in the previous year related to their water rights associated with the Duff Water Treatment Plant as described in Attachment 2.
- B. Based on the information provided in subsection A., MEDFORD WATER will calculate the following total annual costs. An example of the calculations is provided in **Attachment 6**.
 - 1. The Total Annual Operation and Maintenance (O&M) Costs for storage space for Lost Creek Reservoir will be calculated by adding together the annual O&M costs for Ashland, Jacksonville, Phoenix, and Talent. This cost is associated with 3,892 AF of storage space in the reservoir, as shown in Table 1 of Attachment 6;
 - 2. The Total Annual Repair Replacement and Rehabilitation (RR&R) Costs for storage space for Lost Creek Reservoir will be calculated by adding together any annual RR&R costs for Ashland, Jacksonville, Phoenix, and Talent. This cost is associated with the 3,892 AF of storage space, as shown in Table 2 of Attachment 6.
 - 3. The 5-year Rolling Average RR&R Cost for storage space for Lost Creek Reservoir will be calculated by adding together the Total Annual RR&R Costs for the preceding five years and dividing by 5. This calculation is shown in Table 3 in Attachment 6.
 - 4. The Total Annual Assessment Costs will be calculated by adding together the annual costs charged to Central Point and Eagle Point by Medford Irrigation District and Rogue River Irrigation District. This cost is associated with the

3,123.7 AF for which the irrigation districts charge assessments, as shown in Table 4 of Attachment 6.

5. The Total Water Volume Associated with the Costs is 7,015.7 AF, which is calculated by adding 3,892 AF associated with storage space plus 3,123.7 AF associated with the irrigation districts, as shown in Table 5 of Attachment 6.

C. The Average Annual Cost Per Acre Foot will be calculated as follows.

1. Calculate the Total Annual Cost by adding together the Total Annual O&M Cost for storage space, the Five-Year Rolling Average RR&R Cost, and the Total Annual Assessment Cost.
2. Calculate the Annual Average Cost Per Acre Foot by dividing the Total Annual Cost by the Total Water Volume Associated with the Costs (7,015.7 AF), as shown in Table 5 of Attachment 6.

D. MEDFORD WATER will provide the PARTNER CITIES with the Average Annual Cost Per Acre Foot by March 30 of each year.

E. Each year after completing the calculations described in Section VI., for each PARTNER CITY with a Volume of Excess Use, MEDFORD WATER will multiply the Volume of Excess Use allocated to each PARTNER CITY (determined according to Section VI. D.) by the Average Annual Cost Per Acre Foot to obtain the “Annual Cost for Excess Use” owed to each PARTNER CITY.

F. By December 15 of each year, MEDFORD WATER will provide the PARTNER CITIES an Annual Summary Report of Water Sharing that includes the following information for the previous May through September:

1. Each PARTNER CITY’S Annual Metered Volume;
2. Each PARTNER CITY’S Authorized Water Volume;
3. Each PARTNER CITY’S Excess Water Right Volume, or Volume of Excess Use for the year; and
4. For each PARTNER CITY with a Volume of Excess Use, the volume of water allocated to each PARTNER CITY with an Excess Water Right Volume, and the associated Annual Cost for Excess Use. An example Annual Summary Report of Water Sharing is provided in **Attachment 7**.

G. By January 15 of each year, the PARTNERS will meet to review the Annual Summary Report of Water Sharing, and will work in good faith to resolve any discrepancies raised by a PARTNER CITY.

H. By February 15 of each year, each PARTNER CITY with a Volume of Excess Use shall pay the Annual Cost for Excess Use to other PARTNER CITIES as provided in the Annual Summary Report of Water Sharing.

VIII. Annual Meeting

A. Medford Water will schedule an annual meeting with the PARTNERS during the month of April each year at a time and location agreeable to the PARTNERS.

- B. Each PARTNER will, to the extent possible, have at least one representative at the annual meeting.
- C. Agenda items will include, but are not limited to, the following:
 - 1. An explanation of the processes established by this IGA, as necessary.
 - 2. Estimations provided by each PARTNER CITY of the amount of water it expects to use during the upcoming period of May 1 through September 30.
 - 3. Any available estimations of water supply expected to be available during the upcoming period of May 1 through September 30
 - 4. A review of the Water Rights Certification Strategy Table (the current version is provided in Attachment 2), and a discussion of any updates to the table that are needed or any plans to certificate a water right included in the table.
 - 5. Coordination of any other activities regarding the Water Rights so that all Partners are apprised of actions by a Partner that may affect them.
 - 6. Any amendments needed to this IGA. The process for adoption of amendments is provided in Section XIV.

IX. Designation, Tasks and Powers of Managing Agency

- A. Medford Water shall perform the duties of the Managing Agency hereunder including but not limited to:
 - 1. Coordinating use of the Partners' Rogue River water rights at the Duff Water Treatment Plant in accordance with the terms and conditions of this Agreement.
 - 2. Schedule and convene meetings with the Partners in accordance with the terms of this Agreement and as necessary to meet the requirements of this Agreement, maintain public records in accordance with the Oregon Public Records Law and rules, policies and procedures of Medford Water, and provide administrative support.
 - 3. Provide public communications and outreach, including response to public information, media or records requests in coordination with the Partner Cities.
 - 4. Retain consultants, attorneys, auditors, accountants and other professional services to assist the Managing Agency in accordance with Managing Agency contracting rules.
 - 5. Provide the Partners and their agents with reasonable access to books and records maintained by the Managing Agency specifically related to administration of this Agreement.
 - 6. Perform ministerial and administrative tasks to implement this Agreement.
- B. The General Manager of Medford Water shall be the person authorized to act for the Managing Agency, unless the Medford Water Commission specifies otherwise.

X. Governance

- A. Each Partner shall appoint a representative, elected or staff member, to receive notices, attend meetings as called and act as a liaison to the Partner's governing body. A

Partner's representative shall serve at the discretion of the Partner's governing body, or the City Manager or City Administrator.

- B. The Representatives shall meet in accordance with the terms of this Agreement and as deemed necessary by the Managing Agency upon reasonable notice to carry out the terms and conditions of this Agreement.

XI. Failure to Perform/Breach/Remedies

- A. If a Partner fails to perform any obligation or term of this Agreement, (Defaulting Partner) the Managing Agency will notify the Defaulting Partner in writing and request performance and cure. If the Defaulting Partner cures the default within 30 days of notice or commences to diligently cure a default within 30 days and completes cure within a mutually agreed time, then the matter will be deemed resolved.
- B. If the default continues after notice and opportunity to cure, the Managing Agency and the Representative of the Defaulting Partner shall meet within 45 days to discuss and resolve. Other Partners (Remaining Partners) shall be apprised and may attend.
- C. If no satisfactory resolution is reached, the parties agree to mediate any disputes under ORS Chapter 36.

XII. Termination and Withdrawal

- A. A Partner may elect to withdraw from this Agreement (Withdrawing Partner) by providing written notice to the Managing Agency no later than October 1 of each year. If timely notice is given, the withdrawal shall be effective on the following May 1.
- B. The Managing Agency will provide the Remaining Partners with timely notice of the withdrawal notice.
- C. Withdrawal from this Agreement will terminate the obligation to participate in water sharing under this agreement but will not affect any pre-existing agreements that may be operative. Withdrawal shall not relieve the Withdrawing Partner of any outstanding obligations remaining unpaid.
- D. Upon withdrawal, the Managing Agency will cause the Attachments to this Agreement affected by such Partner's withdrawal to be revised and adjusted as necessary to remove the Withdrawing Partner and its water rights, Authorized Water Volumes, and associated costs identified in the Attachments. The Managing Agency may create a new Attachment for addition to this Agreement to account for change in membership to identify the Partners, and their water rights, Authorized Water Volumes, and associated costs.
- E. The Managing Agency shall provide the Partner Cities with timely copies of the new or revised Attachment(s).
- F. This Agreement shall continue after withdrawal of a Partner unless dissolved as provided in Section XV, below.

XIII. Representations

By execution of this Agreement, each Partner represents to the others that the Agreement has been approved by the governing body and that the person executing the Agreement has full authority to do so and the Agreement is binding on the Partner. Further the

If to Central Point:

City of Central Point
Attn: City Manager
140 S. 3rd Street
Central Point, OR 97502

If to Eagle Point:

If to Jacksonville:

If to Phoenix:

If to Talent:

Jordan Rooklyn
PO Box 445
110 E Main St
Talent, OR 97540