

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

In the Matter of Transfer Application) FINAL ORDER APPROVING A
T-10862, Linn County) CHANGE 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

MUDDY CREEKS IRRIGATION DISTRICT
PO BOX 225
HARRISBURG, OR 97446

Agent

WALTER TRIMMER
TRIMMER ENGINEERING INC.
3924 NW WALNUT PLACE
CORVALLIS, OR 97330

Receiving Landowners

MALPASS FARMS
PO BOX 225
HARRISBURG, OR 97446

MICHAEL AND JANE DEWALL
32627 BOWERS RD
HARRISBUR, OR 97446

TOBIN AND KARI BOWERS
30290 NIXON DR
HALSEY, OR 97348

THOMAS DEE AND
KAREN L. MALPASS
PO BOX 225
HARRISBUG, OR 97446

WADE AND STACEY BIEGLER
22703 NORTH COBURG RD
HARRISBURG, OR 97446

DEAN BOWERS
22035 COBURG RD
HARRISBURG, OR 97446

Findings of Fact

Background

1. On April 24, 2009, MUDDY CREEKS IRRIGATION DISTRICT filed an application to change the place of use under Certificate 68366. The Department assigned the application number T-10862.
2. On April 23, 2010, the agent submitted an updated application map.

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

Certificate: 68366 in the name of MUDDY CREEKS IRRIGATION PROJECT
(perfected under Permit S-37877)
Use: IRRIGATION OF 443.2 ACRES
Priority Date: FEBRUARY 7, 1973
Rate: 5.54 CUBIC FEET PER SECOND
Limit/Duty: The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second, or its equivalent for each acre irrigated, and shall be further limited to a diversion of not to exceed 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year.
Source: MCKENZIE RIVER, tributary to the WILLAMETTE RIVER

Authorized Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	3 W	WM	9	NE NE	4440 FEET SOUTH AND 5250 FEET EAST FROM THE SE CORNER OF DLC 79

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	4 W	WM	35	NE NE	35.4
15 S	4 W	WM	35	NW NE	1.9
15 S	4 W	WM	35	SE NE	22.50
15 S	4 W	WM	35	NE SE	8.4
15 S	4 W	WM	36	NE NE	0.1
15 S	4 W	WM	36	NW NE	32.9
15 S	4 W	WM	36	SW NE	40.0
15 S	4 W	WM	36	SE NE	5.7
15 S	4 W	WM	36	NE NW	38.7
15 S	4 W	WM	36	NW NW	39.0
15 S	4 W	WM	36	SW NW	40.0
15 S	4 W	WM	36	SE NW	40.0
15 S	4 W	WM	36	NE SW	40.0
15 S	4 W	WM	36	NW SW	40.0
15 S	4 W	WM	36	SW SW	0.7
15 S	4 W	WM	36	SE SW	1.2
15 S	4 W	WM	36	NE SE	14.9
15 S	4 W	WM	36	NW SE	40.0
15 S	4 W	WM	36	SW SE	1.2
15 S	4 W	WM	36	SE SE	0.6
Total					443.2

4. Transfer Application T-10862 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	22	NW NW	31.0
14 S	4 W	WM	22	SW NW	29.0

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	3 W	WM	16	NE SW	9.3
15 S	3 W	WM	16	NW SW	40.0
15 S	3 W	WM	16	SW SW	38.0
15 S	3 W	WM	16	SE SW	8.7
15 S	3 W	WM	28	NE NW	0.2
15 S	3 W	WM	28	NW NW	2.2
15 S	3 W	WM	28	SW NW	25.5
15 S	3 W	WM	28	SE NW	3.5
15 S	3 W	WM	29	NE NE	19.5
15 S	3 W	WM	29	NW NE	25.0
15 S	3 W	WM	29	SW NE	15.2
15 S	3 W	WM	29	SE NE	20.6
15 S	3 W	WM	29	NE NW	25.9
15 S	3 W	WM	29	SE NW	15.7
15 S	3 W	WM	29	NE SW	8.9
15 S	3 W	WM	29	NE SE	1.2
15 S	3 W	WM	29	NW SE	6.0
15 S	3 W	WM	29	SE SE	4.0
15 S	3 W	WM	32	NE SW	40.0
15 S	3 W	WM	32	NW SW	17.3
15 S	3 W	WM	32	SW SW	17.2
15 S	3 W	WM	32	SE SW	31.3
15 S	3 W	WM	32	SW SE	8.0
Total					443.2

5. The applicant will remain responsible for completion of the change.
6. Notice of the application for transfer was published on May 5, 2009, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
7. On April 26, 2010, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10862 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of May 26, 2010, for the applicant to respond. The applicant 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.
8. On August 6, 2010, the Department issued a Preliminary Determination proposing to approve Transfer T-10862 and mailed a copy to the applicants. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on August 10, 2010, 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)]

9. 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.

10. 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 Transfer Application T-10862.
11. The proposed change would not result in enlargement of the right.
12. The proposed change would not result in injury to other water rights.

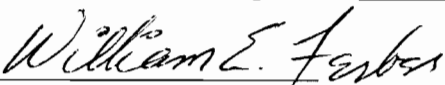
Conclusions of Law

The change in place of use proposed in Transfer Application T-10862 is consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The change in place of use proposed in Transfer Application T-10862 is 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 68366 and any related decree.
3. Water right certificate 68366 is cancelled.
4. The Director may require the water user to install a totalizing flow meter or other suitable measuring device at each point of diversion. If the Director notifies the water use to install totalizing flow meter or other measuring device, the water use shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meter or measuring device in good working order and shall allow the Watermaster access to the meter or measuring device.
5. The former place of use of the transferred right shall no longer receive water under the right.
6. The approved change 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 Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the change and full beneficial use of the water.
7. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 9th day of September 2010.


For Phillip C. Ward, Director

Mailing Date: SEP 13 2010