

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

In the Matter of Transfer Application            )     PRELIMINARY DETERMINATION  
T-10862, Linn County                            )     PROPOSING APPROVAL OF A  
  )     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 HARRISBURG, 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.

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.

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.

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

8. 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.
9. 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.
10. The proposed change would not result in enlargement of the right.

11. The proposed change would not result in injury to other water rights.


**Determination and Proposed Action**

The change in place of use proposed in Transfer Application T-10862 appears 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-10862 is approved, the final order will include the following:*

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 devices at each point of diversion. If the Director notifies the water user to install totalizing flow meters or other measuring devices, the water user shall install such devices specified by the Director within the period allowed in the notice. Once installed, the water user shall maintain the meters or measuring devices in good working order and shall allow the Watermaster access to the meters or measuring devices.*
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 6 day of August 2010.

  
Phillip C. Ward, Director

This Preliminary Determination was prepared by Kara Morris. If you have questions about the information in this document, you may reach me at 503-986-0898 or Kara.B.Morris@ wrd.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.*