

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

In the Matter of Transfer Application	)	PRELIMINARY DETERMINATION
T-10120, Jackson County	)	PROPOSING APPROVAL OF AN
	)	ADDITIONAL POINT OF DIVERSION,
	)	A CHANGE IN CHARACTER OF USE
	)	AND PLACE OF USE

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**

NAUMES PROPERTIES, LLC  
ROBERT BOGGESS, MANAGER  
PO BOX 966  
MEDFORD, OR 97501

**Findings of Fact**

On March 24, 2006, Naumes Properties, Llc

1. Robert Boggess, for Naumes Properties, LLC, filed a transfer application for an additional point of diversion and to change the place of use and character of use under Certificates 80570 and 80572. The Department assigned the application number T-10120. Herb Farber is the agent authorized to act on the applicant's behalf.
2. The portion of the first right to be transferred is as follows:  
**Certificate:** 80570 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit E-19)  
**Use:** IRRIGATION of 154.7 ACRES  
**Priority Date:** JULY 23, 1909  
**Rate:** 1.13 CUBIC FEET PER SECOND  
**Limit/Duty:** ONE-HUNDREDTH of one cfs per acre per year  
**Source:** NORTH AND SOUTH FORKS LITTLE BUTTE CREEK, tributary to LITTLE BUTTE CREEK

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.
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**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP: NONE GIVEN
36 S	2 E	WM	20	SE NE	NORTH FORK LITTLE BUTTE CREEK: 40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTION 20
36 S	2 E	WM	29	NE SE	SOUTH FORK LITTLE BUTTE CREEK: 780 FEET SOUTH & 400 FEET WEST FROM E1/4 CORNER, SECTION 29

**Authorized Place of Use:****IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	9	SW SE	9.0
37 S	1 W	WM	9	SE SE	37.4
37 S	1 W	WM	10	SW SW	32.5
37 S	1 W	WM	15	NW NW	40.0
37 S	1 W	WM	15	SW NW	35.8

3. Application T-10120 proposes an additional point of diversion for the portion of the right described in Finding #2 approximately 16 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 W	WM	13	SW NW	South 25degrees 25 minutes 28 seconds East, 4385.6 feet from the NE corner DLC 42

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

**Certificate:** 80572 in the name of MEDFORD IRRIGATION DISTRICT (perfected under Permit S-407)

**Use:** SUPPLEMENTAL IRRIGATION of 154.7 ACRES

**Priority Date:** MARCH 31, 1910

**Rate:** 1.13 CUBIC FEET PER SECOND

**Limit/Duty:** ONE-EIGHTIETH of one cfs per acre per year

**Source:** FOURMILE LAKE RESERVOIR, within the Klamath River Basin, CASCADE CANAL, AND FISH LAKE RESERVOIR, constructed under Permit R-50, within the Rogue River Basin

**Authorized Points of Diversion:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	1 E	WM	8	SW SW	BRADSHAW DROP: NO COORDINATES GIVEN
36 S	2 E	WM	20	SE NE	NORTH FORK: 40 FEET NORTH & 620 FEET WEST FROM E1/4 CORNER, SECTION 20
36 S	5 E	WM	9	SW NW	FOUR MILE LAKE DAM: 3600 FEET NORTH & 4200 FEET EAST FROM SW CORNER, SECTION 9
37 S	4 E	WM	4	SE SE	FISH LAKE DAM: 4000 FEET SOUTH & 600 FEET EAST FROM NE CORNER, SECTION 4

**Authorized Place of Use:**

**SUPPLEMENTAL IRRIGATION**

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	1 W	WM	9	SW SE	9.0
37 S	1 W	WM	9	SE SE	37.4
37 S	1 W	WM	10	SW SW	32.5
37 S	1 W	WM	15	NW NW	40.0
37 S	1 W	WM	15	SW NW	35.8

- Application T-10120 proposes an additional point of diversion for the right described in Finding #4 approximately 29 miles downstream to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
36 S	2 W	WM	13	SW NW	South 25degrees 25 minutes 28 seconds East, 4385.6 feet from the NE corner DLC 42

- Application T-10120 proposes to change the character of use of the rights described in Findings #2 and #4 to Municipal and Industrial.
- Application T-10120 proposes that the rights described in Findings #2 and #4 be transferred to the City of Central Point, which will be responsible for completion of all changes.
- Application T-10120 also proposes to change the place of use of the rights described in Findings #2 and #4 to:

**Proposed Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	2 W	WM	34	NE SW
36 S	2 W	WM	34	SE SW
36 S	2 W	WM	34	NE SE
36 S	2 W	WM	34	NW SE
36 S	2 W	WM	34	SW SE
36 S	2 W	WM	34	SE SE
36 S	2 W	WM	35	SW SW
36 S	2 W	WM	35	SE SE
36 S	2 W	WM	36	SE NW
36 S	2 W	WM	36	NE SW
36 S	2 W	WM	36	SW SW
36 S	2 W	WM	36	SE SW
37 S	2 W	WM	1	NE NW
37 S	2 W	WM	1	NW NW
37 S	2 W	WM	1	SW NW
37 S	2 W	WM	1	SE NW
37 S	2 W	WM	1	NE SW
37 S	2 W	WM	1	NW SW
37 S	2 W	WM	1	SW SW
37 S	2 W	WM	1	SE SW
37 S	2 W	WM	2	NE NE
37 S	2 W	WM	2	SE NE
37 S	2 W	WM	2	NW NW
37 S	2 W	WM	2	SW NW
37 S	2 W	WM	2	SE NW
37 S	2 W	WM	2	NE SW
37 S	2 W	WM	2	NW SW
37 S	2 W	WM	2	SW SW
37 S	2 W	WM	2	SE SW
37 S	2 W	WM	2	NE SE
37 S	2 W	WM	2	NW SE
37 S	2 W	WM	2	SW SE
37 S	2 W	WM	2	SE SE
37 S	2 W	WM	3	NE NE
37 S	2 W	WM	3	NW NE
37 S	2 W	WM	3	SW NE
37 S	2 W	WM	3	SE NE
37 S	2 W	WM	3	NE NW
37 S	2 W	WM	3	NW NW
37 S	2 W	WM	3	SW NW
37 S	2 W	WM	3	SE NW
37 S	2 W	WM	3	NE SW
37 S	2 W	WM	3	NW SW
37 S	2 W	WM	3	SW SW
37 S	2 W	WM	3	SE SW

Twp	Rng	Mer	Sec	Q-Q
37 S	2 W	WM	3	NE SE
37 S	2 W	WM	3	NW SE
37 S	2 W	WM	3	SW SE
37 S	2 W	WM	3	SE SE
37 S	2 W	WM	10	NE NE
37 S	2 W	WM	10	NW NE
37 S	2 W	WM	10	SW NE
37 S	2 W	WM	10	SE NE
37 S	2 W	WM	10	NE NW
37 S	2 W	WM	10	NW NW
37 S	2 W	WM	10	SW NW
37 S	2 W	WM	10	SE NW
37 S	2 W	WM	10	NE SW
37 S	2 W	WM	10	NW SW
37 S	2 W	WM	10	SW SW
37 S	2 W	WM	10	SE SW
37 S	2 W	WM	10	NE SE
37 S	2 W	WM	10	NW SE
37 S	2 W	WM	10	SW SE
37 S	2 W	WM	10	SE SE
37 S	2 W	WM	11	NE NE
37 S	2 W	WM	11	NW NE
37 S	2 W	WM	11	SW NE
37 S	2 W	WM	11	SE NE
37 S	2 W	WM	11	NE NW
37 S	2 W	WM	11	NW NW
37 S	2 W	WM	11	SW NW
37 S	2 W	WM	11	SE NW
37 S	2 W	WM	11	NE SW
37 S	2 W	WM	11	NW SW
37 S	2 W	WM	11	SW SW
37 S	2 W	WM	11	SE SW
37 S	2 W	WM	11	NE SE
37 S	2 W	WM	11	NW SE
37 S	2 W	WM	11	SW SE
37 S	2 W	WM	11	SE SE
37 S	2 W	WM	12	NE NW
37 S	2 W	WM	12	NW NW
37 S	2 W	WM	12	SW NW
37 S	2 W	WM	12	SE NW
37 S	2 W	WM	12	NE SW
37 S	2 W	WM	12	NW SW
37 S	2 W	WM	12	SW SW
37 S	2 W	WM	12	SE SW

9. Notice of the application for transfer was published on April 4, 2006 pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice. However, the Oregon Department of Fish and Wildlife did request inclusion of a condition requiring installation of proper fish screens at the additional point of diversion.

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. However, funds may not be currently available.
11. On September 11, 2006, a Draft Preliminary Determination was issued and a copy was mailed to the applicants. On October 2, 2006 by fax, and October 5, 2006 by mail, comments on the draft were received from Medford Irrigation District, requesting that the original points of diversion remain as the measuring points for delivery, requesting clarification of the date by which the approved changes (including ODFW approval of the screens and by-pass devices) needed to be completed, and also requesting to be allowed to “perfect” the changes prior to the new fish facilities being installed so that the City could then have the option of putting the water instream.
12. Consultations between the representatives of the Oregon Water Resources Department, ODFW and other stakeholders resulted in agreement to modify the conditions for fish screening, water measurement, and perfection of the changes, as reflected in this document.
13. Water right Certificates 80570 and 80572 were issued less than 5 years prior to the filing of the T-10120 application, confirming the rights, and no other evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
14. Diversion structures and ditches as well as a pump, pipeline and sprinklers sufficient to use the full amount of water allowed under the existing right are present.
15. The proposed changes would not result in enlargement of the rights so long as the use of water continues to be limited to the irrigation season, being April 1 to October 1 of each year.
16. The proposed changes would not result in injury to other water rights.

### **Determination and Proposed Action**

The proposed changes in place of use, character of use and an additional point of diversion in application T-10120 appear to be consistent with the requirements of ORS 540.505 to 540.580, and OAR 690-380-5000, and will be approved provided that protests are not filed pursuant to OAR 690-380-4030.

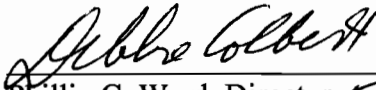
*If T-10120 is approved, the final order will contain the following conditions:*

1. *The changes in place of use, character of use and an additional point of diversion proposed in T-10120 are approved.*
2. *Certificates 80570 and 80572 are cancelled. New certificates will be issued describing the portions of the rights not affected by this transfer.*

3. *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 in Certificates 80570 and 80572 and any related decree.*
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.*
5. *Municipal use of water shall be limited to the irrigation season, being April 1 to October 1 of each year.*
6. *The former place of use of the transferred water shall no longer receive water as part of these rights.*
7. *Prior to diverting water, the water user shall install and maintain a suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The Lake Creek gaging station on Little Butte Creek (Station number 14346700) is an acceptable measuring point for use in fulfillment of this requirement.*
8. *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 fish screening and/or by-pass device meets ODFW's criteria. The water user may withdraw water at the new point of diversion without an adequate fish screening or by-pass device for one continuous four hour period between September 1 and October 1, 2007, for the purposes of proving up the transfer. After October 1, 2007, no further diversion of water will be allowed until adequate fish screening and/or by-pass devices have been installed and approved by ODFW. 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.*
9. *The approved changes associated with Transfer T-10120 shall be completed and full beneficial use of the water shall be made on or before October 1, 2012. 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.*
10. *If a claim of beneficial use is submitted prior to installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require installation of a fish screening and/or by-pass device prior to diversion of any water under the certificate.*

11. *If a claim of beneficial use is submitted prior to installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require that the water right be leased instream prior to diversion of any water.*
12. *If a claim of beneficial use is submitted after the installation of an approved fish screening and/or by-pass device, the confirming certificate will be conditioned to require operation and maintenance of the fish screen consistent with ODFW standards.*

Dated at Salem, Oregon this 15<sup>th</sup> day of March 2007.

  
Phillip C. Ward, Director *FOR*

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@wrp.state.or.us](mailto:Dorothy.I.Pedersen@wrp.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 97301-1271.