

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

In the Matter of Transfer Application)
T-10458, Linn County)
)
) PRELIMINARY DETERMINATION
) PROPOSING APPROVAL OF A
) CHANGE IN 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 CREEK IRRIGATION PROJECT
PO BOX 225
HARRISBURG OR 97446

Findings of Fact

Background

1. On September 14, 2007, MUDDY CREEK IRRIGATION PROJECT filed an application to change the place of use under Certificate 84796. The Department assigned the application number T-10458.
2. On August 14, 2009, the applicant submitted a revised map, identifying 97 acres for transfer. A revised Supplemental Form A was also submitted.
3. On August 21, 2009, the applicant submitted a revised map and Supplemental Form A page 3, identifying the appropriate points of diversion.
4. On October 7, 2009, the applicant submitted a revised map and Supplemental Form A with the authorized points of diversion properly described and mapped.

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.

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

Certificate: 84796 in the name of MUDDY CREEKS IRRIGATION PROJECT
(perfected under Permit S-17510)
Use: IRRIGATION OF 97.0 ACRES
Priority Date: FEBRUARY 9, 1939
Rate: 1.21 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 ONE-EIGHTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
Sources: MUDDY CREEK AND MCKENZIE RIVER, tributaries to the WILLAMETTE RIVER

Authorized Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
14 S	4 W	WM	35	NW NE		1280 FEET SOUTH AND 2520 FEET WEST FROM THE NE CORNER OF SECTION 35
15 S	3 W	WM	30	SW NE		3830 FEET NORTH AND 1900 FEET WEST FROM THE NW CORNER OF GREENWOOD DLC 64
15 S	3 W	WM	32	SW NE	64	2810 FEET NORTH AND 2090 FEET WEST FROM THE SE CORNER OF SECTION 32

Authorized Place of Use:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	4 W	WM	35	NE NW	18.1
14 S	4 W	WM	35	NW NW	33.4
14 S	4 W	WM	35	SW NW	21.4
14 S	4 W	WM	35	SE NW	24.1
TOTAL ACRES					97.0

6. Transfer Application T-10458 proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	3 W	WM	30	SW NE	18.4
15 S	3 W	WM	30	SE NE	16.6
15 S	3 W	WM	30	NE SE	0.9
15 S	3 W	WM	30	NW SE	6.9
15 S	3 W	WM	32	NW NE	1.6
15 S	3 W	WM	32	NE NW	15.3
15 S	3 W	WM	32	SE NW	14.2
15 S	3 W	WM	32	NW SE	23.1
TOTAL ACRES					97.0

7. Notice of the application for transfer was published on September 25, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
8. On October 15, 2009, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-10458 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of November 20, 2009, for the applicant to respond. The applicant's agent 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)]

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 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-10458.
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.

Determination and Proposed Action


The change in place of use proposed in Transfer Application T-10458 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-10458 is approved, the final order will include the following:

1. *The change in place of use proposed in Transfer Application T-10458 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 84796 and any related decree.*
3. *Water right certificate 84796 is cancelled. A new certificate will be issued describing that portion of the right not affected by this transfer.*
4. *The former place of use of the transferred right shall no longer receive water under the right.*
5. *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(s) and full beneficial use of the water.*

6. *When satisfactory proof of the completed change 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 Kelly Starnes. If you have questions about the information in this document, you may reach me at 503-986-0886 or Patrick.K.Starnes@ 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.