

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

In the Matter of Transfer Application                    )     FINAL ORDER APPROVING A  
T-8456, Linn County    )     CHANGE IN CHARACTER 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**

TROY E CUMMINS  
MALLARD CREEK LLC  
31221 OSPREY ROAD  
LEBANON, OREGON 97355

**Findings of Fact**

1. On 3-3-2000, Karl E. Kaser filed a transfer application to change the character of use under Certificate 80831. The Department assigned the application number T-8456.
2. On 5-10-2004, the transfer file was assigned to Troy E. Cummins of Mallard Creek LLC.
3. The right to be transferred is as follows:

**Certificate:** 80831 in the name of TROY E CUMMINS, MALLARD CREEK LLC  
(perfected under Permit R-12492)

**Use:** STORAGE FOR WETLAND ENHANCEMENT

**Priority Date:** SEPTEMBER 9, 1996

**Rate:** 20.3 ACRE FEET

**Source:** UNNAMED STREAM, tributary to HAMILTON CR

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q	DLC
12 S	1 W	WM	22	NE NW	44
12 S	1 W	WM	22	SE NW	44

**NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW**

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may either 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.

4. Application T-8456 proposes to change the character of use to storage for multiple purposes, including, but not limited to irrigation and wetland enhancement.
5. Notice of the application for transfer was published pursuant to ORS 540.520 and OAR 690-380-4000. No comments were filed in response to the notice.
6. Water has been used within the last five years according to the terms and conditions of the rights, and no evidence is available that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
7. A storage structure sufficient to use the full amount of water allowed under the existing right is present.
8. A water measurement device is required by Certificate 80831.
9. The proposed change would not result in enlargement of the right.
10. The proposed change would not result in injury to other water rights.

#### **Conclusions of Law**

The change in character of use proposed in application T-8456 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 character of use proposed in application T-8456 is approved.
2. Water right certificate 80831 is cancelled.
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 contained in Certificate 80831 and any related decree.
4. The approved change shall be completed and full beneficial use of the water shall be made on or before **October 1, 2007**. 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.
5. When satisfactory proof of the completed change is received, a new certificate confirming the right transferred will be issued.

Dated at Salem, Oregon this 10<sup>th</sup> day of April 2006.

  
Phillip C. Ward, Director *for*

Mailing date: 4-13-2006