

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

In the Matter of Transfer Application            )  
T-10310, Lake County                            )  
  )  
  )  
  )  
  )

PRELIMINARY DETERMINATION  
PROPOSING APPROVAL OF A  
CHANGE IN POINT OF  
APPROPRIATION, AND PLACE OF  
USE

**Authority**

ORS 537.705 and 540.505 to 540.580 establish the process in which a water right holder may submit a request to transfer the point of appropriation, 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:**

DUANE & ANN CUMMINS  
35835 SANTIAM HWY SE  
ALBANY OR 97322

**Findings of Fact**

**Background**

1. On February 8, 2007, Duane & Ann Cummins filed a transfer application to change the place of use and point of appropriation for portions of Certificates 52619 and 52620. The Department assigned the application number T-10310.
2. On March 13, 2007, Anderson Engineering & Surveying, Inc., the applicants’ agent, revised the transfer application so as to change the place of use and point of appropriation for a portion of Certificate 52619, and to change only the place of use for a portion of Certificate 52620. A Land Use Information Form showing approval by the county commission was submitted.
3. The portion of the first right to be transferred is as follows:  
**Certificate:** 52619 in the name of O.R. HEAVILIN (perfected under Permit G-7054)  
**Use:** IRRIGATION of 10.0 ACRES  
**Priority Date:** DECEMBER 14, 1976  
**Rate:** 0.125 CUBIC FOOT PER SECOND  
**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

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.

**Source:** WELL 2 in the FORT ROCK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
27 S	15 E	WM	3	NE NW	1273 FEET SOUTH AND 2645 FEET WEST FROM THE NE CORNER OF SECTION 3

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
27 S	15 E	WM	3	NW NW	10.0

4. Application T-10310 proposes to move the authorized point of appropriation approximately 7 miles north the existing point of appropriation to:

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	15 E	WM	32	SW SE	60 FEET NORTH AND 2690 FEET WEST FROM THE SE CORNER OF SECTION 32

5. Application T-10310 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	32	SE SE	10.00

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

**Certificate:** 52620 in the name of MAURICE L And HAZEL WARD (perfected under Permit G-8983)

**Use:** IRRIGATION of 65.0 ACRES

**Priority Date:** MARCH 25, 1980

**Rate:** 0.81 CUBIC FOOT PER SECOND

**Limit/Duty:** ONE-EIGHTIETH cfs per acre, not to exceed 3 acre-feet per acre per year

**Source:** A WELL in the FORT ROCK BASIN

**Authorized Point of Appropriation:**

Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
25 S	15 E	WM	32	SW SE	60 FEET NORTH AND 2690 FEET WEST FROM THE SE CORNER OF SECTION 32

**Authorized Place of Use:**

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	32	SW SW	7.5
25 S	15 E	WM	32	SE SW	7.5
25 S	15 E	WM	32	SW SE	20.0
25 S	15 E	WM	32	SE SE	30.0

7. Application T-10310 also proposes to change the place of use of the right to:

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
25 S	15 E	WM	32	NE SW	32.5
25 S	15 E	WM	32	NW SW	32.5

8. Notice of the application for transfer was published on February 13, 2007, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

***Transfer Review Criteria (OAR 690-380-4010)***

9. Water has been used within the last five years according to the terms and conditions of the rights, and there is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
10. The information submitted with the transfer application was deficient in description of the delivery system. However, on April 23, 2007 the applicant submitted additional information sufficient to establish that water delivery systems able to use the full amount of water allowed under the existing rights are present [OAR 690-15-060(10)].
11. The proposed change would not result in enlargement of the rights.
12. The proposed change would not result in injury to other water rights.

**Determination and Proposed Action**

The changes in place of use and change in point of appropriation proposed in application T-10310 appear to be consistent with the requirements of ORS 537.705 and 540.505 to 540.580 and OAR 690-380-5000. If protests are not filed pursuant to OAR 690-380-4030, the application will be approved.

*If application T-10310 is approved, the final order will include the following:*

1. *The changes in place of use proposed in application T-10310 are approved.*
2. *Water right certificates 52619 and 52620 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 contained in Certificates 52619 and 52620 and any related decree.*
4. *Water for the right evidenced by Certificate 52619 shall be acquired from the same aquifer (water source) as the original point of appropriation.*

5. *The quantity of water diverted at the new point of appropriation for the right evidenced by Certificate 52619 shall not exceed the quantity of water lawfully available at the original point of appropriation.*
6. *The former place of use of the transferred rights shall no longer receive water under the rights.*
7. *Prior to diverting water, the water user shall install an in-line flow meter or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department. The water user shall maintain and operate the measuring device as required by the Department.*
8. *The approved changes shall be completed and full beneficial use of the water shall be made on or before October 1, 2008. 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.*
9. *When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.*

Dated at Salem, Oregon this 8<sup>th</sup> day of May 2007.

  
Phillip C. Ward, Director

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@wrdd.state.or.us](mailto:Dorothy.I.Pedersen@wrdd.state.or.us).

Protests should be addressed to the attention of Field Services Division, Water Resources Department, 725 Summer St. NE, Salem, OR 97301-1266.