

STATE OF OREGON

COUNTY OF JOSEPHINE

ORDER APPROVING A CHANGE IN USE AND PLACE OF USE
AND CANCELING A PORTION OF A WATER RIGHT

Pursuant to ORS 537.348 and ORS 540.510 to 540.530, after notice was given and no objections were filed, and finding that no injury to existing water rights would result, this order approves, as conditioned or limited herein, TRANSFER 8094 submitted by

OREGON WATER TRUST
147 CENTAL AVENUE
ASHLAND, OREGON 97520.

The right to be modified was confirmed by decree of the Circuit Court of the State of Oregon for JOSEPHINE County as evidenced by a PORTION of Certificate 72373. The decree is recorded in the Order Record of the Water Resources Director in Volume 1, at Page 252. The date of priority is 1857.

The right allows the use of SUCKER CREEK, a tributary of the ILLINOIS RIVER, for IRRIGATION of 7.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.139 cubic foot per second, if available at the authorized point of diversion: BRIGGS-TANNERY DITCH, NW¼ SE¼, SECTION 31, T 39 S, R 7 W, WM, or its equivalent in case of rotation, measured at the point of diversion from the source.

The authorized place of use is located as follows:

TRACT 1

NE¼ SE¼ 5.3 ACRES

TRACT 2

SE¼ SE¼ 1.7 ACRES
SECTION 35
TOWNSHIP 39 SOUTH, RANGE 8 WEST, W.M.

The right to use water for the above purpose is restricted to beneficial use on the lands or place of use described and is subject to all other conditions and limitations contained in the decree.

The applicant proposes to change the USE and PLACE OF USE to INSTREAM USE FOR FISHERIES ENHANCEMENT in SUCKER CREEK from the authorized point of diversion, BRIGGS-TANNERY DITCH, NW¼ SE¼, SECTION 31, T 39 S, R 7 W, WM; 2500 FEET NORTH AND 300 FEET EAST FROM THE S¼ CORNER, SECTION 31, to the mouth, in the NE¼ SW¼, SECTION 35, T 39 S, R 8 W, WM.

The Director's findings under OAR 690-77-075(2) are affirmative.

An affidavit was received from Erwin Sawall, representing Diana and Erwin Sawall, the owners of certain land and the water right appurtenant to it. The water right has been abandoned and is requested to be canceled.

The abandoned water right is a portion of the right described by Certificate 72373, State Record of Water Right Certificates. The abandoned water right is for the use of 0.061 cubic foot per second from Sucker Creek, a tributary of the Illinois River. The date of priority is 1857. The abandoned water right is for irrigation of 3.05 acres.

A description of the place of use of the abandoned right is as follows:

TRACT 1

NE¼ SE¼ 1.20 ACRES

TRACT 2

SE¼ SE¼ 1.85 ACRES
SECTION 35
TOWNSHIP 39 SOUTH, RANGE 8 WEST, W.M.

ORS 540.621 provides: "Whenever the owner of a perfected and developed water right certifies under oath to the Water Resources Commission that the water right has been abandoned by the owner and that the owner desires cancellation thereof, the commission shall enter an order canceling the water right."

THESE CHANGES TO AN EXISTING WATER RIGHT MAY BE MADE PROVIDED THE FOLLOWING CONDITIONS ARE MET BY THE WATER USER:

1. The proposed change shall be effective upon the date of this order.
2. The stream channel immediately below the original point of diversion loses water flow, in some years, due to gravel conditions. The water flow returns prior to the stream crossing the west line of Section 31, T 39 S, R 7 W, WM. No regulatory action will be taken to maintain the flow between the original point of diversion and the west line of Section 31, if the instream flow is present at the original point of diversion and the west line of Section 31.
3. This instream right shall replace a portion of the existing instream water right for Sucker Creek, evidenced by Certificate 62323, during the period from April 1 to October 31, of each year.
4. The former place of use shall no longer be irrigated as a part of this water right.

An instream flow of 0.139 cubic foot per second will be maintained, during the period from April 1 to October 31 of each year, in Sucker Creek, tributary to the East Fork Illinois River, from the authorized point of diversion in the NW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 31, T 39 S, R 7 W, WM; BRIGGS-TANNERY DITCH, 2500 FEET NORTH AND 300 FEET EAST FROM THE S $\frac{1}{4}$ CORNER, SECTION 31, to the mouth, in the NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 35, T 39 S, R 8 W, WM, with a priority date of 1857.

The portions of the water rights requested to be canceled are canceled. Certificate 72373 is canceled. A new certificate confirming this instream water right will be issued.

WITNESS the signature of the Water Resources

Director, affixed January 5, 1999.



Martha O. Pagel, Director