

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

In the Matter of Transfer Application)
T-12534, Douglas County) FINAL ORDER APPROVING
) ADDITIONAL POINTS OF
) DIVERSION

Authority

Oregon Revised Statutes (ORS) 540.505 to 540.580 establish 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. Oregon Administrative Rules (OAR) Chapter 690, Division 380 implement the statutes and provides the Department’s procedures and criteria for evaluating transfer applications.

Applicant

SUTHERLIN WATER CONTROL DISTRICT
495 N. STATE STREET
SUTHERLIN, OR 97479

Findings of Fact

1. On December 13, 2016, SUTHERLIN WATER CONTROL DISTRICT filed an application for additional points of appropriation under Certificates 76599 and 76600. The Department assigned the application number T-12534.
2. Notice of the application for transfer was published on December 20, 2016, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.
3. On January 22, 2020, the Department mailed a copy of the draft Preliminary Determination proposing to approve Transfer Application T-12534 to the applicant. The draft Preliminary Determination cover letter set forth a deadline of February 24, 2020, for the applicant to respond.
4. On March 2, 2020, the applicant requested that the Department proceed with issuance of a Preliminary Determination.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, you may 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.

5. On July 15, 2020, the Department issued a Preliminary Determination proposing to approve Transfer T-12534 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on July 21, 2020, and in the News Review newspaper on July 21 and 28, 2020 pursuant to ORS 540.520 and OAR 690-380-4020. No protests were filed in response to the notice.
6. The first right to be transferred is as follows:

Certificate: 76599 in the name of SUTHERLIN WATER CONTROL DISTRICT (perfected under Permit S-31273)

Use: PRIMARY IRRIGATION OF 499.1 ACRES AND SUPPLEMENTAL IRRIGATION OF 34.6 ACRES

Priority Date: JANUARY 27, 1960

Rate: 6.67 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 2.5 acre-feet per acre for each acre irrigated during the irrigation season of each year from direct flow and storage. The use of water for supplemental irrigation is limited to stored water only.

Source: SUTHERLIN CREEK AND PLAT 1 RESERVOIR CONSTRUCTED UNDER PERMIT R-4751, a tributary of NORTH UMPQUA RIVER

Authorized Point of Diversion:

Twtp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	5 W	WM	14	NW SE	41	POD 1 - 800 FEET SOUTH AND 580 FEET EAST FROM THE C1/4 CORNER OF SECTION 14

Authorized Place of Use:

PRIMARY							
Twtp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	5 W	WM	10	SE SE			0.7
25 S	5 W	WM	11	NE SW		45	0.9
25 S	5 W	WM	11	SW SW		45	25.0
25 S	5 W	WM	11	SE SW	2		2.6
25 S	5 W	WM	11	SE SW		45	31.7
25 S	5 W	WM	13	NE NW			12.4
25 S	5 W	WM	13	SW NW		42	3.2
25 S	5 W	WM	13	SE NW		42	4.0
25 S	5 W	WM	13	NE SW		42	0.6
25 S	5 W	WM	13	NW SW		42	4.1
25 S	5 W	WM	13	SW SW		42	3.4
25 S	5 W	WM	14	NE NE			2.9
25 S	5 W	WM	14	NW NE			10.4
25 S	5 W	WM	14	SW NE	2	41	3.8
25 S	5 W	WM	14	SW NE		41	6.6
25 S	5 W	WM	14	SE NE		41	11.8
25 S	5 W	WM	14	SE NE	1	41	19.0

PRIMARY							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	5 W	WM	14	NE NW		45	32.0
25 S	5 W	WM	14	NW NW		45	29.6
25 S	5 W	WM	14	SW NW		41	1.7
25 S	5 W	WM	14	SW NW	3	41	3.2
25 S	5 W	WM	14	SW NW		45	13.4
25 S	5 W	WM	14	SE NW		45	5.2
25 S	5 W	WM	14	SE NW		41	12.8
25 S	5 W	WM	14	NE SW	5	41	4.9
25 S	5 W	WM	14	NE SW		41	22.0
25 S	5 W	WM	14	NW SW			3.3
25 S	5 W	WM	14	NW SW	4	41	22.7
25 S	5 W	WM	14	SW SE		41	2.0
25 S	5 W	WM	14	SE SE		41	5.9
25 S	5 W	WM	15	NE NE		45	5.8
25 S	5 W	WM	15	NW NE		40	2.3
25 S	5 W	WM	15	NW NE		45	2.8
25 S	5 W	WM	15	SW NE	4	40	1.2
25 S	5 W	WM	15	SW NE		45	3.6
25 S	5 W	WM	15	SW NE		40	12.9
25 S	5 W	WM	15	SE NE	7	40	4.0
25 S	5 W	WM	15	SE NE		45	8.3
25 S	5 W	WM	15	NE NW		40	1.2
25 S	5 W	WM	15	SW NW		40	2.2
25 S	5 W	WM	15	SE NW		40	18.4
25 S	5 W	WM	15	NE SW		40	9.4
25 S	5 W	WM	15	NW SW		40	2.7
25 S	5 W	WM	15	NE SE			40.0
25 S	5 W	WM	15	NW SE		40	18.6
25 S	5 W	WM	15	NW SE	5		20.0
25 S	5 W	WM	15	SW SE		40	6.6
25 S	5 W	WM	15	SW SE	6		14.4
25 S	5 W	WM	15	SE SE			11.6
25 S	5 W	WM	23	NE NE		41	4.9
25 S	5 W	WM	23	NW NE		41	6.4
						Total	499.1

SUPPLEMENTAL (STORED WATER ONLY)							
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres	
25 S	5 W	WM	13	NE SW	42	0.8	
25 S	5 W	WM	13	NW SW	42	5.9	
25 S	5 W	WM	13	SW SW	42	25.4	
25 S	5 W	WM	13	SE SW	42	2.5	
						Total	34.6

7. The second right to be transferred is as follows:

Certificate: 76600 in the name of SUTHERLIN WATER CONTROL DISTRICT
(perfected under Reservoir Application R-74271)
Use: PRIMARY IRRIGATION OF 137.1 ACRES AND SUPPLEMENTAL
IRRIGATION OF 533.7 ACRES
Priority Date: JANUARY 1, 1993
Rate: 450.0 ACRE-FEET
Source: SUTHERLIN CREEK, A TRIBUTARY OF NORTH UMPQUA RIVER
IN AN ENLARGEMENT PLAT 1 RESERVOIR, ORIGINALLY
CONSTRUCTED UNDER PERMIT R-4751

The dam is located as follows:

Twp	Rng	Mer	Sec	Q-Q
25 S	5 W	WM	14	NW SE

Authorized Place of Use:

PRIMARY						
Twp	Rng	Mer	Sec	Q-Q	DLC	Acres
25 S	5 W	WM	14	NE NE		5.0
25 S	5 W	WM	14	SW NW		14.3
25 S	5 W	WM	14	SE NW		12.1
25 S	5 W	WM	14	SE SW		2.0
25 S	5 W	WM	15	NW NE	40	6.6
25 S	5 W	WM	15	NE NW	40	0.8
25 S	5 W	WM	15	NE SW	40	29.4
25 S	5 W	WM	15	NW SW	40	15.6
25 S	5 W	WM	15	SW SW	40	13.6
25 S	5 W	WM	15	SE SW	40	13.6
25 S	5 W	WM	15	SE SE		3.7
25 S	5 W	WM	16	NE SE	40	3.4
25 S	5 W	WM	16	SE SE	40	9.7
25 S	5 W	WM	22	SW NE		3.9
25 S	5 W	WM	22	SE NE		2.4
25 S	5 W	WM	23	NE NW		1.0
Total						137.1

SUPPLEMENTAL							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	5 W	WM	10	SE SE			0.7
25 S	5 W	WM	11	NE SW			0.9
25 S	5 W	WM	11	SW SW		45	25.0
25 S	5 W	WM	11	SE SW		45	31.7
25 S	5 W	WM	11	SE SW	2		2.6
25 S	5 W	WM	13	NE NW			12.4
25 S	5 W	WM	13	SW NW		42	3.2
25 S	5 W	WM	13	SE NW		42	4.0
25 S	5 W	WM	13	NE SW		42	1.4
25 S	5 W	WM	13	NW SW		42	10.0
25 S	5 W	WM	13	SW SW		42	28.8
25 S	5 W	WM	13	SE SW		42	2.5

SUPPLEMENTAL							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
25 S	5 W	WM	14	NE NE			2.9
25 S	5 W	WM	14	NW NE			10.4
25 S	5 W	WM	14	SW NE	2		3.8
25 S	5 W	WM	14	SW NE		41	6.6
25 S	5 W	WM	14	SE NE		41	11.8
25 S	5 W	WM	14	SE NE	1		19.0
25 S	5 W	WM	14	NE NW		45	32.0
25 S	5 W	WM	14	NW NW		45	29.6
25 S	5 W	WM	14	SW NW		45	13.4
25 S	5 W	WM	14	SW NW	3		3.2
25 S	5 W	WM	14	SW NW		41	1.7
25 S	5 W	WM	14	SE NW		41	12.8
25 S	5 W	WM	14	SE NW		45	5.2
25 S	5 W	WM	14	NE SW	5		4.9
25 S	5 W	WM	14	NE SW		41	22.0
25 S	5 W	WM	14	NW SW		41	3.3
25 S	5 W	WM	14	NW SW	4		22.7
25 S	5 W	WM	14	SW SE		41	2.0
25 S	5 W	WM	14	SE SE		41	5.9
25 S	5 W	WM	15	NE NE		45	5.8
25 S	5 W	WM	15	NW NE		45	2.8
25 S	5 W	WM	15	NW NE		40	2.3
25 S	5 W	WM	15	SW NE		40	12.9
25 S	5 W	WM	15	SW NE	4	40	1.2
25 S	5 W	WM	15	SW NE		45	3.6
25 S	5 W	WM	15	SE NE		45	8.3
25 S	5 W	WM	15	SE NE	7		4.0
25 S	5 W	WM	15	NE NW		40	1.2
25 S	5 W	WM	15	SW NW		40	2.2
25 S	5 W	WM	15	SE NW		40	18.4
25 S	5 W	WM	15	NE SW		40	9.4
25 S	5 W	WM	15	NW SW		40	2.7
25 S	5 W	WM	15	NE SE			40.0
25 S	5 W	WM	15	NW SE	5		20.0
25 S	5 W	WM	15	NW SE		40	18.6
25 S	5 W	WM	15	SW SE		40	6.6
25 S	5 W	WM	15	SW SE	6		14.4
25 S	5 W	WM	15	SE SE			11.6
25 S	5 W	WM	23	NE NE		41	4.9
25 S	5 W	WM	23	NW NE		41	6.4
						Total	533.7

8. The Department received information from the applicant that better describes the location of the authorized point of diversion for Certificate 76600 as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances
25 S	5 W	WM	14	NW SE	41	POD 1 - 800 FEET SOUTH AND 580 FEET EAST FROM THE C1/4 CORNER OF SECTION 14

9. Transfer Application T-12534 proposes additional points of diversion for the rights as follows:

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximated distance from original point of diversion in miles (mi.)
25 S	5 W	WM	13	SE NW	42	POD 5 - 753 FEET NORTH AND 1239 FEET WEST FROM THE C1/4 CORNER OF SECTION 13	0.7 mi.
25 S	5 W	WM	14	SW SE	41	POD 2 - 50 FEET NORTH AND 1497 FEET WEST FROM THE SE1/4 CORNER OF SECTION 14	0.4 mi.
25 S	5 W	WM	23	NE NE	41	POD 3 - 103 FEET SOUTH AND 394 FEET WEST FROM THE NE1/4 CORNER OF SECTION 23	0.5 mi.
25 S	5 W	WM	23	NE NE	41	POD 4 - 1247 FEET SOUTH AND 918 FEET WEST FROM THE NE1/4 CORNER OF SECTION 23	0.7 mi.

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 points of diversion to prevent fish from entering the diversions and/or safely transport fish back to the body of water from which the fish were diverted and that the diversions are not currently equipped with an appropriate fish screening and/or by-pass device. The diversions may be eligible for screening cost share funds.

Transfer Review Criteria [OAR 690-380-4010(2)]

11. Water has been used within the last five years according to the terms and conditions of the right. There is no information in the record that would demonstrate that the rights are subject to forfeiture under ORS 540.610.
12. A pump, pipeline, and water distribution system sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-12534.
13. The proposed changes would not result in enlargement of the rights.
14. The proposed changes would not result in injury to other water rights.
15. All other application requirements are met.

Conclusions of Law

The additional points of diversion proposed in Transfer Application T-12534 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

Now, therefore, it is ORDERED:

1. The additional points of diversion proposed in Transfer Application T-12534 are 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 Certificates 76599 and 76600, and any related decree.
3. Water right Certificates 76599 and 76600 are modified. After satisfactory proof of completion has been determined by the Department, superseding water right certificates will be issued when the Department determines it is necessary for record keeping.
4. The quantity of water diverted at the new additional points of diversion (POD 2, POD 3, POD 4, and POD 5), together with that diverted at the original point of diversion (POD 1), shall not exceed the quantity of water lawfully available at the original point of diversion (POD 1).
5. Prior to diverting water, 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 screen and/or by-pass device meets ODFW's criteria. Prior to submitting a Claim of Beneficial Use, the water user must obtain written approval from ODFW that the required screening and/or by-pass device was installed to the state's criteria. 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.
6. Full beneficial use of the water shall be made, consistent with the terms of this order, on or before **October 1, 2021**. 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 changes and full beneficial use of the water.

Dated in Salem, Oregon on

OCT 13 2020


Lisa J. Jaramillo, Transfer and Conservation Section Manager, for
THOMAS M BYLER, DIRECTOR
Oregon Water Resources Department

OCT 14 2020

Mailing date: _____