

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

In the Matter of Transfer Application)	PRELIMINARY DETERMINATION
T-12534, Douglas County)	PROPOSING APPROVAL FOR
)	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.

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.
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5. 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:

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

Authorized Place of Use:

PRIMARY							
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		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
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

PRIMARY							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
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

6. 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
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

SUPPLEMENTAL							
Twp	Rng	Mer	Sec	Q-Q	GLot	DLC	Acres
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

7. 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

8. 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.

Twp	Rng	Mer	Sec	Q-Q	DLC	Measured Distances	Approximated distance from original point of diversion in miles (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.

9. 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)]

10. 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.
11. 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.
12. The proposed changes would not result in enlargement of the rights.
13. The proposed changes would not result in injury to other water rights.
14. All other application requirements are met.

Determination and Proposed Action

The additional points of diversion proposed in Transfer Application T-12534 appear 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.

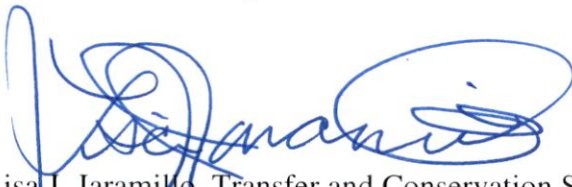
If Transfer Application T-12534 is approved, the final order will include the following:

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

JUL 15 2020



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

This Preliminary Determination was prepared by Corey Courchane. If you have questions about the information in this document, you may reach me at 503-986-0825 or corey.a.courchane@oregon.gov

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

Notice Regarding Service Members: Active duty servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free number.



Oregon

Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

July 15, 2020

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

SUBJECT: Water Right Transfer Application T-12534

Please find enclosed the Preliminary Determination indicating that, based on the information available, the Department intends to approve application T-12534. This document is an intermediate step in the approval process; water may not be used legally as proposed in the transfer application until a Final Order has been issued by the Department. Please read this entire letter carefully to determine your responsibility for additional action.

A public notice is being published in the Department's weekly publication and in the News Review newspaper, simultaneously with issuance of the Preliminary Determination. The notice initiates a period in which any person may file either a protest opposing the decision proposed by the Department in the Preliminary Determination or a standing statement supporting the Department's decision. The protest period will end 30 days after the last date of newspaper publication.

If no protest is filed, the Department will issue a Final Order consistent with the Preliminary Determination. You should receive a copy of the Final Order about 30 days after the close of the protest period.

If a protest is filed, the application may be referred to a contested case proceeding. A contested case provides an opportunity for the proponents and opponents of the decision proposed in the Preliminary Determination to present information and arguments supporting their position in a quasi-judicial proceeding.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

Please do not hesitate to contact me, at corey.a.courchane@oregon.gov or (503) 986-0825, if I may be of assistance.

Sincerely,



Corey Courchane
Transfer Specialist
Transfer and Conservation Section

cc: T-12534
Susan M. Douthit, District 15 Watermaster (*via e-mail*)
Nathan R. Reed, Agent for the applicant (*via e-mail*)

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