



5. The applicant initially proposed to move the reservoir site for Certificate 51136 to another location and to store water from the irrigation season for use outside of the irrigation season. This request was modified on July 10, 2003, to state that the reservoir would remain at the original location, that the request to store water during the irrigation season for use outside of the irrigation season was withdrawn, and that the reservoir would be used as a settling pond for storm water discharge. Note that the transfer application referenced the pond as a source for pumped water. The applicant further clarified the pond's proposed use on November 8, 2004, as follows. The pond's intended use during the irrigation season is to hold excess night-time flow from Little Butte Creek Ditch which will be pumped during the day and used for dust control and rock processing. Outside of the irrigation season, the pond will be used as a settling pond for stormwater discharge.

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

**Certificate:** 79479 in the name of Little Butte Irrigation Company  
**Use:** Irrigation  
**Priority Date:** 1883  
**Quantity:** shall not exceed 0.12 cubic feet per second from April 1<sup>st</sup> to October 1<sup>st</sup> of each year.  
**Acres:** 6.2  
**Source:** Little Butte Creek, tributary to the Rogue River

**Authorized Point of Diversion:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Survey Coordinates
35	S	1	E	W.M.	31	SW	SE			560' N and 2990' E from SW corner of Section 31

**Authorized Place of Use:**

Township		Range		Meridian	Sec	¼ ¼		Lot	DLC	Acres
36	S	1	W	W.M.	3	SW	NW	5		6.2

7. A scrivener's error, a 5.0-acre discrepancy, was identified in paragraph 2 of Certificate 79479. Certificate 75431 contained a subtraction error that was subsequently perpetuated in superseding Certificates 75892 and 79479. Certificate 79479 should list the number of acres associated with the priority date of 1883 as 481.80 acres, rather than 486.80 acres.

8. Application T-9434 proposes to change the place of use of the right to:

Township		Range		Meridian	Sec	Tax Lot	¼ ¼		Lot	DLC	Acres
36	S	1	W	W.M.	4	800	SW	NE			
36	S	1	W	W.M.	4	900	SE	NE	3		
36	S	1	W	W.M.	4	901	SE	NE	3		
36	S	1	W	W.M.	4	D100	NE	SE	1		

9. The submitted deed for tax lots 800 and 900 shows Arvel L. and Lorene R. Nash as landowners. The submitted lease agreement granting Galpin permission to use these lands for mining operations was signed by Lorene Hale. On December 14, 2004, the applicant provided the following information: Arvel L. Nash died approximately 30 years ago and Lorene R. Nash subsequently remarried and changed her name to Lorene Hale.
10. Application T-9434 proposes to change the character of use to mining water use.
11. The following certificate associated with this property is not subject to transfer and the applicant wishes to cancel this certificate:
  - Certificate:** 51137 in the name of Chester Henson
  - Use:** Supplemental Irrigation
  - Priority Date:** February 11, 1972
  - Quantity:** 0.03 cubic feet per second
  - Rate/Duty:** 1/80 cfs per acre, not to exceed 4 1/2 acre-feet per acre per year
  - Acres:** 3.9
  - Source:** A spring and Henson Reservoir (constructed under permit R-5944), tributary to Little Butte Creek
12. The following certificate associated with this property is requested by the applicant to be cancelled:
  - Certificate:** 51136 in the name of Chester Henson (permit R-5944)
  - Use:** Storage for supplemental irrigation
  - Priority Date:** February 11, 1972
  - Quantity:** 1.4 acre feet
  - Source:** Unnamed spring, tributary to Little Butte Creek
13. The applicant plans on using the former irrigation pond to hold nighttime water, pumped from the Little Butte Irrigation District ditch, for daytime use during the irrigation season. The applicant plans on using the former irrigation pond to hold storm water runoff outside of the irrigation season.
14. 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.
15. Water has been used within the last five years according to the terms and conditions of the right for irrigation purposes and no evidence is available that would demonstrate that the irrigation right is subject to forfeiture under ORS 540.610.
16. Certificate 79479 allows Irrigation, Domestic, and Stock use. On December 27, 2004, the applicant submitted an Affidavit for the Partial Cancellation of a Water Right Certificate to voluntarily cancel the Domestic and Stock use portions of Certificate 79479 that are appurtenant to tax lot 600, Lot 5, in the SW ¼ of the NW ¼ of Section 3, T 36N, R 1W.

17. A pump, ditch and pipeline sufficient to use the full amount of water allowed under the existing right are present.
18. The proposed change would not result in enlargement of the right.
19. The proposed change would not result in injury to other water rights.

### **Conclusions of Law**

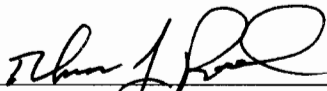
The proposed changes in place of use and character of use in application T-9434 are consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000.

### **Now, therefore, it is ORDERED:**

1. The changes in place of use/character of use proposed in application T-9434 are approved.
2. The Irrigation use under Certificate 75892 on 0.8 acres will be cancelled as per Finding of Fact #2 above.
3. Water right certificate 79479 is cancelled. A new certificate will be issued describing that portion of the right not involved in this transfer. The remaining right certificate will be corrected to reflect the 5.0 acre scrivener's error that was identified in Certificate 79495 during processing of this transfer (see Finding #7 above).
4. The right to the use allowed under Certificate 79479 for domestic and stock use on the lands described in Finding #16 above is cancelled.
5. The right to the use of the water for mining is restricted to beneficial use at the place of use described and is subject to all other conditions and limitations on irrigation use contained in Certificate 79479 and any related decree.
6. Diversion for mining water use under this right shall be limited to the irrigation season specified in certificate 79479 (April 1 through October 1).
7. Use of the former irrigation pond to hold diverted water under this right shall be limited to the irrigation season specified in certificate 79479 (April 1 though October 1).
8. The former place of use shall no longer be irrigated as part of this water right.
9. Certificates 51136 and 51137 are cancelled.
10. The proposed change shall be completed on or before October 1, 2006.
11. A Claim of Beneficial Use prepared by a Certified Water Rights Examiner shall be submitted by the applicant to the Department by October 1, 2007.

12. Prior to diverting water, the water user shall install and maintain a headgate, an in-line flow meter, weir, or other suitable device for measuring and recording the quantity of water diverted. The type and plans of the headgate and measuring device must be approved by the Department prior to beginning construction and shall be installed under the general supervision of the Department.
13. When satisfactory proof of the completed changes is received, a new certificate confirming the rights transferred will be issued.

Dated at Salem, Oregon this 16<sup>th</sup> day of MARCH, 2005.

  
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for Phillip C. Ward  
Director

Mailing date: MAR 18 2005