

STATE OF OREGON

COUNTY OF WHEELER

ORDER APPROVING A CHANGE IN PLACE OF USE,  
POINT OF DIVERSION, AND PARTIAL CANCELLATION OF A WATER RIGHT

Pursuant to 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 9104 submitted by

DAVID FISHER, SR., DAVID FISHER, JR.,  
LYNN AND KATHLEEN FISHER  
P.O. BOX 68  
MITCHELL, OREGON 97750

The FIRST right to be modified was confirmed by decree of the Circuit Court of the State of Oregon for WHEELER County as evidenced by a PORTION of Certificate 13584. The decree is recorded in the Order Record of the Water Resources Director in Volume 12, at Page 388. The date of priority is 1881.

The right allows the use of GABLE CREEK, a tributary of BRIDGE CREEK, for IRRIGATION, DOMESTIC AND STOCK. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed one-eightieth (1/80th) of one cubic foot per second per acre of land irrigated before June 15, and one-hundredth of one cubic foot per second per acre after 15, during the irrigation season from March 1 to October 1 of each year, if available at the authorized point of diversion: NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 17, T 12 S, R 21 E, W.M., 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:

NE $\frac{1}{4}$ SW $\frac{1}{4}$	10.1 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	32.4 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	31.8 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$	3.5 ACRES

SECTION 4  
TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

This is a final order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

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 point of diversion to:

NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 17, T 12 S, R 21 E, W.M.; 750 FEET SOUTH AND 1540 FEET EAST FROM NW CORNER, SECTION 17.

The applicant also proposes to change the place of use to:

NE $\frac{1}{4}$ SW $\frac{1}{4}$	17.2 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	1.7 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	27.5 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$	20.3 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$	2.7 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$	2.1 ACRES
SECTION 4	

SW $\frac{1}{4}$ SE $\frac{1}{4}$	1.0 ACRE
SE $\frac{1}{4}$ SE $\frac{1}{4}$	2.7 ACRES
SECTION 5	

NE $\frac{1}{4}$ NE $\frac{1}{4}$	2.6 ACRES
SECTION 8	

TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

The SECOND right to be modified was confirmed by decree of the Circuit Court of the State of Oregon for WHEELER County as evidenced by Certificate 49834. The decree is recorded in the Order Record of the Water Resources Director in Volume 12, at Page 388. The date of priority is 1884.

The right allows the use of GABLE CREEK, a tributary of BRIDGE CREEK, for IRRIGATION OF 38.3 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed ONE-EIGHTIETH (1/80th) of one cubic foot per second per acre of land irrigated before June 15, and ONE-HUNDREDTH (1/100th) of one cubic foot per second per acre after June 15, during the irrigation season from March 1 to October 1 of each year, if available at the original point of diversion NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 8, T 12 S, R 21 E, W.M.; TRACT NO. 1 - 750 FEET SOUTH AND 2050 FEET WEST; TRACT NO. 2 - 1600 FEET SOUTH AND 2000 FEET WEST, BOTH FROM NE CORNER, SECTION 8 and the authorized point of diversion: NW $\frac{1}{4}$  SE $\frac{1}{4}$ , SECTION 5, T 12 S, R 21 E, W.M.; 2380 FEET NORTH AND 2270 FEET WEST FROM SE CORNER, SECTION 5, 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 NO. 1

NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 16.7 ACRES  
SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 9.6 ACRES

SECTION 5

TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

TRACT NO. 2

NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 1.0 ACRE  
SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 11.0 ACRES

SECTION 5

TOWNSHIP 12 SOUTH, RANGE 21 EAST, 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 point of diversion to:

NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, SECTION 17, T 12 S, R 21 E, W.M.; 750 FEET SOUTH AND 1540 FEET EAST FROM NW CORNER, SECTION 17

The applicant also proposes to change the place of use to:

NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 14.4 ACRES  
SW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 9.7 ACRES  
SE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 13.2 ACRES

SECTION 5

NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub> 1.0 ACRE

SECTION 9

TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

Furthermore, the rate and duty will be reduced for this right in accordance to the order approving Conserved Water Application C-31.

The THIRD right to be modified, as evidenced by Certificate 10719, was perfected under Permit 3714 with a date of priority of FEBRUARY 20, 1918. The right allows the use of GABLE CREEK, a tributary of BRIDGE CREEK, a tributary of JOHN DAY RIVER, for IRRIGATION OF 25.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.31 cubic foot per second, if available at the authorized point of diversion: NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, SECTION 8, T 12 S, R 21 E, W.M.; 750 FEET SOUTH AND 3200 FEET EAST FROM NW CORNER, SECTION 8, or its equivalent in case of rotation, measured at the point of diversion from the source.

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 (1/80th) of one cubic foot per second

per acre or its equivalent for each acre irrigated during the irrigation season of each year.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

NW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>            12.5 ACRES  
SW<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>            5.0 ACRES  
SECTION 4

SE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>            4.0 ACRES  
NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>            3.5 ACRES  
SECTION 5

TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described.

The applicant proposes to change the point of diversion to:

NE<sup>1</sup>/<sub>4</sub> NW<sup>1</sup>/<sub>4</sub>, SECTION 17, T 12 S, R 21 E, W.M.; 750 FEET SOUTH  
AND 1540 FEET EAST FROM NW CORNER, SECTION 17

The applicant also proposes to change the place of use to:

NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>            7.5 ACRES  
SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub>            1.0 ACRE  
SECTION 4

SE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub>            16.5 ACRES  
SECTION 5

TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

Furthermore, the rate and duty will be reduced for this right in accordance to the order approving Conserved Water Application C-31.

The FOURTH right to be modified, as evidenced by Certificate 46646, was perfected under Permit 39680 with a date of priority of DECEMBER 17, 1974. The right allows the use of GABLE CREEK, a tributary of BRIDGE CREEK, a tributary of JOHN DAY RIVER, for IRRIGATION OF 38.0 ACRES. The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 0.48 cubic foot per second, if available at the authorized point of diversion: NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub>, SECTION 8, T 12 S, R 21 E, W.M.; 900 FEET SOUTH AND 760 FEET EAST FROM N<sup>1</sup>/<sub>4</sub> CORNER, SECTION 8, or its equivalent in case of rotation, measured at the point of diversion from the source.

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 (1/80th) 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 4.0 acre feet per acre for each acre irrigated during the irrigation season of each year.

The use shall conform to any reasonable rotation system ordered by the proper state officer.

The authorized place of use is located as follows:

NE $\frac{1}{4}$  SE $\frac{1}{4}$  1.1 ACRES  
SE $\frac{1}{4}$  SE $\frac{1}{4}$  29.2 ACRES  
SECTION 5

NE $\frac{1}{4}$  NE $\frac{1}{4}$  7.7 ACRES  
SECTION 8  
TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

The right to use the water for the above purpose is restricted to beneficial use on the lands or place of use described

The applicant proposes to change the point of diversion to:

NE $\frac{1}{4}$  NW $\frac{1}{4}$ , SECTION 17, T 12 S, R 21 E, W.M.; 750 FEET SOUTH AND 1540 FEET EAST FROM NW CORNER, SECTION 17

The applicant also proposes to change the place of use:

NE $\frac{1}{4}$  SW $\frac{1}{4}$  10.4 ACRES  
NW $\frac{1}{4}$  SW $\frac{1}{4}$  3.5 ACRES  
NW $\frac{1}{4}$  SE $\frac{1}{4}$  24.1 ACRES  
SECTION 4  
TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

Furthermore, the rate and duty will be reduced for this right in accordance to the order approving Conserved Water Application C-31.

#### **PARTIAL CANCELLATION OF THE RIGHT EVIDENCED BY CERTIFICATE 122**

On March 28, 2002, an affidavit was received from David Fisher, Sr., David Fisher, Jr., Lynn and Kathleen Fisher, owners of certain lands and the water right appurtenant to it. The affidavit states that a portion of water right has been abandoned and authorizes the cancellation of a portion of the certificate.

The abandoned water right is described by the right evidenced by a portion of Certificate 13584. The abandoned water right is for the use of water from Gable Creek, tributary to the Bridge Creek, for domestic purposes within NE $\frac{1}{4}$  SW $\frac{1}{4}$ , NW $\frac{1}{4}$  SE $\frac{1}{4}$ , SW $\frac{1}{4}$  SW $\frac{1}{4}$ , SE $\frac{1}{4}$  SW $\frac{1}{4}$ , Section 4, Township 12 South, Range 21 East, W.M. with a date of priority of 1881.

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."

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


1. The proposed change shall be completed on or before October 1, 2006.
2. Proof, to the satisfaction of the Director, that the changes approved by this order have been completed must be submitted by DAVID FISHER, SR., DAVID FISHER, JR., LYNN AND KATHLEEN FISHER, on or before October 1, 2007.
3. The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.
4. 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.
5. When required by the Department, the water user shall operate and maintain the headgate and measuring device, as needed. The water user shall report total flow figures when requested by the Watermaster. The Watermaster may operate the headgate and monitor the accuracy of the measuring device, as needed.
6. Water shall be acquired from the same surface water source as the original point of diversion.
7. The former place of use shall no longer be irrigated as a part of this water right.
8. The water user shall install and maintain a fish screen or fish by-pass device. The type and plans of the screen or by-pass device must be approved by the Oregon Department of Fish and Wildlife prior to beginning of construction and shall be installed under the supervision of the Department of Fish and Wildlife.
9. When satisfactory proof of the completed changes is received, new certificates confirming the rights evidenced by certificates 10719, 46646, and 49834 shall be issued

reflecting the reduced rates and duties established under the order approving Conserved Water Application C-31. However, if the order approving Conserved Water Application C-31 is protested or appealed and, as result, does not become final, the superseding certificates shall be issued without the reduced rates and duties.

The abandoned portion of the water right evidenced by Certificate 13584 for domestic purposes requested to be canceled is canceled.

Certificates 10719, 13584, 46646 and 49834 are canceled. A new certificate will be issued to confirm that portion of Certificate 13584 NOT involved in this transfer.

Dated at Salem, Oregon this 25<sup>th</sup> day of January, 2005.

  
for \_\_\_\_\_  
Phillip C. Ward  
Director

Mailing date: JAN 28 2005