

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

In the Matter of the Proposed Allocation of	)	FINAL ORDER APPROVING
Conserved Water submitted by Kathleen Fisher,	)	ALLOCATION OF
Susan Lynn Bacon Fisher, David Fisher, Jr., and	)	CONSERVED WATER
David Fisher, Sr., for Certificates 10719, 49834,	)	
46646, Wheeler County, Oregon	)	

**Application History**

On September 8, 2003, Kathleen Fisher, Susan Lynn Bacon Fisher, David Fisher, Jr., and David Fisher, Sr., filed an application for the allocation of conserved water under water right certificates 10719, 49834, 46646. The Department assigned this conserved water application number C-31.

The conservation project, located in Wheeler County, was completed in May 2003. The project consists of changing the existing distribution system that consists of an open ditch to buried mainline that feeds to a pond and gravity-flows into buried mainline to pressure wheel lines and handlines using 4.3 and 3.7 gpm flow control nozzles. The application proposes to allocate 100 percent of the conserved water to the state for instream use.

On November 25, 2003, the Department published a public notice inviting public comments on the application. On November 26, December 4 and 11, 2003, The Times-Journal published a public notice inviting public comments on the application. No comments were received.

**Applicable Law**

Under ORS 537.465 (2003 HB 2456), any person holding a water use subject to transfer as defined in ORS 540.505 may submit an application to the Water Resources Commission for approval of an allocation of conserved water that was implemented within five years prior to submission of the application. Under the Allocation of Conserved Water Program, a portion of the water proposed to be conserved by an applicant may be used on additional lands, may be put to a different use, or be leased or sold to another user. OAR 690-018-0010. A portion of the water conserved is allocated to the state to be converted to an instream water right or to revert to the public for appropriation by other water users.

Under ORS 537.470(3) (2003 HB 2456), after determining any quantity of water needed to mitigate the effects on other water rights, 25 percent of the conserved water shall be allocated to the state and 75 percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation measures comes from federal or state sources.

<p>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.</p>
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If an application for the allocation of conserved water is approved, the Department shall issue orders for proposed new certificates covering the changes in the original water rights and once the conservation project is completed separate new certificates preserving the previously established priority of rights shall be issued to cover the unaffected portion of the water rights and separate new certificates describing the right created by the allocation of conserved water. ORS 537.470(6).

Under ORS 537.455 to 537.500 and OAR 690-018-0010 to 690-018-0090, the Department has considered the application, and makes the following:

**Findings of Fact**

1. The applicants undertook a conservation project that consisted of changing the existing distribution system that consists of an open ditch to buried mainline that feeds to a pond and gravity-flows into buried mainline to pressure wheel lines and handlines using 4.3 and 3.7 gpm flow control nozzles.
2. The proposed allocation of conserved water will result in reduced diversions for the uses allowed under the original rights. The reduced amounts and the quantity conserved is:

Certificate	Priority Date	Time Period	Before Project	After Project	Conserved Water
10719	February 20, 1918	March 1 – October 1	0.31 cfs	0.278 cfs	0.032 cfs
49834	1884	March 1 – June 15	0.479 cfs	0.426 cfs	0.053 cfs
		June 16 – October 1	0.383 cfs	0.354 cfs	0.029 cfs
46646	December 17, 1974	March 1 – October 1	0.475 cfs 152 af	0.423 cfs 136 af	0.052 cfs 16 af

3. The applicants have obtained the required land use approvals.
4. The proposed allocation of conserved water will not harm other water rights and, therefore, no reduction in the quantity of conserved water will be needed to mitigate for harm to existing water rights.
5. In consultation with the Departments of Fish and Wildlife, Environmental Quality, and Parks and Recreation, the Department has determined that conserved water is needed to support instream uses. Additional streamflows are needed in the Gable Creek to provide for improved habitat for redband trout and steelhead, and will improve water quality.
6. There are no existing instream water rights on Gable Creek.
7. Under ORS 537.470(3) (2003 HB 2456), after determining the quantity of water needed, if any, to mitigate the effects on other water rights, 25 percent of the conserved water shall be allocated to the state and 75 percent to the applicant unless the applicant proposes a higher allocation to the state or more than 25 percent of the funds used to finance the conservation

measures comes from federal or state sources. The applicant requests that 100 percent of the allocation of conserved water go to the state.

8. The state's portion of the conserved water shall be allocated in the following manner:

Certificate	Priority Date	Time Period	Rate and Volume Limitation	Instream Reach
10719	February 20, 1918 plus one minute	March 1 – October 1	0.032 cfs	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M.) to mouth of Gable Creek
49834	1884 plus one minute	March 1 – June 15	0.053 cfs	POD (NW ¼ SE ¼ Sect. 5, T 12 S R 21 E, W.M., 2380 feet North and 2270 feet West from SE Corner, Sect. 5) to mouth of Gable Creek
		June 16 – October 1	0.029 cfs	
46646	December 17, 1974 plus one minute	March 1 – August 2	0.052 cfs 16 af	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M., 900 feet South and 760 feet East from the N ¼ Corner, Section 8) to mouth of Gable Creek

9. Transfer Application number T-9104 has been filed associated with this conserved water project and is being processed concurrently.
10. Under ORS 537.485 (2003 HB 2456), the priority of any right to the use of conserved water, including an in-stream water right, shall be either the same as or one minute after the priority of the water right held by the person implementing the conservation measures. The applicant has requested that the conserved water be assigned the one minute after the priority date of the existing rights.
11. The applicant has completed the conservation project and has not requested additional time to finalize the allocation under OAR 690-018-0050(3)(i).
12. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

### Ultimate Findings of Fact

The ultimate findings of fact that the Department must make are described in OAR 690-018-0050.

- A. The allocation of conserved water will result in a reduced diversion for the uses allowed under the original water rights.
- B. The proposed allocation of conserved water will not harm existing water rights.

- C. The application is consistent with local land use plans.
- D. No water is needed to mitigate for harm to existing water rights.
- E. The new rate and duty for the existing water right shall be:

Certificate	Priority Date	Time Period	After Project Rate and Duty	After Project Per Acre Rate and Duty
10719	February 20, 1918	March 1 – October 1	0.278 cfs	1/90 cfs
49834	1884	March 1 – June 15	0.426 cfs	1/90 cfs
		June 16 – October 1	0.354 cfs	1/108 cfs
46646	December 17, 1974	March 1 – October 1	0.423cfs 136 af	1/90cfs/ac 3.58 af/ac

- F. The conserved water allocated to the state is needed to support instream uses.
- G. One hundred percent of the conserved water will be allocated to the state, in the following manner:

Certificate	Priority Date	Time Period	Rate and Volume Limitation	Instream Reach
10719	February 20, 1918	March 1 – October 1	0.032 cfs	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M.) to mouth of Gable Creek
49834	1884	March 1 – June 15	0.053 cfs	POD (NW ¼ SE ¼ Sect. 5, T 12 S R 21 E, W.M., 2380 feet North and 2270 feet West from SE Corner, Sect. 5) to mouth of Gable Creek
		June 16 – October 1	0.029 cfs	
46646	December 17, 1974	March 1 – August 2	0.052 cfs 16 af	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M., 900 feet South and 760 feet East from the N ¼ Corner, Section 8) to mouth of Gable Creek

- H. The applicant has completed the conservation project and has requested finalization of the allocation of the conserved water.
- I. No other conditions or limitations are needed to prevent or mitigate for harm to existing water rights.

**Conclusion of Law**

The project described in the application C-31 for allocation of conserved water is consistent with the criteria in ORS 537.455 to 537.500, as amended by 2003 HB 2456, and OAR Chapter 690, Division 018.

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

1. Certificate 10719 is cancelled. A new superceding certificate shall be issued for irrigation of 25.0 acres. The priority date shall be February 20, 1918. The season of use shall be March 1 – October 1, the rate shall be 0.278, being 1/90 cfs/ac. The place of use shall be those lands described under certificate 10719, as modified by transfer 9104 completed pursuant to ORS 540.510 to 540.530. All other conditions and limitations of the existing water right shall be included in the superseding certificate.
2. Certificate 49834 is cancelled. A new superceding certificate shall be issued for irrigation of 38.3 acres. The priority date shall be 1884. The season of use shall be March 1 – October 1, the rate shall be 0.426 from March 1 – June 15, being 1/90 cfs/ac; from June 16 – October 1, the rate shall be 0.354 cfs, being 1/108 cfs. The place of use shall be those lands described under certificate 49834, as modified by transfer 9104 completed pursuant to ORS 540.510 to 540.530. All other conditions and limitations of the existing water right shall be included in the superseding certificate.
3. Certificate 46646 is cancelled. A new superceding certificate shall be issued for irrigation of 38.0 acres. The priority date shall be December 17, 1974. The season of use shall be March 1 – October 1, the rate shall be 0.423 cfs (1/90 cfs/ac), with a duty of 136 AF (3.58 AF/ac). The place of use shall be those lands described under certificate 46646, as modified by transfer 9104 completed pursuant to ORS 540.510 to 540.530. All other conditions and limitations of the existing water right shall be included in the superseding certificate.
4. The associated rate, duty, and priority date for these certificates shall be:

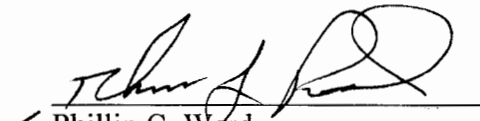
Certificate	Priority Date	Time Period	Rate and Duty	After Project Per Acre Rate and Duty
10719	February 20, 1918	March 1 – October 1	0.278 cfs	1/90 cfs
49834	1884	March 1 – June 15	0.426 cfs	1/90 cfs
		June 16 – October 1	0.354 cfs	1/108 cfs
46646	December 17, 1974	March 1 – October 1	0.423 cfs 136 af	1/90 cfs/ac 3.58 af/ac

5. A new instream water right certificate shall be issued to replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right shall be issued with the following conditions:

Priority Date	Season of Use	Rate and Volume Limitation	Instream Reach
February 20, 1918 plus one minute	March 1 – October 1	0.032 cfs	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M.) to mouth of Gable Creek
1884 plus one minute	March 1 – June 15	0.053 cfs	POD (NW ¼ SE ¼ Sect. 5, T 12 S R 21 E, W.M., 2380 feet North and 2270 feet West from SE Corner, Sect. 5) to mouth of Gable Creek
	June 16 – October 1	0.029 cfs	
December 17, 1974 plus one minute	March 1 – August 2	0.052 cfs 16 af	POD (NW ¼ NE ¼ Sect. 8, T 12 S R 21 E, W.M., 900 feet South and 760 feet East from the N ¼ Corner, Section 8) to mouth of Gable Creek

6. If the order approving Transfer Application T-9104 is protested or appealed, and as a result, does not become final, this order shall not become final.

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

  
 Phillip C. Ward  
 Director