

3165 Kenneth Sawyer  
Mitchell  
07-97950

3165

### STATUS OF APPLICATION

Change in point of diversion  
Date filed 2-7-75  
Date of hearing May 9, 1979  
Place of hearing Fossil  
Date of order 5-18-79 Vol. 32, page 111  
Date for application of water completed  
Proof mailed \_\_\_\_\_  
Proof received \_\_\_\_\_  
Certificate issued JUN 14 1979 41, page 48206 ✓  
JAN 19 1981 43 49834

to survey 5/79

### DESCRIPTION OF WATER RIGHT

Name of stream Gable Creek  
Trib. of \_\_\_\_\_ County of Wheeler  
Use irrigation  
Quantity of water \_\_\_\_\_ No. of acres 39 3/4  
Name of ditch Gillenwater ditch  
Date of priority 5  
In name of Orlando Gillenwater  
Bridge Creek Adjudication, Vol. 12, page 424  
App. No. \_\_\_\_\_ Per. No. \_\_\_\_\_ Cert. No. 13566  
Certificate cancelled \_\_\_\_\_  
Notation made on record by \_\_\_\_\_

### FEES PAID

Date	Amount	Receipt No.
<u>2-7-75</u>	<u>30.00</u>	<u>45151</u>
<u>3-8-76</u>	<u>45.00 p.o.n.</u> <u>&lt;2.00&gt;</u>	<u>51792</u>
TOTAL . . .		
<u>4-13-79</u>	<u>2 Cert. Fee</u>	<u>Tru. fr 51792</u>

The Times Journal \$31.60 pd 4-13-79 ck# 3220

### FEES REFUNDED

Date	Amount	Check No.
<u>4-13-79</u>	<u>11 40</u>	<u>3219</u>

EX 15-  
POD 15-  
cert 2-  
PON 31 60  
63 60

75-  
63 60  
11 40

### REMARKS

T-9104 Δ Pou/POD V. 63 p. 144

W.R.I.S.	
Assembled <u>7/13/84</u> by <u>ctt</u>	
Entered _____ by _____	
Verified _____ by _____	

TO BE ENTERED WHERE CHECKED	INDEX CARDS:	
	Entered	Checked
<input checked="" type="checkbox"/> Name	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Stream	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Pt. of Div.	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Calendar	<u>ccj</u>	_____
CHECKED TO RECORDS		
<input checked="" type="checkbox"/> Twp. & Rge.	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Decree-vault	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Decree-sale	<u>ccj</u>	_____
<input checked="" type="checkbox"/> Cert. of W/R	<u>ccj</u>	<u>ccj</u>
<input type="checkbox"/> Per. Folder	_____	_____
<input type="checkbox"/> Chainindex	_____	_____
<input type="checkbox"/> Cross Ref.	_____	_____
<input checked="" type="checkbox"/> Power Claim	<u>ccj</u>	_____
<input type="checkbox"/> Abstracts	_____	_____

314



FOR 2001

DATE AUG. TIME 9:00 A.M.  
P.M.

FROM VERN CHURCH

FIRM CONDON.

PHONE ( ) - 341-384-2167

☒ FAX ☐ MOBILE

AREA CODE 341 NUMBER 384 EXTENSION 2167


AREA CODE 341 NUMBER 384 TIME TO CALL 2167

TELEPHONED	<input checked="" type="checkbox"/>	PLEASE CALL	<input checked="" type="checkbox"/>
RETURNED YOUR CALL	<input type="checkbox"/>	WILL CALL AGAIN	<input type="checkbox"/>
CAME TO SEE YOU	<input type="checkbox"/>	RUSH	<input type="checkbox"/>
WANTS TO SEE YOU	<input type="checkbox"/>	SPECIAL ATTENTION	<input type="checkbox"/>
WAITING TO SEE YOU	<input type="checkbox"/>	HOLDING LINE	<input type="checkbox"/>

MESSAGE FP

T-3165

SIGNED \_\_\_\_\_

FORM 4007  
 MADE IN U.S.A.



T-3165

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 $\frac{1}{4}$  SE $\frac{1}{4}$  16.7 ACRES  
SW $\frac{1}{4}$  SE $\frac{1}{4}$  9.6 ACRES  
SECTION 5  
TOWNSHIP 12 SOUTH, RANGE 21 EAST, W.M.

TRACT NO. 2  
NW $\frac{1}{4}$  SE $\frac{1}{4}$  1.0 ACRE  
SW $\frac{1}{4}$  SE $\frac{1}{4}$  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 $\frac{1}{4}$  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:

NW $\frac{1}{4}$  SE $\frac{1}{4}$  14.4 ACRES  
SW $\frac{1}{4}$  SE $\frac{1}{4}$  9.7 ACRES  
SE $\frac{1}{4}$  SE $\frac{1}{4}$  13.2 ACRES  
SECTION 5  
  
NW $\frac{1}{4}$  NW $\frac{1}{4}$  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 $\frac{1}{4}$  NE $\frac{1}{4}$ , 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 $\frac{1}{4}$  NW $\frac{1}{4}$         12.5 ACRES  
SW $\frac{1}{4}$  NW $\frac{1}{4}$         5.0 ACRES  
SECTION 4

SE $\frac{1}{4}$  NE $\frac{1}{4}$         4.0 ACRES  
NE $\frac{1}{4}$  SE $\frac{1}{4}$         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 $\frac{1}{4}$  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:

NW $\frac{1}{4}$  SW $\frac{1}{4}$         7.5 ACRES  
SW $\frac{1}{4}$  SW $\frac{1}{4}$         1.0 ACRE  
SECTION 4

SE $\frac{1}{4}$  SE $\frac{1}{4}$         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 $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 8, T 12 S, R 21 E, W.M.; 900 FEET SOUTH AND 760 FEET EAST FROM N $\frac{1}{4}$  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

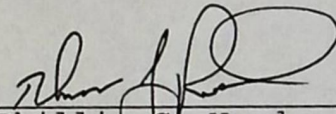


reflecting the reduced rates and duties established under the order approving Conserved Water Application C-31. However, if the order approving Conserved Water Application C-31 is protested or appealed and, as result, does not become final, the superseding certificates shall be issued without the reduced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



**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>
---



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

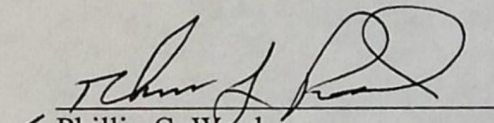
5. A new instream water right certificate shall be issued to replace a portion of any existing instream water rights established pursuant to ORS 537.341 or 537.346 and be in addition to any instream water rights established pursuant to ORS 537.348 or 537.470. The new right shall be issued with the following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



STATE OF OREGON  
COUNTY OF WHEELER  
CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

NELLIE SIEDOW  
MITCHELL, OREGON 97750

confirms the right to use the waters of GABLE CREEK, a tributary of BRIDGE CREEK, for IRRIGATION, DOMESTIC, AND STOCK.

This right was confirmed by decree of the Circuit Court of the State of Oregon for WHEELER County. The decree is of record at Salem, in the Order Record of the WATER RESOURCES DIRECTOR, in Volume 12, at Page 388. The date of priority is 1903.

The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed one-eightieth 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 June 15, during the irrigation season from March 1 to October 1 or its equivalent in case of rotation, measured at the point of diversion from the source.

A description of the place of use to which this right is appurtenant is as follows:

TRACT #1  
NW $\frac{1}{4}$  NW $\frac{1}{4}$  12.9 ACRES  
SW $\frac{1}{4}$  NW $\frac{1}{4}$  0.8 ACRE  
SECTION 20  
T 12 S, R 21 E, W.M.

TRACT #2  
SE $\frac{1}{4}$  NW $\frac{1}{4}$  1.9 ACRES  
SECTION 20  
T 12 S, R 21 E, W.M.

This certificate describes that portion of the water right confirmed by Certificate 13584, State Record of Water Right Certificates, NOT modified by the provisions of an order of the Water Resources Director entered JAN 25 2005, approving Transfer Application 9104.

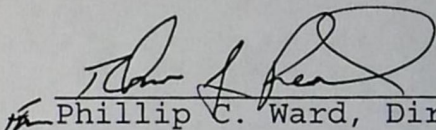


The issuance of this superseding certificate does not confirm the status of the water right in regard to the provisions of ORS 540.610 pertaining to forfeiture or abandonment.

The right to the use of the 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 said decree.

WITNESS the signature of the Water Resources

Director, affixed JANUARY 25, 2005.

  
Phillip C. Ward, Director

Recorded in State Record of Water Right Certificates numbered 81150



## STATE OF OREGON

COUNTY OF WHEELER

## CERTIFICATE OF WATER RIGHT

This Is to Certify, That

Kenneth Taylor  
ORLANDO GILLENWATER

of Mitchell, State of Oregon 97750, has a right to the use of  
the waters of Gable Creek for Tracts #1 and 2; Thompson Creek for Tract #3  
for the purpose of irrigation and stock for Tracts #1 and 2; irrigation for Tract #3  
and that said right has been confirmed by decree of the Circuit Court of the State of Oregon for  
Wheeler County, and the said decree entered of record at Salem, in the Order  
Record of the STATE ENGINEER, in Volume 12, at page 388; that the priority  
of the right thereby confirmed dates from 1884 for Tracts #1 and 2; 1903 for Tract #3;

that the amount of water to which such right is entitled, for the purposes aforesaid, is limited to an  
amount actually beneficially used for said purposes, and shall not exceed one-eightieth 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 June 15, during the irrigation season from March 1  
to October 1 of each year, measured at the point of diversion from the stream.

A description of the lands irrigated under such right, and to which the water is appurtenant (or,  
if for other purposes, the place where such water is put to beneficial use), is as follows:

if available at the original points of diversion;  
NW $\frac{1}{4}$  NE $\frac{1}{4}$ , SW $\frac{1}{4}$  NE $\frac{1}{4}$ , Sec 8, T12S R21E WM, Tract No. 1 - 750'S & 2050'W, Tract  
No. 2 - 1600'S & 2000'W both from NE cor Sec 8

## TRACT #1

16.7 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$   
9.6 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 5,  
T. 12 S., R. 21 E., W. M.

## TRACT #3

0.8 acre in SW $\frac{1}{4}$  NE $\frac{1}{4}$   
0.2 acre in NW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 5,  
T. 12 S., R. 21 E., W. M.

## TRACT #2

1.0 acre in NW $\frac{1}{4}$  SE $\frac{1}{4}$   
11.0 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$   
Section 5,  
T. 12 S., R. 21 E., W. M.

This certificate is issued to confirm a change in point of diversion approved  
by an order of the WRD entered 12/18/1979 and together with certificate  
of water right recorded at page 48206 Vol. 41 SRWRC supersedes certi-  
ficate of water right recorded at page 13566 Vol. SRWRC.

The issuance of this superseding certificate does not confirm the status of  
the water right in reference to ORS 540.610.

CHAS. E. STRICKLIN

State Engineer.

Recorded in State Record of Water Right Certificates, Volume 12, page 13566

C-49834



BEFORE THE WATER RESOURCES DIRECTOR OF OREGON

WHEELER COUNTY

IN THE MATTER OF THE APPLICATION )  
OF KENNETH TAYLOR FOR APPROVAL OF)  
A CHANGE IN POINT OF DIVERSION )  
OF WATER FROM GABLE CREEK )  
- - - - -

ORDER APPROVING  
TRANSFER NO. 3165

On February 7, 1975, an application was filed in the office of the Water Resources Director by Kenneth Taylor for approval of a change in points of diversion of water from Gable Creek, pursuant to the provisions of ORS 540.510 to 540.530.

The certificate recorded at page 13566, Volume 12, State Record of Water Right Certificates, in the name of Orlando Gillenwater, describes a right which includes the use of water from Gable Creek for irrigation of tract No. 1 consisting of 16.7 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 9.6 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5; and of tract No. 2 consisting of 1.0 acre in NW $\frac{1}{4}$  SE $\frac{1}{4}$  and 11.0 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5, all being in Township 12 South, Range 21 East, W.M., with a date of priority of 1884.

The authorized point of diversion for said tract No. 1 is located 750 feet South and 2050 feet West from the Southeast Corner of Section 5, being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, Township 12 South, Range 21 East, W.M.; for said tract No. 2 is located 1600 feet South and 2000 feet West from the Southeast Corner of Section 5, being within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Section 8, Township 12 South, Range 21 East, W.M.

The applicant herein, owner of the lands above described, proposes to change the points of diversion therefrom, without loss of priority, to one point located 2530 feet North and 2140 feet West from the Southeast Corner of Section 5, being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Section 5, Township 12 South, Range 21 East, W.M.

Notice of the application, pursuant to ORS 540.520(2), was published in The Times-Journal, a newspaper printed and having general circulation in Wheeler County, Oregon, for a period of three weeks in the issues of March 15, 22 and 29, 1979.

Mr. Jerry Rodgers, Watermaster, has filed a statement to the effect that the proposed change in points of diversion may be made without injury to existing rights.

No objections having been made and it appearing that the proposed change in points of diversion may be made without injury to existing rights, the application should be approved.

NOW, THEREFORE, it hereby is ORDERED that the requested change in points of diversion, as described herein, without loss of priority, is approved.

V32, 0111



It is FURTHER ORDERED that the quantity of water diverted at the new point of diversion shall not exceed the quantity of water available at the old points of diversion under the subject right.

It is FURTHER ORDERED that the following provisions shall be effective when in the judgment of the watermaster it becomes necessary to install headgates and measuring devices:

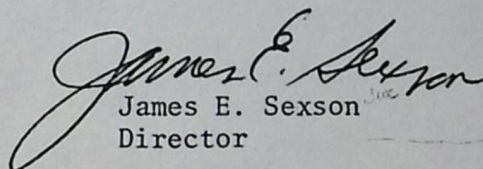
That the diversion works shall include an in line flow meter, a weir, or other suitable device for measuring the water to which the applicant is entitled;

That the type and plans of the measuring device be approved by the watermaster before the beginning of construction work and that the weir or measuring device be installed under the general supervision of said watermaster.

It is FURTHER ORDERED that NO time need be fixed for completion as the change in points of diversion is completed.

It is FURTHER ORDERED that the certificate of water right recorded at page 13566, Volume 12, State Record of Water Right Certificates, is canceled; and in lieu thereof a new certificate be issued covering the balance of the right NOT involved in this proceeding; and upon proof satisfactory to the Water Resources Director of completion of works and beneficial use of water to the extent intended under the provisions of this order, a confirming certificate of water right shall be issued to the applicant herein.

Dated at Salem, Oregon this 18th day of May, 1979.

  
James E. Sexson  
Director

PH2



RECEIVED

MAR 30 1979

WATER RESOURCES DEPT.  
SALEM, OREGON

## Affidavit of Publication

STATE OF OREGON, COUNTY OF GILLIAM, ss:

I, Janet L. Stinchfield

being first duly sworn, depose and say that I am the  
Publisher of the

GILLIAM-WHEELER TIMES-JOURNAL, a newspaper of general circulation as defined by Sections 1-509, 1-510, Oregon Code; printed and published at Condon in the aforesaid county and state; that the Notice of water Right Transfer Application, a printed copy of which is hereto annexed, was published in the entire issue of said newspaper for Three successive and consecutive weeks in the following issues:

*ok*  
March 15, 22, & 29, 1979

*eg*  
Janet L. Stinchfield

Subscribed and sworn to before me this 29th

day of March, 19 79

McLaren E. Stinchfield  
Notary Public for Oregon

(My commission expires February 20, 1982)

## Legal Notice

### NOTICE OF WATER RIGHT TRANSFER APPLICATION NO. 3165

Notice is given hereby that an application has been filed in the office of the Water Resources Director by Kenneth Taylor for approval of a change in points of diversion of water from Gable Creek, pursuant to the provisions of ORS 540.510 to 540.530.

The certificate recorded at page 13566, Volume 12, State Record of Water Rights Certificates, in the name of Orlanda Gillenwater, describes a right which includes the use of water from Gable Cr. for irrigation of tract #1 consisting of 16.7 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  9.9.6 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 5; and of tract #2 consisting of 1.0 acres in NW $\frac{1}{4}$  SE $\frac{1}{4}$  & 11.0 acres in SW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec. 5, all being in T 12S, R 21E, WM, with a date of priority of 1884.

The authorized point of diversion for said tract #1 is located 750 ft S & 2050 ft W from the SE Corner of Sec 5, being within the NW $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec 8, T 12S, R 21E, WM; for said tract #2 is located 1600 ft S & 2000 ft W from the SE Corner of Sec 5, being within the SW $\frac{1}{4}$  NE $\frac{1}{4}$  of Sec 8, T 12S, R 21E, WM.

The applicant herein, owner of the lands above described, proposes to change the points of diversion therefrom, without loss of priority, to one point located 2530 ft N & 2140 W from the SE Corner of Sec 5, being within the NW $\frac{1}{4}$  SE $\frac{1}{4}$  of Sec 5, T 12S, R 21E, WM.

All persons interested are notified hereby that a hearing will be held at the county courthouse at Fossil, Oregon, on May 9, 1979, at 9:30 a.m. All objections to the proposed change, if any there are, will be heard at said time and place. Any and all objections shall be prepared in writing: One copy to be served on Kenneth Taylor, Mitchell, OR 97750; and one copy filed with the Water Resources Department, Salem, OR 97310, together with a \$10 filing fee, at least 10 days prior to the date set for hearing. IF NO OBJECTIONS ARE FILED THE APPLICATION MAY BE APPROVED BY THE WATER RESOURCES DIRECTOR WITHOUT A HEARING. Administrative rules pertaining to the filing of a protest will be furnished by the Water Resources Dept. upon request.

Dated at Salem, Oregon this 7th day of March, 1979.

James E. Sexson  
Director

Published March 15, 22 and 29, 1979

TJ/SS