

This is a final order in other than a 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.

In addition, under ORS 537.260 any person with an application, permit or water right certificate subsequent in priority may jointly or severally contest the issuance of the certificate at any time before it has issued, and after the time has expired for the completion of the appropriation under the permit, or within three months after issuance of the certificate.

STATE OF OREGON

COUNTY OF GRANT

CERTIFICATE OF WATER RIGHT

THIS CERTIFICATE ISSUED TO

THOMAS ORCHARDS, INCORPORATED  
PO BOX 496  
KIMBERLY, OREGON 97848

HITSELBERGER FAMILY TRUST  
WILLIAM E. AND SUE HITSELBERGER, CO-TRUSTEES  
4257 WOODLEIGH LANE  
LA CANADA, CALIFORNIA 91011

confirms the right to use the waters of the NORTH FORK JOHN DAY RIVER, tributary of the JOHN DAY RIVER, for FROST PROTECTION ON 52.0 ACRES AND IRRIGATION OF 15.8 ACRES with any deficiency in the available supply from the river for irrigation to be made up by appropriation from the reservoir constructed under Permit R-8654, AND 50.0 ACRE-FEET STORED WATER FROM THE RESERVOIR CONSTRUCTED UNDER PERMIT R-8654 FOR SUPPLEMENTAL IRRIGATION OF 20.4 ACRES.

This right was perfected under Permit 49637. The dates of priority are JUNE 13, 1985 FOR USE OF 0.35 CUBIC FOOT PER SECOND (CFS) FROM THE NORTH FORK JOHN DAY RIVER FOR IRRIGATION AND FOR USE OF 5.0 CFS FROM THE NORTH FORK JOHN DAY RIVER FOR FROST PROTECTION; AUGUST 8, 1985, FOR USE OF STORED WATER FROM THE RESERVOIR CONSTRUCTED UNDER PERMIT R-8654 FOR SUPPLEMENTAL IRRIGATION; AND FEBRUARY 21, 1986, FOR USE OF 2.8 CFS FROM THE NORTH FORK JOHN DAY RIVER FOR FROST PROTECTION.

The amount of water to which this right is entitled is limited to an amount actually beneficially used and shall not exceed 7.80 CUBIC FOOT PER SECOND(CFS) from the NORTH FORK JOHN DAY RIVER, BEING 7.80 CFS for FROST PROTECTION, and 0.35 CFS when available with any deficiency in the available supply from the river to be made up by appropriation from the reservoir for IRRIGATION, provided the total diversion does not exceed 7.80 CFS; and 50.0 ACRE-FEET STORED WATER from the RESERVOIR constructed under Permit R-8654 for SUPPLEMENTAL IRRIGATION, or its equivalent in case of rotation, measured at the points of diversion from the sources,

The points of diversion (POD) are located as follows:

RIVER POD 1: NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SECTION 20, T 9 S, R 26 E, WM; 1660 FEET NORTH AND 80 FEET EAST FROM THE SW CORNER, SECTION 20.

RIVER POD 1A: NW $\frac{1}{4}$  SW $\frac{1}{4}$ , SECTION 20, T 9 S, R 26 E, WM; 1690 FEET NORTH AND 125 FEET EAST FROM THE SW CORNER, SECTION 20.

RIVER POD 2: NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 620 FEET SOUTH AND 730 FEET WEST FROM THE NE CORNER, SECTION 30.

RIVER POD 3: NE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 680 FEET SOUTH AND 830 FEET WEST FROM THE NE CORNER, SECTION 30.

RIVER POD 4: SE $\frac{1}{4}$  NE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 3450 FEET NORTH AND 580 FEET WEST FROM THE SE CORNER, SECTION 30.

RIVER POD 5: NE $\frac{1}{4}$  SE $\frac{1}{4}$ , SECTION 30, T 9 S, R 26 E, WM; 1700 FEET NORTH AND 1210 FEET WEST FROM THE SE CORNER, SECTION 30.

RESERVOIR POD 6: LOT 1 (NE $\frac{1}{4}$  NE $\frac{1}{4}$ ), SECTION 2, T 9 S, R 27 E, WM; 300 FEET SOUTH AND 220 FEET EAST FROM THE SW CORNER, SECTION 31, T 8 S, R 28 E, WM.

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-FORTIETH 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 5.0 acre-feet per acre for each acre irrigated during the irrigation season of each year.

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

FROST PROTECTION FROM NORTH FORK JOHN DAY RIVER

SW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 7.3 ACRES  
SECTION 20

NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 0.2 ACRE  
SECTION 29

NE<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 1.0 ACRE  
SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 1.8 ACRES  
NE<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 5.5 ACRES  
SECTION 30

SUPPLEMENTAL IRRIGATION FROM RESERVOIR  
FROST PROTECTION NORTH FORK JOHN DAY RIVER

NW<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 20.4 ACRES  
SECTION 20

IRRIGATION FROM NORTH FORK JOHN DAY RIVER  
WITH ANY DEFICIENCY FROM RESERVOIR  
FROST PROTECTION FROM NORTH FORK JOHN DAY RIVER

NW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 1.2 ACRES  
SW<sup>1</sup>/<sub>4</sub> NE<sup>1</sup>/<sub>4</sub> 4.2 ACRES  
NE<sup>1</sup>/<sub>4</sub> SW<sup>1</sup>/<sub>4</sub> 8.0 ACRES  
NW<sup>1</sup>/<sub>4</sub> SE<sup>1</sup>/<sub>4</sub> 2.4 ACRES  
SECTION 30

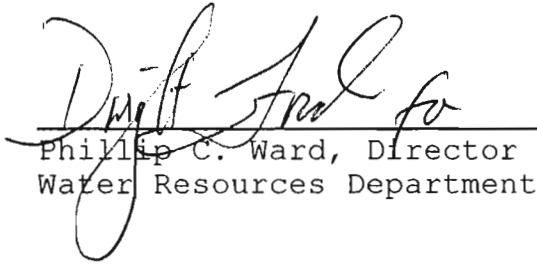
TOWNSHIP 9 SOUTH, RANGE 26 EAST, W.M.

The Water User shall record and submit annually to the Water Resources Department all pertinent data pertaining to use of water for temperature control on forms furnished.

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.

The use confirmed herein may be made only at times when sufficient water is available to satisfy all prior rights, including rights for maintaining instream flows.

Issued DEC 26 2007.

  
Phillip C. Ward, Director  
Water Resources Department

Recorded in State Record of Water Right Certificates Number 83578.

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