

OREGON WATER RESOURCES DEPARTMENT

In the Matter of the Applications for an Extension of:
Permit Number 35425, Water Right Application Number 48484;
Permit Number 35426, Water Right Application Number 48683;
Permit Number 37346, Water Right Application Number 51976;
Permit Number 40920, Water Right Application Number 54099;
Permit Number 41314, Water Right Application Number 54967;
Permit Number 41645, Water Right Application Number 55439; and
Permit Number 48547, Water Right Application Number 68089
(Boeing Agricultural-Industrial Company, et al.)

FINAL ORDER

This Final Order comes after settlement by BAIC Inc. and the Conservation Parties (defined below) of the contested case that was commenced in July, 1999 upon the filing of protests to Proposed Final Orders issued by the Water Resources Department in 1999. Contested Case No. CC46. In issuing this Final Order, the Department incorporates decisions on recent filings by BAIC Inc. as holder of the permits, to certificate five permits, amend two permits, and cancel three permits. Two of these permits, 41644 and 43325, were not the subject of the contested case. This Final Order is issued based on the unique facts in this matter. It does not constitute legal or factual precedent except as to the specific permits at issue.

SUMMARY OF FINAL ORDER

This Final Order applies to Permits 35425, 35426, 37346, 40920, 41314, 41645, 41644, 43325, and 48547.

Based upon the findings and conclusions set forth below, the attachments incorporated herein by reference and upon agreement of the parties, the Department orders:

- Permits 35425, 35426, 37346, 40920, and 41314 are extended for completion of construction of the water system and application of water to beneficial use to January 31, 2001;
- Extended Permit 41314 is amended to change the place of use as provided in Exhibit A and shown on the map attached as Exhibit B;
- Permits 35425, 35426, 37346, 40920, and 41314 as amended shall be issued water right certificates as provided in Exhibit C and shown on the map attached as Exhibit B;
- Permit 41645 is extended for completion of construction of the water system and application of water to beneficial use to October 31, 2005 for all but the Radar Range area of the farm. Permit 41645 is extended for completion of construction and application of water to beneficial use for the Radar Range to five years from the date the Boeing Company vacates and allows BAIC, Inc. and its leaseholders the right to enter the Radar Range area for development, but in any event no later than October 31, 2015.
- Extended Permit 41645 is amended to change the place of use as provided in Exhibit A and shown on the map attached as Exhibit D.
- Permits 41644, 43325, and 48547 are canceled.
- All extensions and certificates are subject to certain conditions as set forth below.

DEFINITIONS

As used in this Final Order, the following terms have the following meanings:

1. "BAIC" means Boeing Agri-Industrial Company. "BAIC Inc." is a separate entity and current holder of the water permits.
2. "Carty Reservoir" means the water storage reservoir as shown on Exhibit B, which was authorized and developed under permit R6605.
3. "Certificate" means a certificate issued by the WRD under ORS 537.250.
4. "Conservation Area" means the areas identified on Exhibit B, and by the legal description attached as Exhibit H.
5. "Conservation Parties" means WaterWatch, Oregon Trout, Oregon Natural Desert Association, Trout Unlimited, NEDC, Idaho Rivers United, and Ted Hallock.
6. "Inland" means Inland Land Company, LLC.

7. "Irrigation Season" means the period from March 1 to October 31.
8. "Listed Fish" means Snake River spring/summer chinook salmon, Snake River fall chinook salmon, Snake River sockeye salmon, Upper Columbia River steelhead, Snake River steelhead, Lower Columbia River steelhead, Upper Willamette River chinook salmon, Upper Columbia River spring run chinook salmon, Middle Columbia River steelhead, and Upper Willamette River steelhead.
9. "ODFW" means Oregon Department of Fish and Wildlife.
10. "Permit Amendment" means a change in the place of use of water under a permit as provided in ORS 537.211.
11. "Permits" includes, as the context requires, water permits 35425, 35426, 37346, 40920, 41314, 41644, 41645, 43325, and 48547.
12. "Permittee" means BAIC Inc.
13. "Property" means those lands leased by BAIC Inc. under the lease from the State of Oregon, dated July 2, 1963.
14. "RDO" means R.D. Offutt Company Northwest.
15. "Radar Range" means the oval area in the northeast portion of the Property as shown on Exhibit B.
16. "Six Mile Canyon" means the blue line shown on Exhibit B extending from the Columbia River to Carty Reservoir.
17. "Threemile" means Threemile Canyon Farms LLC.
18. "Willow Creek Pump Station" means either the RDO Station or the Boeing Station or both shown on Exhibit B

FINDINGS OF FACT

Historical Background

19. On July 2, 1963, the State of Oregon entered into an agreement with the Boeing Company to lease a tract of land to the Boeing Company for a term of 77 years. The tract is known as the Boardman Space Age Industrial Park, and contains approximately 99,000 acres in north central Oregon. On January 1, 1974, the Boeing Company, with the consent of the State of Oregon, assigned all its rights and duties under the July 2, 1963 lease to BAIC, an Oregon corporation and wholly owned subsidiary of The Boeing Company. The Department of Administrative Services ("DAS") administers the lease on behalf of the State of Oregon.

20. In furtherance of its efforts to develop portions of the tract for agricultural use, BAIC applied for and obtained nine state water right Permits as summarized on the attached Exhibit E.
21. Permit 35425 was granted by the Water Resources Department on October 27, 1971. The permit authorizes use of 63.2 cfs of water from the Columbia River for irrigation of 2,527.9 acres in the Columbia River basin. The authorized duty under the permit is 4.5 acre feet per acre. The permit has a priority date of July 23, 1971 for 56.1 cfs and September 14, 1971 for 7.1 cfs. As originally granted, the permit specified that construction shall begin on or before October 27, 1972, and be completed by October 1, 1973, and that the complete application of water to the proposed use be made on or before October 1, 1973.
22. Permit 35426 was granted by the Water Resources Department on October 27, 1971. The permit authorizes use of 287.5 cfs of water from the Columbia River for irrigation of 11,520 acres in the Columbia River basin. The authorized duty under the permit is 4.5 acre feet per acre. The permit has a priority date of September 14, 1971. As originally granted, the permit specified that construction shall begin on or before October 27, 1972, and be completed by October 1, 1973, and that the complete application of water to the proposed use be made on or before October 1, 1974.
23. Permit 37346 was granted by the Water Resources Department on July 12, 1974. The permit authorizes use of 351 cfs of water from the Columbia River for irrigation of 14,040 acres in the Columbia River basin. The authorized duty under the permit is 4.5 acre feet per acre. The permit has a priority date of May 23, 1974. As originally granted, the permit specified that construction shall begin on or before July 12, 1975, and be completed by October 1, 1976, and that the complete application of water to the proposed use be made on or before October 1, 1977.
24. Permit 40920 was granted by the Water Resources Department on December 21, 1976. The permit authorizes use of 130 cfs of water from the Columbia River for irrigation of 5,325.52 acres in the Columbia River basin. The authorized duty under the permit is 4.0 acre feet per acre. The permit has a priority date of August 18, 1976 for 30 cfs and April 2, 1976 for 100 cfs. As originally granted, the permit specified that construction shall begin on or before December 21, 1977, and be completed by October 1, 1978, and that the complete application of water to the proposed use be made on or before October 1, 1979.
25. Permit 41314 was granted by the Water Resources Department on March 21, 1977. The permit authorizes use of 387.9 cfs of water from the Columbia River for irrigation of 15,515.96 acres in the Columbia River basin. The authorized duty under the permit is 4.5 acre feet per acre. The

permit has a priority date of November 18, 1976. As originally granted, the permit specified that construction shall begin on or before March 21, 1978, and be completed by October 1, 1978, and that the complete application of water to the proposed use be made on or before October 1, 1979.

26. Permit 41645, was granted by the Water Resources Department on September 14, 1977. The permit authorizes use of 224.0 cfs of water from the Carty Reservoir and the Columbia River for irrigation of 8,957.42 acres in the Columbia River basin. The permit has a priority date of March 7, 1977 for Carty Reservoir, and September 9, 1977 for the Columbia River. As originally granted, the permit specified that construction shall begin on or before September 14, 1978, and be completed by October 1, 1979, and that the complete application of water to the proposed use be made on or before October 1, 1980.
27. Permit 41644 was granted by the Water Resource Department on September 14, 1977. The permit authorizes use of 109.6 cfs of water from Carty Reservoir and the Columbia River for irrigation of 4,370.85 acres in the Columbia River Basin. The permit has a priority date of March 7, 1977 for Carty Reservoir and September 9, 1977 for the Columbia River.
28. Permit 43325 was granted by the Water Resources Department on September 5, 1978. The permit authorizes use of 16 cfs of water from surface water in Six Mile Canyon for irrigation of 640 acres in the Columbia River Basin. The permit has a priority date of June 20, 1978.
29. Permit 48547, was granted by the Water Resources Department on July 19, 1984. The permit authorizes use of 8 cfs of water from an unnamed west tributary of Six Mile Canyon, a tributary of the Columbia River, for irrigation of 320 acres in the Columbia River basin. The permit has a priority date of May 23, 1984.
30. BAIC previously applied for and obtained extensions of time under all nine Permits to complete construction and application of water to beneficial use. These extensions were granted through October 1, 1995.
31. On March 29, 1995, BAIC sought extensions to complete development for all nine Permits. The Department granted the requests, including the request for Permit 35425, on September 25, 1995. The order granting the requests extended the nine permits to October 1, 1996.
32. On January 5, 1996, the Department accepted a petition by WaterWatch, the Northwest Environmental Defense Center ("NEDC"), the National Wildlife Federation, the Columbia Basin Institute and Oregon Trout for reconsideration of the permit extensions. The petition set forth objections to the Department's decision to grant the permit extensions. On

February 14, 1996, the Department reconfirmed the water right permit extensions. The decision was appealed and ultimately dismissed. *See WaterWatch of Oregon, Inc. v. Boeing Agri-Industrial Company*, 155 Or. App. 381, 963 P.2d 744 (1998).

33. On September 27, 1996, the Department received applications from BAIC for an extension of time to complete construction and to apply water to full beneficial use for the Permits.
34. On October 23, 1996, WaterWatch, Oregon Trout, NEDC, Idaho Rivers United, and Ted Hallock filed protests of the applications, which raised numerous issues including those raised in WaterWatch et al.'s 1995 petition.
35. On July 22, 1996, at the request of BAIC and Inland, the WRD entered an order approving an additional point of diversion for Permits 41314, 41644, and 41645 directly from the Columbia River John Day Pool, in addition to the authorized point of diversion at the Willow Creek Pump Station.
36. On December 3, 1998, Inland began participating in mediated settlement negotiations with the WRD, ODFW, the Governor's Office of the State of Oregon, WaterWatch, and Oregon Trout in an effort to resolve the disputes associated with the permit extension requests. Mediation negotiations continued until February 11, 1998. A final settlement negotiation meeting occurred between the state agencies and Inland on February 18, 1999.
37. On January 15, 1999, NEDC, Defenders of Wildlife, and the Oregon Natural Desert Association filed a petition for emergency listing of the Washington ground squirrel with the Oregon Fish and Wildlife Commission. On January 21, 2000, the Commission listed the Washington ground squirrel as endangered and adopted survival guidelines, effective February 14, 2000.
38. On April 2, 1999, the Department received new applications from BAIC for an extension of time to October 1, 2001 to complete construction and to apply water to full beneficial use for Permits 35425 and 48547, and to October 1, 2003 for Permits 35426, 37346, 40920, 41314, and 41645. On April 8, 1999, Permittee amended its requests for extension on Permits 35426, 37346, 40920, 41384, and 41645 to request an extension until October 1, 2005 to complete construction and apply water to full beneficial use. These applications superseded the applications filed on September 27, 1996.
39. Permits 35425, 35426, 37346, 40920, 41314, and 41645 were proposed to be extended by the WRD in Proposed Final Orders (PFOs) dated April 9, 1999. Conservation Parties filed protests dated May 28, 1999. BAIC also

applied for an extension to complete development under Permit 48547, the PFO for which was issued on April 27, 1999. Conservation Parties filed a protest to this PFO dated June 11, 1999. Thereafter, on July 1, 1999, the WRD issued a Notice of Contested Case Proceeding and commenced contested case proceedings (the "Contested Case").

40. In May 2000, RDO purchased BAIC and renamed the company BAIC Inc. In July 2000, RDO assigned its leasehold interests in the Property to Threemile. In July 2000, BAIC Inc. filed with the WRD final proof surveys requesting certification for water right Permits 35425, 35426, 40920, and 41314. BAIC Inc. also filed applications to extend and permit amendment requests to change the place of use for Permits 41644 and 41645. On September 7, 2000, WaterWatch and NEDC filed comments opposing the amendment to the place of use for Permits 41644 and 41645.
41. On August 30, 2000, BAIC Inc. filed with the Department notice that it was withdrawing all applications for extensions filed in 1999 and earlier, including the extension requests that were the subject of the contested case. On February 28, 2001 BAIC Inc. withdrew its August 30, 2000 letter to have the matter fully resolved through this Final Order. See Exhibit F.
42. In December 2000, BAIC Inc. and the Conservation Parties entered into a settlement that resolved their issues in the Contested Case. WRD incorporates those terms into this Final Order.
43. On February 28, 2001 BAIC Inc. filed with the Department a letter requesting cancellation of Permits 41644, 43325, and 48547. See Exhibit G.

Start of Construction

44. The record reflects the start of construction for each permit as follows:
 - a. **Permit 35425.** On the ground construction of the Willow Creek Pumping Station, which is sized to serve the Project and which serves lands appurtenant to Permit 35425, had begun by June 1, 1972. The deadline for beginning of construction on this permit was October 27, 1972.
 - b. **Permit 35426.** On the ground construction of the Willow Creek Pumping Station, which is sized to serve the Project and which serves lands appurtenant to Permit 35426, had begun by June 1, 1972. The deadline for beginning of construction on this permit was October 27, 1972.
 - c. **Permit 37346.** On the ground construction of the Willow Creek Pumping Station and distribution system, which is sized to serve

the Project and which serves lands appurtenant to Permit 37346, had begun by June 1, 1972. Additional development work had begun for lands appurtenant to Permit 37346 by June 30, 1975.

- d. **Permit 40920.** On the ground construction of the Willow Creek Pumping Station, which is sized to serve the Project and which serves lands appurtenant to Permit 40920, had begun by June 1, 1972. The deadline for beginning of construction on this permit was December 21, 1977.
- e. **Permit 41314.** Installation of pipe to serve land appurtenant to the place of use began on January 3, 1978. Permit 41314 required construction to begin on or before March 21, 1978. On the ground construction on the Willow Creek Pump Station, which is sized to serve the land appurtenant to all of the Permits, had begun by June 1, 1972.
- f. **Permit 41645.** On the ground construction of the pumping plant on Carty Reservoir began on August 9, 1978. Construction of the 60-inch Carty pipeline, which is intended to serve land appurtenant to the place of use, was begun on September 14, 1977. Permit 41645 required construction to begin on or before September 14, 1978. On the ground construction on the Willow Creek Pump Station, which is sized to serve the land appurtenant to all of the Permits, had begun by June 1, 1972.

Reasonable Diligence

- 45. Reasonable diligence during the permit period constitutes a continuing test of whether and under what conditions to grant an extension. ORS 537.260, OAR 690-320-010(9). In general, the last extension period provides the most relevant evidence of a permittee's diligence or good faith toward completion of development under a permit. The most recent extension period for the permits commenced in October 1995.
- 46. The existing system developed for irrigation of the Property, including the place of use, is shown on the attached Exhibit B. In addition to the Willow Creek Pump Station, the system includes approximately 150 miles of underground mainline, booster pump stations, and approximately 275 center pivot sprinklers and storage rights in Carty Reservoir under Permit R6605, which allows storage of water appropriated under Permits 41644 and 41645 for irrigation. Carty Reservoir is owned and operated by Portland General Electric Company in conjunction with its Boardman Coal Plant. The irrigation system is designed and built to allow pumping from Carty Reservoir in addition to the Columbia River. At this time, irrigation storage at Carty Reservoir is limited by contract to 10,000 acre feet.

47. Permits 35425, 35426, 37346, 40920, 41314, and 41645 are the only permits that are extended. The evidence of diligence for the purpose of the extension requests for each of these permits is as follows:
- a. **Permit 35425.** As of December 1995, 2,495 acres of land within the place of use had been placed under irrigation under permit 35425. During 1996, additional acreage was placed under irrigation, with related piping and electrical service. During 1997, mortar lining and cathodic protection on pipe were installed, and work was done on the booster pump and pivots. During 1998 and 1999, Permittee worked on pivots, valves and filters, a new six-inch main line for 1,200 feet, a pump, and new pipeline and pumping infrastructure.
 - b. **Permit 35426.** As of December 1995, 9,393 acres of land within the place of use had been placed under irrigation under permit 35426. During 1996, an additional 220 acres of land were placed under irrigation, with related mortar lining of the pipeline. During 1997, mortar lining, cathodic protection on pipe, and center pivots were installed and work was done on the mortar lining and cathodic protection on pipe, installed center pivots and worked on the drainage system. During 1998 and 1999, new pipeline and pumping infrastructure, center pivots, drain tile, and cement mortar lining for pipe were installed, and work was done on the drainage system. As of August 7, 1997, 9,665 acres had been placed under irrigation on the place of use.
 - c. **Permit 37346.** As of December 1995, 8,647 acres of land within the place of use had been placed under irrigation under permit 37346. During 1996, an additional 438.8 acres of land were placed under irrigation, with related mortar lining of pipe. During 1997, mortar lining, cathodic protection on pipe, and center pivots were installed, and work was done on the drainage system. During 1998 and 1999, new pipeline, pumping infrastructure, a pump, center pivots, drain tile, and cement mortar lining for pipe were installed and work was done on the drainage system. As of August 7, 1997, 9,488 acres had been placed under irrigation of the place of use.
 - d. **Permit 40920.** As of December 1995, 3,020 acres of land within the place of use had been placed under irrigation under permit 40920. During 1996, an additional 95 acres of land were placed under irrigation, with related piping and electrical service. During 1997, mortar lining and cathodic protection on pipe were installed. During 1998 and 1999, new pipeline and pumping infrastructure were installed.

- e. **Permit 41314.** As of December 1995, 950 acres of land within the place of use had been placed under irrigation under permit 41314. During 1997, mortar lining and cathodic protection on pipe, as well as a drainage system, were installed on acreage appurtenant to Permit 41314. During 1998, new pipeline and pumping infrastructure, a drainage system, center pivots, and cement mortar lining for pipe were installed, for development of additional acreage appurtenant to permit No. 41314. During 1999, 3,397 total acres were developed.
 - f. **Permit 41645.** As of December 1995, 1,930 acres of land within the place of use had been placed under irrigation under permit 41645. During 1996, 50 additional acres were placed under irrigation, with related piping and electrical service. During 1997, mortar lining, cathodic protection on pipes, center pivots, and a drainage system were installed. During 1998 and 1999, additional new pipeline, pumping infrastructure, additional center pivots, and mortar lining for pipe were installed and work was done on the drainage system. Total developed acreage under permit 41645 is currently 2,758 acres.
48. Progress in perfecting the permits was delayed by efforts to develop and obtain federal permits for a new point of diversion on the mainstem of the Columbia River, litigation challenging the Department's order approving Permittee's 1995 request for extension, and by changes in the Water Resources Commission's rules regarding permit extensions.

Good Cause

49. Under ORS 537.230(2), the Department shall, for good cause shown, order an extension of time to complete development and perfect a water right. In determining good cause, the Department must consider at least the factors listed in ORS 539.010(5), which include at least the cost of the appropriation and application of the water to a beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demands therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment. The analysis of good cause may include whether the water would be of greater value for other uses or should remain allocated to the currently permitted purpose.
50. The costs associated with development of individual permits are as follows:
- a. **Permit 35425.** As of December 1995, approximately \$3,993,395 was spent for development of the place of use for permit 35425. During 1996, an additional \$17,158 for development of the place

of use was spent. During 1997, approximately \$240,644 for development of the place of use was spent. During 1998, approximately \$839,970 was spent. The total cost for development of the place of use to date is approximately \$5,091,167.

- b. **Permit 35426.** As of December 1995, approximately \$7,832,324 was spent for development of the place of use for permit 35426. During 1996, an additional \$232,192 was spent for development of the place of use, with an additional \$1,484,381 for development of acreage appurtenant to Permit 35426, 37346, 40920, 41645, 43325, and 48547. During 1997, approximately \$489,097 was spent for development of the place of use. During 1998 and 1999, approximately \$1,331,867 was spent for development of the place of use. Without taking into account the 1996 costs for multiple permits, the total cost for development of the place of use to date is approximately \$9,885,480.
- c. **Permit 37346.** As of December 1995, approximately \$11,504,490 was spent for development of the place of use for permit 37364. During 1996, an additional \$1,484,381 was spent for development of acreage appurtenant to Permit 35426, 37346, 40920, 41645, 43325, and 48547. During 1997, approximately \$439,967 was spent for development of the place of use. During 1998 and 1999, approximately \$1,456,283 was spent for development of the place of use. Without taking into account the 1996 costs for multiple Permits, the total costs for development of the place of use to date is approximately \$13,399,740.
- d. **Permit 40920.** As of December 1995, approximately \$12,605,702 was spent for development of the place of use for permit 40920. During 1996, an additional \$1,484,381 was spent for development of acreage appurtenant to Permit 35426, 37346, 40920, 41645, 43325, and 48547. During 1997, approximately \$165,564 was spent for development of the place of use. During 1998 and 1999, approximately \$767,680 was spent for development of the place of use. Without taking into account the 1996 costs for multiple Permits, the total costs for development of the place of use to date is approximately \$13,539,126.
- e. **Permit 41314.** As of December 1995, approximately \$2,531,661 was spent for development of the place of use for permit 41314. During 1996, an additional \$418,708 was spent for development of acreage appurtenant to Permits 41314, 41644, and 41645. During 1997, approximately \$353,989 was spent for development of the place of use. Without taking into account the 1996 costs assigned to multiple permits, including Permit 41314, the total cost for development of the place of use up to 1999 was approximately

\$20,096,434. Within the past year, approximately 2,310 acres were developed at an approximate cost of \$1,633,061.10.

f. Permit 41645. As of December 1995, approximately \$7,239,346 was spent for development of the place of use for permit 41645. An additional \$1,484,381 was spent during 1996 for development of acreage appurtenant to Permits 35426, 37346, 40920, 41645, 43325, and 48547, and an additional \$418,708 for development of acreage appurtenant to Permits 41314, 41644, and 41645. During 1997, approximately \$452,249 was spent for development of the place of use. During 1998, approximately \$3,701,515 was spent for development of the place of use. Without taking into account the 1996 costs that assigned to multiple permits including Permit 41645, the total cost for development of the place of use to 1999 was approximately \$11,393,200.

51. Permittee's good faith is demonstrated by its diligent development of the place of use since October 1995.
52. Present farm economics and new farming technologies indicate that agricultural use and irrigation development of the Boeing tract is feasible and economical. Permittee states that the project will provide reasonable returns on investment.
53. With respect to competing demands for the water, the Department has considered habitat needs of Listed Fish, and has conditioned this extension to address those impacts. See Conditions, below.
54. Under the conditions of this Final Order, the acreage authorized for new irrigation after January 31, 2001 is reduced to 6,833.7 acres. The total irrigated acreage of all Permits collectively will not exceed 41,000 acres. The total authorized rate of withdrawal under the Permits is reduced from 1,569.2 cfs to 582 cfs, and the authorized volume of water diverted per irrigation season is reduced from 280,376.7 acre feet to 123,000 acre feet (41,000 acres x 3 af). These conditions directly limit and reduce the amount of water that the Permits originally authorized.
55. Permittee has agreed that as a condition of this Order, it will provide certain mitigation for wildlife, including the Washington ground squirrel. Mitigation for wildlife impacts of development will include protection of wildlife habitat within a Conservation Area as depicted in Exhibit B.
56. Permittee has agreed that as a condition of this Order, it will request cancellation of Permits 41644, 43325 and 48547.

Duration of Extension

57. Construction and application of water to beneficial use can be completed for Permits 35425, 35426, 37346, 40920, and 41314 (as amended) by January 31, 2001. Construction and application of water to beneficial use can be completed for Permit 41645 (as amended) by October 31, 2005, except for the Radar Range. The development of the Radar Range can be completed within five years after the Boeing Company vacates and provides access to the Permittee to develop the land, but in any event not later than October 31, 2015. The length of time requested is reasonable, given the extent of completed development.

Amendments of Permits

58. The requested amendment of the place of use for Permit 41314 is to land that is contiguous to the land to which Permit 41314 is appurtenant.
59. The amendment of Permit 41645 includes, in part, a new place of use on land noncontiguous to land to which the permit is appurtenant. This amendment will move development from land that has been identified as containing suitable habitat for the Washington Ground Squirrel to land on which there is no evidence of squirrel occupation. The squirrel is listed as an endangered species under ORS 496.171 et seq. A permit amendment to noncontiguous land is authorized if it is in furtherance of mitigation or conservation efforts undertaken for the purpose of benefiting endangered species. ORS 537.211(5). The Permittee has agreed to protect squirrel habitat and preserve the ecological values in the Conservation Area shown on the map attached as Exhibit B, as provided in Condition 6 of this order.
60. The Oregon Department of Fish and Wildlife advises that the amendment of Permit 41645 would be in furtherance of mitigation or conservation efforts undertaken for the purpose of benefiting the Washington ground squirrel. The Department concurs in that determination.

Certification of Permits

61. The final proof surveys filed for Permits 35425, 35426, 37364, 40920 and 41314, as amended, provide satisfactory proof of development under the permits as described in the Water Right Certificates attached as Exhibit C.
62. Permittees and Conservation Parties have reviewed proposed certificates for Permits 35425, 35426, 37364, 40920 and 41314 and have submitted letters waiving any rights they may have to a 60 day comment period under OAR 690-330-0010.

CONCLUSIONS OF LAW

63. Permittee's development under Permits 35425, 35426, 37346, 40920, 41314, and 41645 since October 1995 has been undertaken with reasonable diligence.
64. Taking into account the cost of development under the permits, the good faith development under the permits, the feasibility of the development, impacts to Listed Fish and the associated mitigation required under this extension order, good cause exists to extend Permits 35425, 35426, 37364, 40920, 41314, and 41645.
65. Amendment of the place of use for Permits 41314 and 41645 is authorized under ORS 537.211.
66. Issuance of certificates for Permits 35425, 35426, 37364, 40920 and 41314 is authorized under ORS 537.250.
67. Cancellation of Permits 41644, 43325 and 48547 is authorized under ORS 540.621.

ORDER

Based on the foregoing findings of fact and conclusions of law, the Department:

1. Resolves the protests filed in October, 1996, April, 1999 and June, 1999 by the Conservation Parties;
2. Extends the time for completion of construction and application of water to beneficial use under Permits 35425, 35426, 37346, 40920, and 41314 (as amended) to January 31, 2001;
3. Extends the time for completion of construction and application of water to beneficial use under Permit 41645 (as amended) to October 31, 2005, except for the Radar Range in which the time for complete construction and application of water to beneficial use is extended to five years from the date the Boeing Company vacates and allows BAIC Inc. and its leaseholders the right to enter the Radar Range area for development, but in any event no later than October 31, 2015. If BAIC, Inc. files an application to extend the permit for the Radar Range, the Boeing Company's continued occupancy will be considered good cause, along with the Permittee or a sublessee's diligence in development of the remainder of the permit, to extend the permit for additional time for construction and application of water to use in the Radar Range area;
4. Amends Permit 41314 as provided in the Order Approving Change in Place of Use attached as Exhibit A and shown on the map attached as Exhibit B;

5. Amends Permit 41645 as provided in the Order Approving Change in Place of Use attached as Exhibit A and shown on the map attached as Exhibit D;
6. Issues water right certificates for Permits 35425, 35426, 37346, 40920 and 41314, as amended, attached as Exhibit C;
7. Cancels Permits 41644, 43325, and 48547.

Subject to the following CONDITIONS:

1. Limitation on Acreage

Subject to a maximum 41,000 total irrigated acres, the following acreage limitations for irrigation shall not be exceeded under the following permits:

Permit No. 35425:	2,487.6 acres
Permit No. 41645:	6,833.7 acres
Permit No. 41314:	8,996.4 acres
Permit No. 35426:	9,200.0 acres
Permit No. 37346:	9,956.1 acres
Permit No. 40920:	3,526.2 acres

2. Limitation on Rate, Duty, and Use

a. Permit amendments, extensions and certificates, as applicable, for Permits 35425, 35426, 37346, 40920, 41314 and 41645 shall be subject to the following limitations:

(1) **Rate of Diversion.** The authorized rate shall be 1/40th cfs per acre provided that the maximum rate for the combined use of water under permits 35425, 35426, 37346, 40920, 41314, and 41645 and the certificates issued in respect thereto will not exceed 582 cfs at any one point in time, and provided further that the maximum rate pending completion of consultation as described in Condition 5(a) of this Final Order shall not exceed 480 cfs;

(2) **Duty of Use.** The authorized duty shall be 4 acre feet per acre provided that the maximum duty for the combined water use under permits 35425, 35426, 37346, 40920, 41314, and 41645 and the certificates issued in respect thereto will not exceed an average duty of 3 acre feet per acre (that is "z" acre feet total during the irrigation season where "z" = 3 acre feet times the total number of acres ultimately permitted and certificated not to exceed 41,000 acres); and

(3) **Place of Use.** The authorized place of use for permits 35425, 35426, 37346, 40920, and 41314 shall be as identified in the System Layout Map accompanying the certificates and attached as Exhibit B. The authorized place of use for permit 41645 shall be as identified in the Order Approving Change in Place of Use attached as Exhibit A and map attached as Exhibit D;

b. Subject to the maximum rate of 582 cfs total for all Permits collectively above, and subject further to the maximum rate of 480 cfs pending completion of the consultation described in Condition 5(a) of this Final Order, the rate of diversion shall not exceed the following limitations on the following permits and subsequent certificates:

Permit No. 35425:	62.2 cfs
Permit No. 41645:	170.8 cfs (as amended)
Permit No. 41314:	224.9 cfs (as amended)
Permit No. 35426:	230 cfs
Permit No. 37346:	248.9 cfs
Permit No. 40920:	88.2 cfs

c. Subject to the maximum annual diversion based on an average of 3 acre feet per acre for all rights collectively, the duty and total annual diversion shall not exceed the following limitations on the following permits and subsequent certificates:

Permit No. 35425:	4 acre feet per acre; total annual diversion 9,950.4 acre feet
Permit No. 41645:	4 acre feet per acre; total annual diversion 27,334.8 acre feet
Permit No. 41314:	4 acre feet per acre; total annual diversion 35,985.6 acre feet
Permit No. 35426:	4 acre feet per acre; total annual diversion 36,800 acre feet
Permit No. 37346:	4 acre feet per acre; total annual diversion 39,824.4 acre feet
Permit No. 40920:	4 acre feet per acre; total annual diversion 14,104.8 acre feet

3. Funding for instream water right acquisition

Permittee, or its sublessees under a separate agreement, shall contribute \$1,250,000 to the Oregon Water Trust, to be used for acquisition of instream water rights in tributaries of the Columbia River, on the following schedule:

- Within 30 days after issuance of this final order, \$250,000
- April 1, 2001, \$300,000
- April 1, 2002, \$300,000
- April 1, 2003, \$400,000

With regard to payments due April 1 of 2001, 2002 and 2003, if the period for appeal of this Final Order or the certificates has not run and/or appeals or challenges to this Final Order or the certificates are pending on those dates, the Permittee, or its sublessees under a separate agreement, shall pay the sums due to First American Title Company to hold in escrow in an interest-bearing account or accounts until the appeal periods have run and any appeals or challenges to this Final Order or the certificates by any entity have been concluded, and amendments, extensions and certificates are issued consistent with this

order. Upon satisfaction of this condition, the sum and all accrued interest shall be delivered to the Oregon Water Trust.

4. NMFS Consultation Conditions

- a. Before completion of consultation between the National Marine Fisheries Service (NMFS) and the Corps of Engineers (Corps) under section 7(a)(2) of the ESA, final agency action by the Corps and conclusion of challenges, if any, arising out of this process, Permittees shall not use the Willow Creek Pump Station to pump or divert water from the Columbia River at a rate greater than 480 cfs.
- b. Permittee shall request that the consultation between NMFS (and the United States Fish & Wildlife Service if applicable) and the Corps address issues related to attraction flows from existing and future pumping, screening, ongoing and future dredge operations and effects of Permittee's water withdrawals on Columbia River System target flows.
- c. During the NMFS consultation, Permittee shall seek the views of ODFW, provide ODFW with copies of the Biological Assessment that the Corps submits to NMFS, and provide ODFW with copies of any draft Biological Opinion Permittee receives from the Corps or NMFS.

5. Compliance with Corps Permits

Water use under the permits, amendments, and certificates shall be exercised consistent with and subject to the final conditions on water use, including screening, in the Corps permits for construction and maintenance of pump stations resulting from any NMFS consultation following exhaustion of appeals, if any. Permittee shall, within 30 days following exhaustion of appeals, if any, submit to the Salem office of the Water Resources Department and to the office of the applicable Watermaster District a copy of such Corps permits.

6. Conservation Area

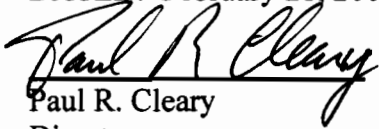
The Permittee shall not farm, develop, or perform any activity in the Conservation Area except for activities that are in furtherance of the purpose of the Conservation Area and for activities that are consistent with implementation of any Multi-Species Candidate Conservation Agreement developed by BAIC Inc. and approved by the U.S. Fish and Wildlife Service covering various federally unlisted upland species, including the Washington ground squirrel. In addition, Permittee will not undertake any activity that is inconsistent with survival guidelines adopted pursuant to the state ESA listing process.

7. Measurement and Reporting

- a. Permittee shall install, operate and maintain a continuous telemetric measurement and recording device for rate and volume of water use, and shall report monthly volumes of water use to the Department on an annual basis. This information shall be available to the State as a public record at any time. Further, the Director may require the permittee

to report general water use information, including the place and nature of use of water under the permit.

DATED: February 28, 2001.

A handwritten signature in cursive script that reads "Paul R. Cleary". The signature is written in black ink and is positioned above the printed name and title.

Paul R. Cleary
Director

LEGAL DESCRIPTION
Conservation Area (revised 02/27/01)

FEB 28 2001

ALL THAT PORTION OF **TOWNSHIP 2 NORTH, RANGE 23 EAST** OF THE WILLAMETTE MERIDIAN IN MORROW COUNTY, STATE OF OREGON, DESCRIBED AS FOLLOWS:

ALL OF SECTIONS 13, 14, 15, 16, 21, 22, 23, 24, AND THE SOUTHEAST $\frac{1}{4}$ OF THE SOUTHEAST $\frac{1}{4}$ OF SECTION 8 AND THE SOUTH HALF OF THE SOUTHWEST $\frac{1}{4}$ OF SECTION 9 AND THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 9 AND ALL THAT PORTION OF SAID SECTION 9 LYING SOUTHEASTERLY OF AN EXISTING FENCE LINE DESCRIBED AS FOLLOWS: COMMENCING AT THE NORTHEAST CORNER OF SECTION 4, TOWNSHIP 2 NORTH, RANGE 23 EAST WITNESSED BY A 2-1/2" G.L.O. BRASS CAP STAMPED '1939'; SAID POINT BEARS N 89°44'33"E, 10,451.11 FEET FROM THE NORTHWEST CORNER OF SECTION 5 OF SAID TOWNSHIP; THENCE S01°02'40"E, 10486.2 FEET ALONG THE EAST LINES OF SECTIONS 4 AND 9, TO AN EXISTING FENCE LINE AND THE **TRUE POINT OF BEGINNING**; SAID POINT BEING HEREINAFTER REFERRED TO A **POINT "A"**; THENCE S 52°06'55"W, ALONG SAID FENCE, 81.5 FEET MORE OR LESS TO THE SOUTH LINE OF SAID SECTION 9 AND THE **TERMINUS OF SAID LINE**.

TOGETHER WITH ALL THOSE PORTIONS OF SECTIONS 10, 11 AND 12 OF SAID TOWNSHIP 2 NORTH, RANGE 23 EAST, LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT **POINT "A"** AFOREMENTIONED; THENCE NORTHEASTERLY ALONG AN EXISTING FENCE LINE THE FOLLOWING COURSES; N 52°06'55"E, 57.22 FEET; N 56°49'20"E, 741.39 FEET; N 57°40'03"E, 2592.70 FEET; N 58°20'14"E, 377.09 FEET; N 62°41'12"E, 433.05; THENCE LEAVING SAID FENCE N 62°41'12"E, 544.17 FEET; THENCE S 89°57'50"E, 11,592.53 FEET MORE OR LESS TO THE EAST LINE OF SECTION 12 AND **THE TERMINUS OF SAID LINE**. SAID POINT BEING HEREINAFTER REFERED TO AS **POINT "B"** AND BEARS N 00°01'07"W, 2526.52 FEET FROM THE SOUTHEAST CORNER OF SAID SECTION 12 WITNESSED BY A 3-WAY FENCE INTERSECTION.

EXCEPTING THEREFROM THAT PORTION OF SECTION 16 LYING WESTERLY OF STATE HIGHWAY NO. 74, AS IT IS NOW SITUATED, AND **EXCEPT** THAT PORTION OF SECTION 16 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF THE RIGHT OF WAY OF STATE HIGHWAY NO. 74 AS IT IS NOW SITUATED, 400 FEET NORTH AND 400 FEET EAST OF THE SOUTHWEST CORNER OF SAID SECTION 16; THENCE EAST 400 FEET; THENCE NORTH 600 FEET; THENCE WEST TO THE EAST BOUNDARY LINE OF SAID HIGHWAY NO. 74; THENCE SOUTHERLY ALONG SAID EASTERLY RIGHT OF WAY TO THE POINT OF BEGINNING.

AND EXCEPT THAT PORTION OF SECTION 21 LYING WESTERLY OF STATE HIGHWAY NO. 74 AS IT IS NOW SITUATED; AND **EXCEPT** THAT PORTION OF SECTION 21 DESCRIBED AS FOLLOWS: BEGINNING AT A POINT ON THE EAST BOUNDARY LINE OF THE RIGHT OF WAY OF STATE HIGHWAY NO. 74 AS IT IS NOW SITUATED, 1200 FEET SOUTH AND 300 FEET EAST OF THE NORTHWEST CORNER OF SAID SECTION 21; THENCE EAST 500 FEET; THENCE SOUTH 500 FEET; THENCE WEST TO THE EAST BOUNDARY LINE OF SAID HIGHWAY NO. 74; THENCE NORTH ALONG SAID EAST BOUNDARY TO THE POINT OF BEGINNING.

ALL THAT PORTION OF **TOWNSHIP 2 NORTH, RANGE 24 EAST** OF THE WILLAMETTE MERIDIAN IN MORROW COUNTY, STATE OF OREGON, DESCRIBED AS FOLLOWS:

ALL OF SECTIONS 1, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23 AND 24 AND THE EAST HALF OF SECTION 2, ALL OF SECTION 11 **EXCEPT** THE NORTHWEST QUARTER THEREOF; AND ALL OF SECTION 10 **EXCEPT** THE NORTHEAST QUARTER THEREOF AND TOGETHER WITH THAT PORTION OF SECTION 7 LYING SOUTHERLY OF THE FOLLOWING DESCRIBED LINE:

BEGINNING AT **POINT "B"** AFOREMENTIONED ON THE WEST LINE OF SECTION 7, TOWNSHIP 2 NORTH, RANGE 24 EAST; THENCE S 89°57'50"E, 5686.17 FEET, MORE OR LESS, TO THE EAST LINE OF SAID SECTION 7 AND THE **TERMINUS OF SAID LINE**, SAID POINT BEING HEREINAFTER REFERED TO AS **POINT "C"**.

TOGETHER WITH THAT PORTION OF SECTION 8 LYING SOUTHERLY, WESTERLY AND SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT POINT "C" 2001 AFOREMENTIONED ON THE WEST LINE OF SECTION 8; THENCE S 89°57'50"E, 529.05 FEET; THENCE S 00°11'52"E, 1442.04 FEET; THENCE N 76° 24'58"E, 4874.95 FEET, MORE OR LESS, TO THE EAST LINE OF SAID SECTION AND THE TERMINUS OF SAID LINE; SAID POINT BEING HEREINAFTER REFERED TO AS POINT "D".

TOGETHER WITH ALL THAT PORTION OF SECTION 9 LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE: BEGINNING AT POINT "D" AFOREMENTIONED; THENCE N 76° 24'58"E, 2634.32 FEET; THENCE N 19°34'46"E, 2833.66 FEET, MORE OR LESS, TO THE NORTH LINE OF SAID SECTION 9 AND THE TERMINUS OF SAID LINE.

THAT PORTION OF **TOWNSHIP 3 NORTH, RANGE 24 EAST** OF THE WILLAMETTE MERIDIAN IN MORROW COUNTY, STATE OF OREGON, DESCRIBED AS FOLLOWS:

ALL OF SECTIONS 22, 23, 24, 25, 27, 36 AND ALL THAT PORTION OF SECTIONS 21 AND 28 LYING EASTERLY OF THE FOLLOWING DESCRIBED LINE:

COMMENCING AT THE SOUTHEAST CORNER OF SAID SECTION 28 WITNESSED BY A 2-1/2" G.L.O. BRASS CAP STAMPED '1939'; THENCE S 89°27'03"W, 1488.38 FEET TO THE **TRUE POINT OF BEGINNING**; THENCE N 30°27'45"E, 1296.03 FEET; THENCE N 21°39'44"E, 871.87 FEET; THENCE N 42°32'11"E, 837.85 FEET; THENCE N 15°32'15"E, 480.59 FEET; THENCE N 87°36'58"W, 618.46 FEET; THENCE N 52°55'56"W, 661.48 FEET; THENCE N 39°49'52"E, 602.95 FEET; THENCE N 01°44'14"E, 424.63 FEET; THENCE N 62°07'27"E, 247.58; THENCE N 17°27'44"W, 471.91 FEET; THENCE N 49°36'58"W, 1074.30 FEET; THENCE N 00°50'28"W, 4970.60 FEET, MORE OR LESS , TO THE NORTH LINE OF SECTION 21 AND THE **TERMINUS OF SAID LINE**. SAID POINT BEING HEREINAFTER REFERED TO AS **POINT "E"**.

TOGETHER WITH ALL THAT PORTION OF SECTION 16 OF SAID TOWNSHIP 3 NORTH, RANGE 24 EAST LYING SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT POINT "E" AFOREMENTIONED; THENCE N 62°02'01"E, 2682.38 FEET, MORE OR LESS, TO THE EAST LINE OF SAID SECTION 16 AND THE TERMINUS OF SAID LINE.

AND TOGETHER WITH ALL THAT PORTION OF SECTION 15 LYING SOUTHWESTERLY OF THE BOEING RADAR RANGE BOUNDARY AND SOUTHEASTERLY OF THE FOLLOWING DESCRIBED LINE; BEGINNING AT POINT "E" AFOREMENTIONED; THENCE N 62°02'01"E, 2682.38 FEET, MORE OR LESS, TO THE WEST LINE OF SAID SECTION 15 AND THE TRUE POINT OF BEGINNING; THENCE CONTINUING N 62°02'01"E, 2879.65 FEET, MORE OR LESS, TO THE BOEING RADAR RANGE BOUNDARY AND THE TERMINUS OF SAID LINE.

AND TOGETHER WITH ALL THAT PORTION OF SECTION 13 LYING EASTERLY AND SOUTHEASTERLY OF THE BOEING RADAR RANGE BOUNDARY AND THAT PORTION OF SECTION 14 LYING SOUTHERLY OF SAID BOEING RADAR RANGE BOUNDARY.

THAT PORTION OF **TOWNSHIP 4 NORTH, RANGE 24 EAST** OF THE WILLAMETTE MERIDIAN IN MORROW COUNTY, STATE OF OREGON, DESCRIBED AS FOLLOWS:

THE SOUTH HALF OF SECTION 25 AND THE NORTH HALF OF SECTON 36.

ALL BEING SUBJECT TO ROAD AND RAILROAD RIGHTS OF WAY, EXISTING EASEMENTS, RESTRICTIONS AND RESERVATIONS OF RECORD.

ENTIRE PARCEL CONTAINS 22,642 ACRES MORE OR LESS.

Exhibit B

System Layout Map

Boeing Agri-Industrial Co.



North

Public Land Survey System (PLSS) corners and irrigated crop circles were located using real-time, Differential GPS (DGPS) methods. NAD27 coordinates were developed using a Trimble ProXL Receiver hardwired to a Trimble ProBeacon. Verified sub-meter

positions were collected, by incorporating correction broadcasts from the U.S. Coast Guard Continuously Operating Reference Station (CORS) in Appleton, Washington, with raw satellite data. Data from the Bureau of Land Management's geographic coordinate data base (GCDB) was combined with field surveyed positions of existing PLSS corners, to develop 1/16 corner positions consistent with the "Manual of Instructions for the Survey of the Public Lands of the United States", 1973 edition.

Point of diversion located 1657 feet north and 2166 feet west of SE corner, section 36, township 3N, range 22E. Source of water is John Day Reservoir on the Columbia River.

Pipe locations and diameters are approximate based on owners map. Mainline to pivot pipes are typically 10 inches in diameter with 8 inch diameter minimum.

Only circles which were surveyed are identified on the map.

This map was prepared for the purpose of identifying the location of a water right only and is not intended to provide legal dimensions or location of property ownership lines.

Legend

- Place of use
- Permit 41645 Amended Place of Use
- Monuments located
- Permit area
- Original permit
- Conservation Area
- Section
- Quarter quarter section
- Township/Range
- Irrigation pipe
- Point of diversion
- Booster station

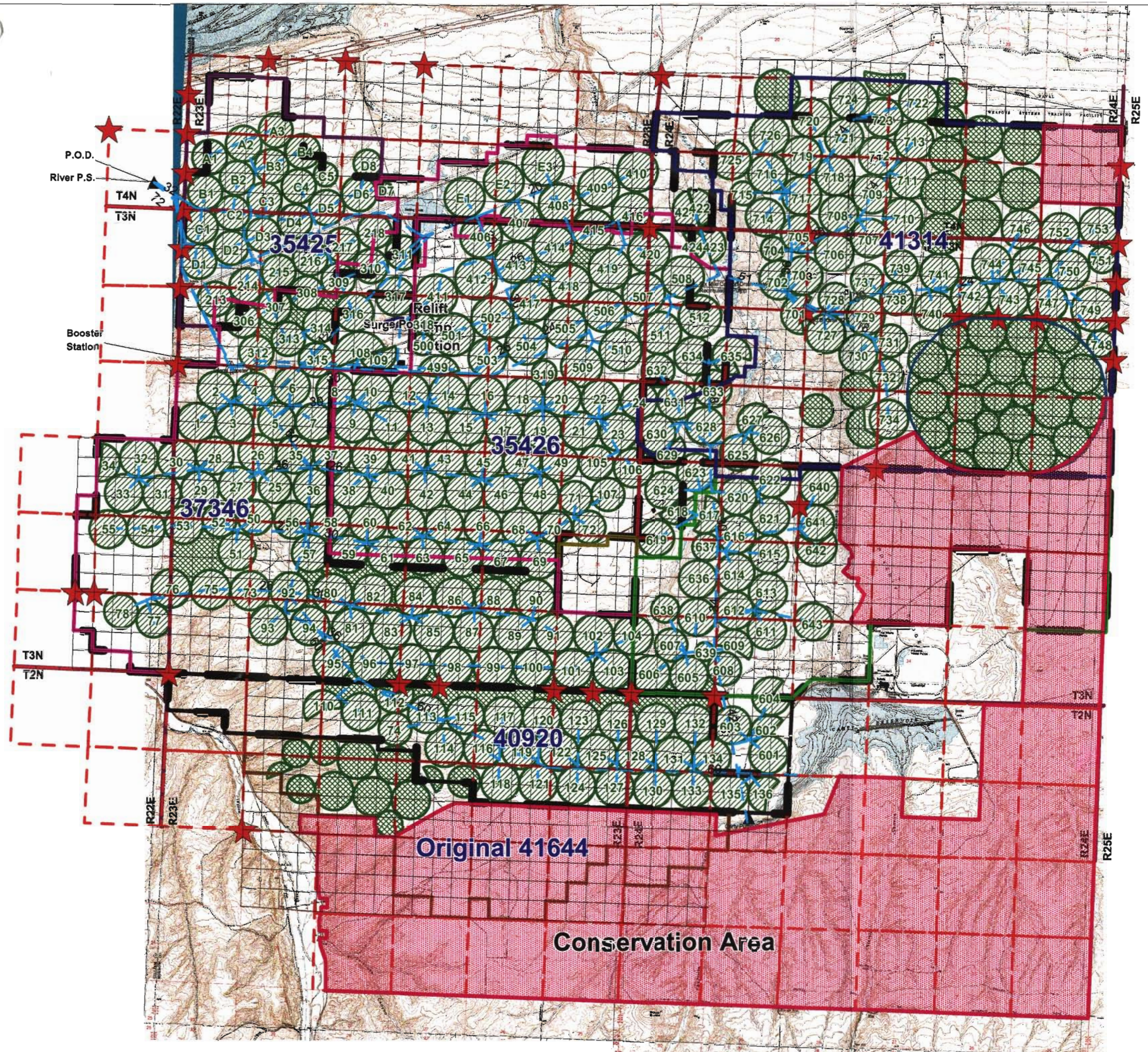


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Point of diversion located 1657 feet north and 2166 feet west of SE corner, section 36, township 3N, range 22E. Source of water is John Day Reservoir on the Columbia River.

Pipe locations and diameters are approximate based on owners map. Mainline to pivot pipes are typically 18 inches in diameter with 8 inch diameter minimum.

Only circles which were surveyed are identified on the map.

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FEB 28 2001

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- Place of use
- Permit 41645 Amended Place of Use
- Monuments located
- Permit area
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