

STATE OF OREGON

COUNTY OF COOS

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

COOS BAY-NORTH BEND WATER BOARD
P.O. BOX 539
COOS BAY, OREGON 97420

PHONE: (541) 267-3128

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-80301

SOURCE OF WATER: PONY CREEK, A TRIBUTARY OF PONY SLOUGH

STORAGE FACILITY: UPPER PONY RESERVOIR, CONSTRUCTED UNDER PERMITS R-1064 AND R-8518

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER PERMIT 53671 FOR MUNICIPAL USE

MAXIMUM VOLUME: 4,100.0 ACRE-FEET EACH YEAR

PERIOD OF ALLOWED USE: YEAR ROUND

DATE OF PRIORITY: MAY 11, 1995

The area submerged by the reservoir, when full, will be 273.0 acres and the maximum depth of water will be 60.0 feet. The maximum height of the dam shall not exceed 77.0 feet.

DAM LOCATION: SW 1/4 SW 1/4, SECTION 28, T25S, R13W, W.M.; 437 FEET WEST FROM NW CORNER, SECTION 28

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SECTION 28
NE 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SE 1/4 SW 1/4
SECTION 29

Application R-80301 Water Resources Department

PERMIT R-12822

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4

SECTION 32

NW 1/4 NW 1/4
SW 1/4 NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4

SECTION 33

TOWNSHIP 25 SOUTH, RANGE 13 WEST, W.M.

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4

SECTION 5

TOWNSHIP 26 SOUTH, RANGE 13 WEST, W.M.

In order for water to be stored under this permit there must be a valid Memorandum of Understanding between the permittee and Oregon Department of Fish and Wildlife (ODFW) waiving the fish passage requirements for the Upper Pony Creek Reservoir Expansion Project. A copy of the MOU shall be kept on file with the Department of Water Resources.

The permittee, ODFW and other appropriate natural resource agencies shall jointly develop, complete and implement a mitigation management and monitoring plan (the "Plan"). The Plan shall include management and monitoring of uplands, fish passage, stream and reservoir habitat and inflow of water from other sources. The Plan shall conform to the objectives and habitat mitigation measures outlined in the Preferred Alternative in the Final Environmental Impact Statement (FEIS) for Coos Bay-North Bend Water Board Water Supply Expansion Project (March 1999, Vol. I and II; US Army Corps of Engineers Action ID: 94-010) and the conditions of this water right. The Plan may be modified from time to time at the initiation of the permittee, ODFW or any other agency that participated in developing the initial Plan. Any modifications shall be incorporated into the Plan and are contingent upon approval of the permittee, ODFW and any other agency that participated in developing the initial Plan.

The permittee, ODFW and other participating natural resource agencies shall work diligently to finalize a draft Plan within three months of issuance of the final order approving application R-80301. A final Plan shall be completed and agreed to prior to storing water in Upper Pony Creek Reservoir under this permit.

If disagreements arise over development of the Plan, compliance with the Plan, or the need for modification to the Plan, the disputing parties (meaning the permittee, ODFW and any other natural resource agencies participating in the process) shall enter into alternative dispute resolution and, within two months, attempt to resolve the disagreement prior to notifying the Water Resources Department (WRD) of water right compliance issues. Water right compliance issues may be raised to WRD without dispute resolution only if immediate and irreparable harm to a species or habitat is about to occur as a result of alleged non-compliance with these water right conditions. The WRD shall make the final decisions on any disagreements under this paragraph unresolved by alternative dispute resolution.

Preceding shutoff, pumping of water from Joe Ney Slough Reservoir into the Upper Pony Creek Reservoir shall be reduced in incremental steps over a period of two weeks during the period of use. The goal of this condition is to minimize stranding of fish attracted to the inflow from Joe Ney Reservoir to Upper Pony Creek Reservoir.

During reservoir construction and filling, no clearing of vegetation, with minimal exceptions approved by ODFW, shall occur within the 100 foot upland mitigation habitat above the 106-foot elevation level in the Upper Pony Creek Reservoir watershed.

Culverts shall be constructed at road crossings at Tarheel Arm, Upper Pony Tributary 2, Libby Arm, and Upper Pony Tributary 3 . The permittee shall consult with ODFW on design of culvert crossings. Culverts shall be at or near zero gradients for fish passage.

Effective and adequate fish passage up and downstream past berms and the culverts described above shall be maintained by the permittee monitoring fish passage at the berms on a weekly basis and at the culverts on a yearly basis. Adequate fish passage shall be monitored by the permittee at the culverts each May. Monitoring will include visual observance of cutthroat trout upstream of the culverted structures. Monitoring data will include the number of observed fish and approximate length. Determinations of fish use will be made by investigating a minimum of six pools or a distance of 300 feet. Culverts shall be adjusted as necessary to ensure effective and adequate fish passage is maintained. ODFW shall be notified when culvert adjustment appears necessary or has been conducted. The applicant shall keep the monitoring records on file.

WRD and ODFW shall have access to Upper Pony Creek Reservoir and watershed as needed to monitor the conditions of this permit. WRD and ODFW shall secure prior approval from the permittee before entering the above mentioned property and such approval shall not be unreasonably withheld.

A minimum 100-foot upland buffer around created wetlands in the reservoir arms shall be established within one year of permit issuance. An additional 25 acres or an additional 200 foot average upland buffer, whichever is smaller, shall be incorporated as a variable width buffer beyond the minimum 100-foot upland buffer. The particular acres shall be agreed to by the permittee and ODFW.

Upon completion of beneficial use under this permit, the permittee's survey and claim of beneficial use report shall specifically address the items listed above.

Dam Safety Conditions:

The outlet gate shall be cycled at least once each year and shall be fully operational at all times.

Routine maintenance of the dam and all appurtenant structures shall be performed as determined necessary by the Water Resources Dam Safety program for the timely removal of trees, brush and debris, and to repair slumps, areas of erosion, or defective equipment.

The constructed works shall conform to the approved plans and specifications on file with the Oregon Water Resources Dam Safety program. Any significant change in the approved design prior to or during construction shall be documented by the project engineer in a letter to Dam Safety. All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon.

No embankment fill shall be placed until preparation of the foundation and excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.

No water shall be stored until the Water Resources Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications. If final construction deviates from the approved design a quality set of reproducible asbuilt drawings, including a revised reservoir capacity graph or table, must accompany the engineer's written certification of completion.

No water shall be stored until the Water Resources Department has approved an Emergency Action Plan for the dam. The Emergency Action Plan shall be updated on an annual basis.

Neither the completed dam nor any appurtenant structure shall be enlarged, modified, or otherwise altered without the prior written approval of the Water Resources Dam Safety program. Except for routine repair and maintenance, plans and specifications prepared by an Oregon licensed professional engineer are required for any significant modification or alteration of the dam or any appurtenant structure.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The permittee shall install, maintain and operate fish screening devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion.

Use under this permit is limited to the reservoir area. This permit does not provide for the appropriation of water for maintaining the water level or maintaining a suitable fresh water condition.

Within three years of permit issuance, the permittee shall submit a water management and conservation plan consistent with OAR Chapter 690, Division 86. The Director may approve an extension of this time line to complete the required water management and conservation plan.

STANDARD CONDITIONS

The storage of water allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

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

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2010. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued April 7, 2000

Water Resources Department
Director

*Superseded
by Permit
R-12870*

Application R-80301 Water Resources Department
Basin 17 Volume 1 JOE NEY SL & MISC
MGMT.CODES 2AD 2AW 2BD 2BW 2FD 2FW 2CD 2CW

PERMIT ~~R-12870~~
District 19