

**Final Order**

*Application History*

On APRIL 29, 2002, BOB SEALBY submitted an application to the Department for a water use permit. Pursuant to ORS 537.409, the Department provided public notice of the application in the Department's weekly public notice. A 60 day comment period followed.

The Department **has not** received adverse comments related to the possible issuance of the attached permit.

The Department **has** received comments from Oregon Department of Fish and Wildlife, Oregon Department of Environmental Quality, and the Watermaster related to the possible issuance of the attached permit. No substantial issues were raised in those comments.

Water is available for the proposed use as described in the attached permit.

The use, as described on the attached permit, will not injure any existing water rights and does not pose potential detrimental impacts to existing fishery resources.

Therefore, the proposed use would not impair or be detrimental to the public interest.

**Order**

Application R-85160 therefore is approved pursuant to ORS 537.409, and Permit Number R-13339 is issued as limited by the conditions contained therein.

DATED August 8, 2002

  
Paul K. Cleary  
Director

*This document was prepared by Gerry Clark. If you have any questions about any of the statements contained in this document I am the most likely the best person to answer your questions. You can reach me at 1-503-378-8455, extension 295.*

*If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Renee Moulun at extension 239.*

*If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 201. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 158 12th Street NE, Salem, OR 97301-4172, Fax: (503)378-6203.*

STATE OF OREGON

COUNTY OF MALHEUR

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

BOB SEALBY  
1039 STEPHENS BLVD  
NYSSA, OREGON 97913

(541) 372-0187

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

APPLICATION FILE NUMBER: R-85160

SOURCE OF WATER: COW HOLLOW DRAIN, A TRIBUTARY OF OWYHEE RIVER

STORAGE FACILITY: UNNAMED RESERVOIR

PURPOSE OR USE OF THE STORED WATER: WILDLIFE AND WETLAND ENHANCEMENT

MAXIMUM STORAGE VOLUME: 9.2 ACRE-FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: FEBRUARY 1  
THROUGH MAY 31 OF EACH YEAR

DATE OF PRIORITY: APRIL 29, 2002

THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 9.5 FEET.

DAM LOCATION: NE 1/4 NW 1/4, SECTION 20, T20S, R46E, W.M.; 460 FEET  
SOUTH & 900 FEET EAST FROM W 1/16 CORNER BETWEEN SECTIONS 17 AND 20,  
SECTION 20

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

NE 1/4 NW 1/4  
SECTION 20  
TOWNSHIP 20 SOUTH, RANGE 46 EAST, W.M.

Measurement, recording and reporting conditions:

- A. The Director may require the permittee to install a meter or other suitable measuring device as approved by the Director. If the Director notifies the permittee to install a meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or measuring device in good working order and shall allow the watermaster access to the meter or measuring device. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.

- B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The permittee shall pass all live flow outside the storage season described above.

This permit does not provide for the appropriation of water for any out of reservoir uses, the maintenance of the water level or maintaining a suitable fresh water condition. If any water is used for out of reservoir uses, or any live flow is appropriated to maintain either the water level or a suitable freshwater condition, a secondary water right is required.

#### STANDARD CONDITIONS

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.

This permit does not authorize the permit holder to pursue this right in such a way as to interfere with or affect adjacent property not under the ownership of the permit holder.

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.

Actual construction work shall begin within one year from permit issuance. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2006.

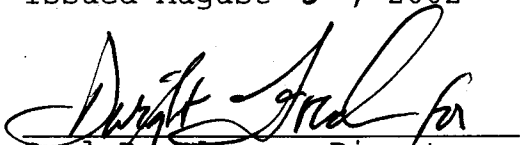
Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.

The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir stores 9.2 or more acre-feet of water.

If no secondary permit exists and the reservoir stores less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- (a) the dimensions of the reservoir;
- (b) the maximum capacity of the reservoir in acre-feet; and
- (c) a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

Issued August 8, 2002

  
Paul R. Cleary, Director  
Water Resources Department

**REAL ESTATE TRANSACTIONS:** Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

**CULTURAL RESOURCES PROTECTION LAWS:** Permittees involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.