

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

J R SIMPLOT CO
PO BOX 27
BOISE, ID 83707

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

APPLICATION FILE NUMBER: R-87015

SOURCE OF WATER: UMATILLA RIVER, A TRIBUTARY OF COLUMBIA RIVER

STORAGE FACILITIES: BUTTER CREEK RESERVOIR (CONSTRUCTED UNDER PERMIT R-12130) AND SPARKS RESERVOIR (CONSTRUCTED UNDER PERMIT R-13872)

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED FOR STORAGE FOR IRRIGATION USE

MAXIMUM VOLUME: 888.0 ACRE FEET (AF), BEING 535.0 AF IN BUTTER CREEK RESERVOIR AND 353.0 AF IN SPARKS RESERVOIR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: NOVEMBER 1 THROUGH MAY 31.

DATE OF PRIORITY: OCTOBER 19, 2007

The area submerged by Butter Creek Reservoir, when full, will be 19.8 acres and the maximum height of the dam shall not exceed 46.5 feet.

The area submerged by Sparks Reservoir, when full, will be 17.0 acres and the maximum height of the dam shall not exceed 20.0 feet.

POINTS OF DIVERSION:

EAST RIVER PUMPING STATION: SESE, SECTION 27, T4N, R28E, W.M.; 150 FEET NORTH AND 4400 FEET EAST FROM SW CORNER, SECTION 27

WEST RIVER PUMPING STATION: NENW, SECTION 34, T4N, R28E, W.M.; 580 FEET SOUTH AND 1710 FEET EAST FROM NW CORNER, SECTION 34

DAM LOCATIONS:

BUTTER CREEK RESERVOIR: SESE, SECTION 5, T3N, R28E, W.M.; 600 FEET NORTH AND 600 FEET WEST FROM SE CORNER, SECTION 5

SPARKS RESERVOIR: NENW, SECTION 34, T3N, R28E, W.M.; 740 FEET SOUTH AND 1600 FEET EAST FROM NW CORNER, SECTION 34

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

SE $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 5

NE $\frac{1}{4}$ NW $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 34

TOWNSHIP 3 NORTH, RANGE 28 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. 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 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.

The Director may require the user to measure outflow to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

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

The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

DAM CONDITIONS

All construction shall be performed under the supervision of a registered professional engineer licensed in Oregon.

The constructed works shall conform to the approved plans and specifications on file with the Water Resources Dam Safety program. The engineer of record shall notify the Water Resources Dam Safety program before making any significant change to the approved design prior to or during construction.

If final construction deviates from the approved design a set reproducible as-constructed drawings, including a revised reservoir capacity graph or table, must accompany the engineer's written certification of completion.

Routine maintenance or repair of the dam, its spillway and all appurtenant structures shall be performed to include, but not limited to, the removal of woody vegetation or debris, prompt restoration of areas of erosion or to repair defective equipment determined necessary for its safe operation.

Except for routine repair and maintenance, design plans and specifications must be prepared by an Oregon licensed professional engineer and approved by the Water Resources Dam Safety program prior to any enlargement, modification, or alteration of the dam or any appurtenant structures.

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.

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.

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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

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.

Construction shall be completed and the permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued August 27, 2009

E. Timothy Ward

for Phillip C. Ward, Director
Water Resources Department