

STATE OF OREGON

COUNTY OF HARNEY

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

U.S. FISH AND WILDLIFE SERVICE
911 NE 11TH AVE.
PORTLAND, OREGON 97232-4181

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

APPLICATION FILE NUMBER: S-84222

PERIOD OF USE: OCTOBER 1 THROUGH MARCH 1

DATE OF PRIORITY: JULY 28, 1999

SOURCE OF WATER: Donner Und Blitzen River, tributary to Malheur Lake, Bridge Creek, Kiger Creek, McCoy Creek, Mud Creek, and Krumbo Creek, tributaries of the Donner Und Blitzen River

PURPOSE OR USE: Wildlife Refuge Management which may include Wildlife Use, Aquatic Life, Wetland Enhancement, Riparian Area Enhancement, Fire Protection, Irrigation Use, Stock Watering, Recreation Use, Construction, Flood Control, Reservoir Maintenance, and Dust Control

The Water Resources Department has determined that the public interest in this use, as described by the type of use, place of use, and point of diversion, is a "High Public Interest" use and is conditioned to protect instream values including habitat for redband trout as set out in the specific permit conditions. OAR 690-410-0070(2)(A).

MAXIMUM RATE/VOLUME

1. **MAXIMUM RATE ALLOWED:** No more than 820.4 cubic feet per second (CFS). The allowed rate being 820.4 CFS from the Donner Und Blitzen River (200.0 CFS from Page Springs Dam, 20.0 CFS from New Buckaroo Dam, 10.0 CFS from Old Buckaroo Dam, 303.0 CFS from Grain Camp Dam, 166.0 CFS from Busse Dam, 84.0 CFS from Dunn Dam, and 37.0 CFS from Sodhouse Dam), 200.0 CFS from Bridge Creek, 188.0 CFS from Mud Creek, 50.0 CFS from Krumbo Creek, 200.0 CFS from McCoy Creek, and 250.0 CFS from Kiger Creek
2. **MAXIMUM VOLUME ALLOWED:** The amount of water authorized under this permit, together with the amount of water authorized under the USFWS'S water rights evidenced by certificates 28524, 15198, 15197, and 14367 (or subsequent orders or certificates evidencing these water rights) is limited to a total volume of 145,000 acre feet (AF) annually (calculated on an annual water year of October 1 through September 30 of each year).

3. The permittee shall designate the acreage, annually, that will be irrigated. The use of the full irrigation duty of three-acre feet per acre for the designated irrigated acres will be assumed. The volume remaining will be available for other uses authorized under this permit.
4. When water is being used for irrigation under this permit, the amount of water used for irrigation, together with the amount secured for irrigation under any other right existing for the same lands, is limited to a diversion of one-fortieth of one cubic foot per second (or its equivalent) and 3.0 acre feet for each acre irrigated.

DONNER UND BLITZEN RIVER POINT OF DIVERSION LOCATIONS:

SODHOUSE DAM: SE 1/4 SE 1/4, SECTION 3, T27S, R31E, W.M.; 856 FEET NORTH & 4 FEET WEST FROM SE CORNER, SECTION 3

DUNN DAM: NW 1/4 SE 1/4, SECTION 15, T27S, R31E, W.M.; 1436 FEET NORTH & 2527 FEET WEST FROM SE CORNER, SECTION 15

BUSSE DAM: NW 1/4 NE 1/4, SECTION 22, T28S, R31E, W.M.; 906 FEET SOUTH & 2094 FEET WEST FROM NE CORNER, SECTION 22

GRAIN CAMP DAM: NE 1/4 NE 1/4, SECTION 26, T29S, R31E, W.M.; 859 FEET SOUTH & 527 FEET WEST FROM NE CORNER, SECTION 26

OLD BUCKAROO DAM: SW 1/4 SW 1/4, SECTION 31, T31S, R32.5E, W.M.; 602 FEET NORTH & 50 FEET EAST FROM SW CORNER, SECTION 31

NEW BUCKAROO DAM: NW 1/4 NW 1/4, SECTION 6, T32S, R32.5E, W.M.; 1356 FEET SOUTH & 381 FEET EAST FROM NW CORNER, SECTION 6;

PAGE SPRINGS DAM: SW 1/4 SW 1/4, SECTION 8, T32S, R32.5E, W.M.; 815 FEET NORTH & 583 FEET EAST FROM SW CORNER, SECTION 8

BRIDGE CREEK POINT OF DIVERSION LOCATION:

NW 1/4 NE 1/4, SECTION 32, T31S, R32.5E, W.M.; 852 FEET SOUTH & 1796 FEET WEST FROM NE CORNER, SECTION 32

MUD CREEK POINT OF DIVERSION LOCATION:

EASTSIDE CANAL: NW 1/4 NE 1/4, SECTION 5, T32S, R32.5E, W.M.; 325 FEET SOUTH AND 1329 FEET WEST FROM NE CORNER, SECTION 5

MCCOY CREEK POINT OF DIVERSION LOCATION:

MCCOY CREEK STRUCTURE: NW 1/4 SW 1/4, SECTION 21, T29S, R32E, W.M.; 2260

FEET SOUTH & 960 FEET EAST FROM NW CORNER, SECTION 21

KIGER CREEK POINT OF DIVERSION LOCATION:

NW 1/4 NW 1/4, SECTION 21, T29S, R32E, W.M.; 98 FEET SOUTH & 1340 FEET WEST FROM NE CORNER, SECTION 21

KRUMBO CREEK POINT OF DIVERSION LOCATION:

KRUMBO POND DIKE: NW 1/4 NE 1/4, SECTION 24, T30S, R31E, W.M.; 635 FEET SOUTH & 1779 FEET WEST FROM NE CORNER, SECTION 24

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SECTION 34
TOWNSHIP 26 SOUTH,
RANGE 31 EAST, W.M.

SE 1/4 NE 1/4
ALL SE 1/4
SECTION 25

ALL NE 1/4
SECTION 36
TOWNSHIP 27 SOUTH,
RANGE 30 EAST, W.M.

NE 1/4 NW 1/4
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 2

ALL
SECTION 3

ALL
SECTION 4

SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 8

ALL
SECTION 9

ALL
SECTION 10

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 11

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 14

ALL
SECTION 15

ALL
SECTION 16

ALL NE 1/4
NE 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 17

ALL
SECTION 31

ALL
SECTION 32

ALL
SECTION 33

SE 1/4 SW 1/4
ALL SE 1/4
SECTION 18

ALL
SECTION 34

ALL
SECTION 19

ALL NW 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SECTION 35

ALL
SECTION 20

TOWNSHIP 27 SOUTH,
RANGE 31 EAST, W.M.

ALL
SECTION 21

ALL NE 1/4
ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 3

ALL
SECTION 22

NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
SECTION 23

ALL
SECTION 4

ALL NW 1/4
ALL SW 1/4
SECTION 26

ALL
SECTION 5

ALL
SECTION 27

ALL NE 1/4
ALL NW 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 6

ALL
SECTION 28

ALL
SECTION 29

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 7

ALL
SECTION 30

ALL
SECTION 8

ALL
SECTION 9

NW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
SECTION 10

ALL NW 1/4
ALL SW 1/4
SECTION 15

ALL
SECTION 16

ALL
SECTION 17

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 18

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 19

ALL
SECTION 20

ALL
SECTION 21

ALL
SECTION 22

SW 1/4 NW 1/4
ALL SW 1/4
SECTION 23

SW 1/4 NE 1/4
NW 1/4 NW 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 25

ALL
SECTION 26

ALL
SECTION 27

ALL
SECTION 28

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

NE 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 32

ALL NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
ALL SE 1/4
SECTION 33

ALL
SECTION 34

ALL
SECTION 35

NE 1/4 NE 1/4
NW 1/4 NE 1/4

SW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 36
TOWNSHIP 28 SOUTH,
RANGE 31 EAST, W.M.

NW 1/4 NE 1/4
SW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 1

ALL
SECTION 2

ALL
SECTION 3

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 4

ALL NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 10

ALL
SECTION 11

NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 12

ALL
SECTION 13

ALL
SECTION 14

ALL NE 1/4
NE 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SE 1/4
SECTION 15

NE 1/4 NE 1/4
SECTION 22

ALL NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
ALL SE 1/4
SECTION 23

ALL NE 1/4
ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 24

NW 1/4 NE 1/4
SW 1/4 NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
SE 1/4 SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 25

ALL NE 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 26
SE 1/4 SW 1/4
NE 1/4 SE 1/4

SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 34

NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
SECTION 35

TOWNSHIP 29 SOUTH,
RANGE 31 EAST, W.M.

SW 1/4 NE 1/4
SE 1/4 NE 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 7

NW 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
SW 1/4 SE 1/4
SECTION 8

SW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 15

ALL NE 1/4
NE 1/4 NW 1/4
SW 1/4 SW 1/4
SECTION 16

ALL
SECTION 17

ALL
SECTION 18

ALL NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4

NW 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 19

ALL
SECTION 20

ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 21

NW 1/4 NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SECTION 29

NE 1/4 NE 1/4
SECTION 30
TOWNSHIP 29 SOUTH,
RANGE 32 EAST, W.M.

SW 1/4 SW 1/4
SECTION 2

ALL NE 1/4
NE 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 3

ALL
SECTION 10

ALL NW 1/4
ALL SW 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 11

SW 1/4 SW 1/4
SECTION 12

SW 1/4 NE 1/4
SE 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 13

ALL NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 14

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SW 1/4 NE 1/4
NE 1/4 NW 1/4
SE 1/4 NW 1/4
NE 1/4 SW 1/4
SW 1/4 SW 1/4
SE 1/4 SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 15

NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 21

ALL
SECTION 22

NE 1/4 NE 1/4
NW 1/4 SW 1/4
SW 1/4 SW 1/4
SECTION 23

ALL NE 1/4
NE 1/4 NW 1/4
NW 1/4 NW 1/4
SE 1/4 NW 1/4
SECTION 24

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 26

ALL
SECTION 27

NE 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
ALL SE 1/4
SECTION 28

ALL NE 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 33

ALL
SECTION 34

NW 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 35

TOWNSHIP 30 SOUTH,
RANGE 31 EAST, W.M.

ALL SW 1/4
ALL SE 1/4
SECTION 18

ALL NE 1/4
ALL NW 1/4

NE 1/4 SW 1/4
NW 1/4 SW 1/4
ALL SE 1/4
SECTION 19

ALL NW 1/4
ALL SW 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 20

SW 1/4 SW 1/4
SE 1/4 SW 1/4
SW 1/4 SE 1/4
SECTION 27

NW 1/4 NW 1/4
SE 1/4 NW 1/4
NW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 28

ALL NW 1/4
SECTION 29

NE 1/4 NE 1/4
SECTION 30

NE 1/4 NE 1/4
SECTION 33

NE 1/4 NE 1/4
NW 1/4 NE 1/4
NW 1/4 NW 1/4
SECTION 34

TOWNSHIP 30 SOUTH,
RANGE 32 EAST, W.M.

NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 1

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4

SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 12

ALL NE 1/4
NE 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 13

SE 1/4 SE 1/4
SECTION 23

ALL NE 1/4
NE 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 24

ALL
SECTION 25

NE 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 26

NE 1/4 NE 1/4
SW 1/4 NE 1/4
SE 1/4 NE 1/4
NE 1/4 SW 1/4
SE 1/4 SW 1/4
ALL SE 1/4
SECTION 35

ALL
SECTION 36
TOWNSHIP 31 SOUTH,
RANGE 32 EAST, W.M.

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

SW 1/4 SW 1/4
SECTION 3

ALL
SECTION 17

SW 1/4 NE 1/4
SE 1/4 NE 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 4

ALL
SECTION 18

ALL
SECTION 19

ALL
SECTION 20

SW 1/4 NE 1/4
SE 1/4 NE 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 5

NW 1/4 NE 1/4
SW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 21

SW 1/4 NE 1/4
SE 1/4 NE 1/4
SW 1/4 NW 1/4
SE 1/4 NW 1/4
ALL SW 1/4
ALL SE 1/4
SECTION 6

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

ALL
SECTION 7

ALL
SECTION 29

ALL
SECTION 8

ALL
SECTION 30

NE 1/4 NE 1/4
NW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
SECTION 9

ALL
SECTION 31

NW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4
SECTION 16

ALL
SECTION 32

NW 1/4 NE 1/4
SW 1/4 NE 1/4
ALL NW 1/4
ALL SW 1/4

NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 33
TOWNSHIP 31 SOUTH,
RANGE 32.5 EAST, W.M.

ALL
SECTION 1

ALL NE 1/4
NE 1/4 SE 1/4
SE 1/4 SE 1/4
SECTION 2

NE 1/4 NE 1/4
NW 1/4 NE 1/4
SE 1/4 NE 1/4
SECTION 11

ALL NE 1/4
ALL NW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SECTION 12
TOWNSHIP 32 SOUTH,
RANGE 32 EAST, W.M.

NW 1/4 NE 1/4
SW 1/4 NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
NW 1/4 SE 1/4
SECTION 4

ALL NE 1/4
ALL NW 1/4
ALL SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SW 1/4 SE 1/4
SECTION 5

ALL
SECTION 6

ALL NE 1/4
ALL NW 1/4
NE 1/4 SW 1/4
NW 1/4 SW 1/4
NE 1/4 SE 1/4
NW 1/4 SE 1/4
SECTION 7

NW 1/4 NE 1/4
NE 1/4 NW 1/4
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 8
TOWNSHIP 32 SOUTH,
RANGE 32.5 EAST. W.M.

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 any meter or measuring device. Where the meter or measuring device is located within a locked structure, the watermaster shall be given access upon reasonable notice.

Within 1 year of permit issuance, the permittee shall develop and submit a Water Quality Monitoring Plan. The Director may approve an extension of this timeline to complete the required Plan. The Plan shall be reviewed and approved by the Water Resources Department in conjunction with the Department of Environmental Quality.

In the event of a request for a change in point of appropriation, an additional point of appropriation or alteration of the appropriation facility associated with this authorized diversion, the quantity of water allowed herein, together with any other right, shall not exceed the capacity of the facility at the time of perfection of this right.

Flow Conditions

Before certification of this permit, the permittee shall conduct a study that determines flow levels and habitat improvement measures during the period of use covered by this permit (October 1 through March 1) necessary for maintaining and restoring Redband trout and its habitats in the Donner und Blitzen River and its tributaries within the Malheur National Wildlife Refuge. The flow study must be conducted collaboratively with the Oregon Department of Fish and Wildlife at all levels of the study development, including study design, analysis and determination of new flow levels. The flow study shall include an analysis of whether peak flows would benefit Redband trout and their habitat within the Malheur National Wildlife Refuge and, if so, determine location, duration, and amount of necessary peak flow levels. The necessary peak flows, if any, will be set within the limits of the Refuge's infrastructure. The flow levels determined by the study, including any peak flows, will become a bypass condition in the permit and subsequent certificate. In the interim the following three bypass flow conditions will apply.

1. During diversions under this permit from the Donner und Blitzen River, bypass flows in the Donner und Blitzen River within the Malheur National Wildlife Refuge must be at: 43.0 cubic foot per second (CFS) during the month of October, 45.0 CFS during the month of November, 45.0 CFS during the month of December, 54.0 CFS during the month of January, and 52.0 CFS during the month of February. The flows shall be

measured to ensure that diversions are consistent with the bypass flow conditions. Except that, when flows in the Donner und Blitzen River are at or below the prescribed bypass flow levels, up to 5.0 CFS may be diverted from the Donner und Blitzen River to East Canal as measured directly below the diversion point for the East Canal.

2. During diversions under this permit from Bridge Creek, bypass flows in Bridge Creek from the East Canal to the Donner und Blitzen River must be at: 12.0 CFS during the month of October, 11.0 CFS during the month of November, 11.0 CFS during the month of December, 11.0 CFS during the month of January, and 11.0 CFS during the month of February, or the actual flow at U.S. Fish and Wildlife Service gage number 357004 on Bridge Creek (formerly U.S. Geological Survey gage number 10397000), whichever is less. These flows shall be measured directly above the confluence of Bridge Creek and the Donner und Blitzen River.
3. During diversions under this permit from McCoy Creek, bypass flows in McCoy Creek within the Malheur National Wildlife Refuge must be at 5.0 CFS.

The permittee shall provide adequate and effective upstream and downstream fish passage past all diversions associated with this permit on the Donner und Blitzen River and its tributaries, as required by the Oregon Department of Fish and Wildlife. Oregon Department of Fish and Wildlife fish passage criteria must be used unless the U.S. Fish and Wildlife Service has developed more protective criteria specific to redband trout and other native fish species that occur in the Donner und Blitzen basin. Oregon Department of Fish and Wildlife must be consulted on design and during installation of fish passage facilities.

The permittee shall install and maintain fish screening as required by the Oregon Department of Fish and Wildlife. Oregon Department of Fish and Wildlife fish screening criteria must be used unless the permittee has developed more protective criteria specific to redband trout and other native fish species occurring in the Donner und Blitzen basin. Oregon Department of Fish and Wildlife must be consulted on design and during installation of fish screens.

The permittee shall meet state and federal water quality standards and requirements.

The permittee shall implement the provisions concerning measurement and reporting of flows contained in the existing measurement and reporting plan developed by the permittee and approved by the Oregon Water Resources Department. This plan is titled "Water Measuring Plan for Malheur National Wildlife Refuge in Compliance with ORS 537.099: Water Use Reporting for Government Entities," September, 1996. The plan was approved by the Water Resources Department in a letter dated November 4, 1996.

Water Sharing/Subordination - Direct Diversion

If bypass flows as measured at the McCoy Creek gaging station are met, then the permittee may divert up to 20.0 CFS from McCoy Creek. Thereafter, for purposes of water regulation, so long as at least the bypass flows plus 20.0 CFS is passing the McCoy Creek gaging station, the Diamond Valley portion of this right shall not have priority over water in excess of this amount up to 20.0 CFS, not to exceed 6,000

AF, of junior priority date water rights as may be authorized by OWRD. Thereafter, the permittee may take the remaining water as it is entitled under this right.

Large Storage Facility

1. In addition to the subordination above, this permit shall be subordinate, for purposes of water regulation, to junior priority date water rights as may be authorized by OWRD to store water in reservoirs greater than 9.2 AF within the Diamond Valley, not to exceed a total of 600 AF for all reservoirs.
2. This permit shall be subordinate as described in (1) above only if: (a) the junior priority date reservoir(s) will be on tributaries of the major streams (Kiger and McCoy Creek) and/or on the minor tributaries of the Diamond Valley (Cucamonga and Swamp Creeks); and (b) the applicant(s) and permittee will coordinate to condition such a new reservoir permit to ensure the Refuge reservoir and obligations including the bypass flows are protected.

Stockwater - Direct Diversions

In addition to the subordinations above, this permit shall be subordinate, for purposes of water regulation, to junior priority water rights as may be authorized by the OWRD to use direct flow diversions into existing ditches, for uses in existence as of December 31, 2004, for livestock purposes during the period October 1 to March 1 of each year.

Existing Stockwater Ponds/Reservoirs

In addition to the subordinations above, this permit shall be subordinate, for purposes of water regulation, to junior priority water rights as may be authorized by the OWRD to store water for livestock or wildlife purposes so long as: the storage permit is for 9.2 AF or less; the pond/reservoir is an existing un-permitted use that is otherwise not authorized as an exempt use or pond, constructed prior to December 31, 2004; and the application for the livestock or wildlife pond/reservoir is submitted to OWRD prior to December 31, 2009.

Future Stockwater Ponds/Reservoirs

1. In addition to the subordinations above, for purposes of water regulation, this permit shall not have priority over junior priority date water rights as may be authorized by the OWRD to store water for livestock and wildlife purposes in storage facilities which are less than 9.2 AF in size, up to a total of 700 AF of water subject to the following limitations:
 - (i) Up to two hundred and twenty (220) AF from the Diamond Tributaries.
 - (ii) Up to one hundred and fifty (150) AF from the Upper Donner und Blitzen River (above Page Springs Dam), Mud Creek, and Bridge Creek basins.
 - (iii) Up to three hundred and thirty (330) AF from all other basins within the Donner und Blitzen subbasin.

This being a combined total from all basins 700 acre feet.

2. This permit shall be subordinate as described in (1) above only if such storage facilities will be widely distributed throughout each basin and the permittees' ability to ensure protection of Malheur National Wildlife Refuge resources is maintained. The intent of this subordination is to ensure that the resources of the Malheur National Wildlife Refuge are protected while providing water users the opportunity to submit permit applications for new storage facilities.

SPECIFIC CONDITIONS

After permit and associated certificate issuance, no proposed subsequent use of any portion of this water right, or any water right derived from this water right, shall occur unless the Department has determined, following public notice and opportunity for comment, that the proposed subsequent use, as described by the type of use, place of use and point of diversion is a "high public interest" use and is conditioned to protect instream values, including habitat for redband trout.

Livestock watering directly from a stream does not establish a right to make a call against any junior water users holding water rights nor may livestock watering uses be regulated in favor of this or any other right. This condition is a statement of OWRD's policy in regards to livestock watering as articulated in the Field Enforcement Manual. This policy applies to all water rights, whether or not the water right includes this condition. This condition will be in effect so long as the policy is in effect.

STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

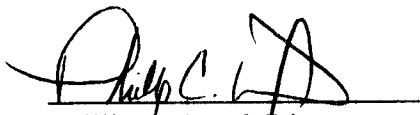
Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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.

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.

Actual construction work shall begin within one year from issuance of the permit. Complete application of the water to the use shall be made on or before October 1, 2009. 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 February 9, 2005



Phillip C. Ward, Director
Water Resources Department