

STATE OF OREGON

COUNTY OF BAKER

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

DURBIN CREEK RANCH
C/O MARY AGAR
3292 GRASS CREEK RD
THERMOPOLIS, WY 82443

This superseding permit is issued to describe an amendment for a change in point of diversion proposed under Permit Amendment Application T-11982 and approved by Special Order Vol. 96, Page ~~554-556~~ entered JUL 07 2015, and to describe an extension of time for complete application of water approved December 19, 2014, and an assignment to a new permittee approved March 24, 2014. This permit supersedes Permit S-54139.

The specific limits for the use are listed below along with conditions of use.

APPLICATION FILE NUMBER: S-71071

SOURCE OF WATER: SNAKE RIVER, TRIBUTARY TO THE COLUMBIA RIVER

PURPOSE OR USE: IRRIGATION OF 59.2 ACRES, SUPPLEMENTAL IRRIGATION OF 60.0 ACRES AND STOCKWATER

RATE OF ALLOWED USE: 2.23 CUBIC FEET PER SECOND (CFS), BEING 1.48 CFS FOR PRIMARY IRRIGATION AND 0.75 CFS FOR SUPPLEMENTAL IRRIGATION (TO BRING UP TO FULL RATE & DUTY)

PERIOD OF ALLOWED USE: MARCH 1 THROUGH OCTOBER 31 AND AS FURTHER LIMITED BELOW.

FOR THE PERIOD APRIL 10 THROUGH AUGUST 31, WATER USE UNDER THIS PERMIT IS LIMITED TO THOSE TIMES THAT FLOW AUGMENTATION TARGET FLOWS FOR THE SNAKE AND COLUMBIA RIVER MAINSTEM, AS SET BY THE NATIONAL OCEANIC AND ATMOSPHERIC ADMINISTRATION FISHERIES (NOAA FISHERIES), ARE BEING MET FOR SNAKE RIVER SOCKEYE, SNAKE RIVER FALL CHINOOK AND SNAKE RIVER SPRING/SUMMER CHINOOK. TARGET FLOWS SHALL BE CONSIDERED MET WHEN THE NATIONAL WEATHER SERVICE NORTHWEST RIVER FORECAST CENTER'S FLOW FORECAST AND TREND AT BROWNLEE DAM FOR THAT WEEK (ISSUED THE PREVIOUS WEEK) PROJECT THE FLOW AUGMENTATION TARGET FLOWS WILL BE MET. THE NATIONAL WEATHER SERVICE NORTHWEST RIVER FORECAST CENTER CURRENTLY POSTS ITS WEEKLY FLOW FORECAST AND TREND AT BROWNLEE DAM AT THE FOLLOWING WEB ADDRESS:<http://www.nwrfc.noaa.gov/river/station/flowplot/flowplot.cgi?BRN11> IN

THE EVENT THE WEEKLY RIVER FORECAST AND TREND AT BROWNLEE DAM IS NO LONGER AVAILABLE AT THIS WEB ADDRESS, THE PERMITTEE MAY DETERMINE WHETHER THE TARGET FLOWS WILL BE MET BASED ON ANY OTHER SITE THAT PROVIDES INSTREAM FLOW INFORMATION UPSTREAM FROM THE POINT OF DIVERSION.

DATE OF PRIORITY: DECEMBER 27, 1990

POINT OF DIVERSION LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	45 E	WM	4	NW NW	300 FEET SOUTH AND 300 FEET EAST FROM THE NW CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to diversion of ONE-FORTIETH of one cubic foot per second (or its equivalent) and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION AND STOCKWATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	45 E	WM	32	SE SW	6.0
14 S	45 E	WM	32	NW SE	0.8
14 S	45 E	WM	32	SW SE	16.0
14 S	45 E	WM	32	SE SE	3.2
15 S	45 E	WM	5	NE NE	22.4
15 S	45 E	WM	5	NW NE	10.8

SUPPLEMENTAL IRRIGATION AND STOCKWATER					
Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	45 E	WM	32	SE SW	2.0
14 S	45 E	WM	32	NE SE	8.0
14 S	45 E	WM	32	SW SE	20.0
14 S	45 E	WM	32	SE SE	30.0

Permit Amendment T-11982 Conditions:

The quantity of water diverted at the new point of diversion, shall not exceed the quantity of water lawfully available at the original point of diversion.

By October 1, 2017, the water user shall install an approved fish screen at the new point of diversion. The water user may withdraw water at the new point of diversion without a screen until October 1, 2017. The water user shall provide to OWRD a written statement from Oregon Department of Fish and Wildlife (ODFW) that the installed screen meets the state's criteria, or that ODFW has determined a screen is not necessary.

The water user shall maintain and operate the fish screen at the new point of diversion consistent with ODFW's operational and maintenance standards. If ODFW determines the screen is not functioning properly, and is unsuccessful in working with the water user to meet ODFW

standards, ODFW may request that OWRD regulate the use of water until OWRD receives notification from ODFW that the fish screen is functioning properly.

Water shall be acquired from the same surface water source as the original point of diversion.

Extension of Time Conditions:

Checkpoint Condition

The permit holder must submit a completed Progress Report Form to the Department by **October 1, 2018.**

- (a) At each checkpoint, the permit holder shall submit and the Department shall review evidence of the permit holder's diligence towards completion of the project and compliance with terms and conditions of the permit and extension. If, after this review, the Department determines the permit holder has not been diligent in developing and perfecting the water use permit, or complied with all terms and conditions, the Department shall modify or further condition the permit or extension to ensure future compliance, or begin cancellation proceedings on the undeveloped portion of the permit pursuant to ORS 537.260 or 537.410, or require submission of a final proof survey pursuant to ORS 537.250;
- (b) The Department shall provide notice of receipt of progress reports in its weekly notice and shall allow a 30 day comment period for each report. The Department shall provide notice of its determination to anyone who submitted comments.

Original Permit Conditions:

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.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter within 50 feet beyond the pump at the point of diversion from the Snake River. The totalizing flow meter must be installed and maintained in good working order and as identified in OAR 690-507-645.
- B. The permittee shall allow the watermaster access to the meter; provided however, where the meter is located within a private structure, the watermaster shall request access upon reasonable notice
- C. The permittee shall keep a record of water use under this permit for each irrigation season through the 2007 irrigation season. The record shall include the rate at which water was diverted, the period of time stated by the date and hours of water use, and the place of use irrigated under this permit.

- D. After the 2007 irrigation season, the permittee shall keep a record of water use as described in C above only for water use under this permit between April 10 and August 31 of each season.
- E. In addition to (C) and (D) above, when water use under this permit occurs between April 10 and August 31, the permittee shall keep documentary evidence of the National Weather Service Northwest River Forecast Center's flow forecast and trend at Brownlee dam from the week prior to water use (projection for the week water was used).
- F. The records kept by the permittee pursuant to conditions (C), (D) and (E) above shall be submitted to the watermaster and the Department's Salem office by December 1 of each year.

In the event of a request for a change in the 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 portion of the right perfected at the time of perfection of this right.

The permittee shall install, maintain and operate fish screening to prevent fish from entering the proposed diversion. The fish screen shall comply with 50 CFR 223.203 9(i)--(iii) of the *Endangered and Threatened Species; Final Rule Governing Take of 14 Threatened Salmon and Steelhead Evolutionary Significant Units* issued by the National Marine Fisheries Service (now NOAA Fisheries) on July 10, 2000. The required screens are to be in place, functional and approved in writing by the Oregon Department of Fish and Wildlife (ODFW) and NOAA Fisheries, or NOAA Fisheries designee, before diversion of any water.

The permittee shall allow ODFW and NOAA Fisheries, or NOAA Fisheries designee, access to the diversion facility for purposes of inspection and determination of compliance with the screening condition above.

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. New regulations may require the use of best practical technologies or conservation practices to achieve beneficial use of water without waste.

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 time 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.

Actual construction work shall begin within one year from original permit issuance (November 12, 2004). Complete application of the water to the use shall be made on or before October 1, 2019. 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.

Issued July 7, 2015.



Dwight French, Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department

