

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-83590

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On October 27, 1997, U.S. BUREAU OF RECLAMATION submitted an application to the Department for the following water use permit:

- Amount of Water: 7215.00 ACRE-FEET
- Use of Water: SUPPLEMENTAL IRRIGATION OF 8800.40 ACRES
- Source of Water: MCKAY RESERVOIR, A TRIBUTARY OF UMATILLA RIVER
- Area of Proposed Use: UMATILLA County within
 - NW 1/4 SW 1/4 13.8 ACRES
 - SECTION 3
 - SW 1/4 NW 1/4 37.0 ACRES
 - SE 1/4 NW 1/4 37.0 ACRES
 - NE 1/4 SW 1/4 29.1 ACRES
 - NW 1/4 SW 1/4 28.0 ACRES
 - SW 1/4 SW 1/4 38.0 ACRES
 - SE 1/4 SW 1/4 1.2 ACRES
 - NE 1/4 SE 1/4 29.8 ACRES
 - NW 1/4 SE 1/4 35.1 ACRES
 - SW 1/4 SE 1/4 35.3 ACRES
 - SE 1/4 SE 1/4 29.5 ACRES
 - SECTION 4
 - NE 1/4 NE 1/4 21.7 ACRES
 - NW 1/4 NE 1/4 35.0 ACRES
 - SE 1/4 NE 1/4 8.5 ACRES
 - NE 1/4 SE 1/4 21.6 ACRES
 - SECTION 7
 - SW 1/4 NW 1/4 14.9 ACRES
 - NW 1/4 SW 1/4 32.4 ACRES
 - SW 1/4 SE 1/4 23.0 ACRES
 - SECTION 8
 - NE 1/4 NE 1/4 31.0 ACRES
 - NW 1/4 NE 1/4 34.1 ACRES
 - SW 1/4 NE 1/4 35.2 ACRES
 - SE 1/4 NE 1/4 29.5 ACRES

NE 1/4 NW 1/4 30.7 ACRES
NW 1/4 NW 1/4 33.8 ACRES
SW 1/4 NW 1/4 35.9 ACRES
SE 1/4 NW 1/4 31.1 ACRES
NE 1/4 SW 1/4 28.0 ACRES
NW 1/4 SW 1/4 29.8 ACRES
SW 1/4 SW 1/4 35.9 ACRES
SE 1/4 SW 1/4 31.6 ACRES
NE 1/4 SE 1/4 31.1 ACRES
NW 1/4 SE 1/4 33.4 ACRES
SW 1/4 SE 1/4 35.3 ACRES
SE 1/4 SE 1/4 30.6 ACRES

SECTION 9

NE 1/4 NE 1/4 32.5 ACRES
NW 1/4 NE 1/4 32.5 ACRES
SW 1/4 NE 1/4 32.5 ACRES
SE 1/4 NE 1/4 32.5 ACRES
NE 1/4 NW 1/4 28.3 ACRES
NW 1/4 NW 1/4 33.9 ACRES
SW 1/4 NW 1/4 34.4 ACRES
SE 1/4 NW 1/4 28.8 ACRES
NE 1/4 SW 1/4 31.9 ACRES
NW 1/4 SW 1/4 32.5 ACRES
SW 1/4 SW 1/4 32.4 ACRES
SE 1/4 SW 1/4 31.9 ACRES
NE 1/4 SE 1/4 1.4 ACRES
NW 1/4 SE 1/4 39.6 ACRES
SW 1/4 SE 1/4 4.4 ACRES

SECTION 10

SW 1/4 SE 1/4 29.5 ACRES
SE 1/4 SE 1/4 31.0 ACRES

SECTION 13

NW 1/4 NE 1/4 38.0 ACRES
SW 1/4 NE 1/4 38.0 ACRES
NE 1/4 NW 1/4 31.3 ACRES
NW 1/4 NW 1/4 31.3 ACRES
SW 1/4 NW 1/4 31.2 ACRES
SE 1/4 NW 1/4 31.2 ACRES
NE 1/4 SW 1/4 31.2 ACRES
NW 1/4 SW 1/4 31.4 ACRES
SW 1/4 SW 1/4 31.2 ACRES
SE 1/4 SW 1/4 31.2 ACRES

SECTION 15

NE 1/4 NE 1/4 30.2 ACRES
NW 1/4 NE 1/4 32.0 ACRES
SW 1/4 NE 1/4 31.4 ACRES
SE 1/4 NE 1/4 31.4 ACRES
NE 1/4 NW 1/4 29.8 ACRES
NW 1/4 NW 1/4 32.2 ACRES
SW 1/4 NW 1/4 33.5 ACRES
SE 1/4 NW 1/4 29.5 ACRES
NE 1/4 SW 1/4 29.6 ACRES
NW 1/4 SW 1/4 32.2 ACRES

SW 1/4 SW 1/4 34.2 ACRES
 SE 1/4 SW 1/4 29.0 ACRES
 NE 1/4 SE 1/4 31.2 ACRES
 NW 1/4 SE 1/4 31.2 ACRES
 SW 1/4 SE 1/4 31.5 ACRES
 SE 1/4 SE 1/4 31.2 ACRES

SECTION 16

NE 1/4 NE 1/4 29.0 ACRES
 NW 1/4 NE 1/4 19.0 ACRES
 SW 1/4 NE 1/4 21.0 ACRES
 SE 1/4 NE 1/4 25.0 ACRES
 NE 1/4 SW 1/4 10.1 ACRES
 SE 1/4 SW 1/4 5.8 ACRES
 NE 1/4 SE 1/4 34.6 ACRES
 NW 1/4 SE 1/4 40.0 ACRES
 SW 1/4 SE 1/4 35.9 ACRES
 SE 1/4 SE 1/4 24.5 ACRES

SECTION 17

NE 1/4 NE 1/4 31.4 ACRES
 NW 1/4 NE 1/4 34.3 ACRES
 SW 1/4 NE 1/4 31.4 ACRES
 SE 1/4 NE 1/4 31.0 ACRES
 NE 1/4 NW 1/4 31.4 ACRES
 NW 1/4 NW 1/4 31.5 ACRES
 SW 1/4 NW 1/4 32.6 ACRES
 SE 1/4 NW 1/4 31.4 ACRES
 NE 1/4 SW 1/4 31.3 ACRES
 NW 1/4 SW 1/4 31.2 ACRES
 SW 1/4 SW 1/4 31.2 ACRES
 SE 1/4 SW 1/4 31.3 ACRES
 NE 1/4 SE 1/4 31.3 ACRES
 NW 1/4 SE 1/4 31.2 ACRES
 SW 1/4 SE 1/4 31.3 ACRES
 SE 1/4 SE 1/4 31.3 ACRES

SECTION 21

NE 1/4 NE 1/4 32.5 ACRES
 NW 1/4 NE 1/4 32.5 ACRES
 SW 1/4 NE 1/4 32.5 ACRES
 SE 1/4 NE 1/4 32.5 ACRES
 NE 1/4 NW 1/4 31.2 ACRES
 NW 1/4 NW 1/4 31.5 ACRES
 SW 1/4 NW 1/4 31.5 ACRES
 SE 1/4 NW 1/4 31.2 ACRES

SECTION 22

SW 1/4 NW 1/4 35.1 ACRES
 SE 1/4 NW 1/4 21.4 ACRES
 NE 1/4 SW 1/4 26.5 ACRES
 NW 1/4 SW 1/4 27.6 ACRES
 SW 1/4 SW 1/4 38.3 ACRES
 SE 1/4 SW 1/4 38.8 ACRES
 NE 1/4 SE 1/4 27.6 ACRES
 NW 1/4 SE 1/4 32.5 ACRES
 SW 1/4 SE 1/4 26.4 ACRES

SE 1/4 SE 1/4 26.2 ACRES
SECTION 23

NE 1/4 NE 1/4 30.0 ACRES
NW 1/4 NE 1/4 30.4 ACRES
SW 1/4 NE 1/4 38.4 ACRES
SE 1/4 NE 1/4 32.4 ACRES
NE 1/4 NW 1/4 32.0 ACRES
NW 1/4 NW 1/4 30.4 ACRES
SW 1/4 NW 1/4 34.0 ACRES
SE 1/4 NW 1/4 38.4 ACRES
NE 1/4 SW 1/4 36.5 ACRES
NW 1/4 SW 1/4 29.3 ACRES
SW 1/4 SW 1/4 32.8 ACRES
SE 1/4 SW 1/4 40.0 ACRES
NE 1/4 SE 1/4 30.1 ACRES
NW 1/4 SE 1/4 35.4 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 25

NE 1/4 NE 1/4 30.4 ACRES
NW 1/4 NE 1/4 35.7 ACRES
SW 1/4 NE 1/4 35.2 ACRES
SE 1/4 NE 1/4 28.4 ACRES
NE 1/4 NW 1/4 23.1 ACRES
NW 1/4 NW 1/4 30.2 ACRES
SW 1/4 NW 1/4 39.1 ACRES
SE 1/4 NW 1/4 38.7 ACRES
NE 1/4 SW 1/4 21.3 ACRES
NW 1/4 SW 1/4 24.7 ACRES
SW 1/4 SW 1/4 0.2 ACRES
SE 1/4 SW 1/4 26.3 ACRES
NE 1/4 SE 1/4 30.0 ACRES
NW 1/4 SE 1/4 29.8 ACRES
SW 1/4 SE 1/4 40.0 ACRES
SE 1/4 SE 1/4 33.6 ACRES

SECTION 26

NE 1/4 NE 1/4 38.0 ACRES
NW 1/4 NE 1/4 27.6 ACRES
SW 1/4 NE 1/4 37.7 ACRES
SE 1/4 NE 1/4 22.4 ACRES
NE 1/4 NW 1/4 30.6 ACRES
NW 1/4 NW 1/4 30.6 ACRES
SW 1/4 NW 1/4 30.6 ACRES
SE 1/4 NW 1/4 30.6 ACRES
NE 1/4 SW 1/4 33.5 ACRES
NW 1/4 SW 1/4 31.1 ACRES
SW 1/4 SW 1/4 35.3 ACRES
SE 1/4 SW 1/4 28.2 ACRES
NE 1/4 SE 1/4 37.4 ACRES
NW 1/4 SE 1/4 40.0 ACRES
SW 1/4 SE 1/4 17.6 ACRES
SE 1/4 SE 1/4 13.0 ACRES

SECTION 27

NE 1/4 NE 1/4 30.6 ACRES
 NW 1/4 NE 1/4 30.6 ACRES
 SW 1/4 NE 1/4 31.6 ACRES
 SE 1/4 NE 1/4 31.6 ACRES
 NE 1/4 NW 1/4 30.7 ACRES
 NW 1/4 NW 1/4 30.7 ACRES
 SW 1/4 NW 1/4 30.7 ACRES
 SE 1/4 NW 1/4 30.7 ACRES
 NE 1/4 SW 1/4 30.5 ACRES
 NW 1/4 SW 1/4 30.2 ACRES
 SW 1/4 SW 1/4 34.3 ACRES
 SE 1/4 SW 1/4 34.5 ACRES
 NE 1/4 SE 1/4 27.2 ACRES
 NW 1/4 SE 1/4 28.0 ACRES
 SW 1/4 SE 1/4 31.2 ACRES
 SE 1/4 SE 1/4 30.9 ACRES

SECTION 28

NE 1/4 NE 1/4 31.8 ACRES
 NW 1/4 NE 1/4 31.0 ACRES
 SW 1/4 NE 1/4 30.6 ACRES
 SE 1/4 NE 1/4 31.3 ACRES
 NE 1/4 NW 1/4 29.4 ACRES
 NW 1/4 NW 1/4 33.1 ACRES
 SW 1/4 NW 1/4 33.1 ACRES
 SE 1/4 NW 1/4 29.4 ACRES

SECTION 29

NE 1/4 NE 1/4 31.0 ACRES
 NW 1/4 NE 1/4 40.0 ACRES
 SW 1/4 NE 1/4 36.4 ACRES
 SE 1/4 NE 1/4 34.4 ACRES
 NE 1/4 NW 1/4 31.6 ACRES
 NW 1/4 NW 1/4 31.2 ACRES
 SW 1/4 NW 1/4 32.8 ACRES
 SE 1/4 NW 1/4 38.1 ACRES
 NE 1/4 SW 1/4 39.8 ACRES
 NW 1/4 SW 1/4 29.0 ACRES
 SW 1/4 SW 1/4 30.2 ACRES
 SE 1/4 SW 1/4 31.6 ACRES

SECTION 35

NE 1/4 NE 1/4 30.3 ACRES
 NW 1/4 NE 1/4 39.3 ACRES
 SW 1/4 NE 1/4 38.0 ACRES
 SE 1/4 NE 1/4 31.2 ACRES
 NE 1/4 NW 1/4 40.0 ACRES
 NW 1/4 NW 1/4 29.2 ACRES
 SW 1/4 NW 1/4 32.4 ACRES
 SE 1/4 NW 1/4 38.0 ACRES
 NE 1/4 SW 1/4 12.5 ACRES
 NE 1/4 SE 1/4 28.8 ACRES
 NW 1/4 SE 1/4 38.0 ACRES
 SW 1/4 SE 1/4 28.6 ACRES
 SE 1/4 SE 1/4 40.0 ACRES

SECTION 36

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

SW 1/4 SW 1/4 7.0 ACRES

SECTION 16

NW 1/4 SW 1/4 26.5 ACRES

SW 1/4 SW 1/4 26.2 ACRES

SW 1/4 SE 1/4 36.7 ACRES

SE 1/4 SE 1/4 18.5 ACRES

SECTION 17

NE 1/4 SE 1/4 23.2 ACRES

SE 1/4 SE 1/4 23.1 ACRES

SECTION 18

NE 1/4 NE 1/4 5.6 ACRES

SW 1/4 NE 1/4 30.4 ACRES

SE 1/4 NE 1/4 37.0 ACRES

SW 1/4 NW 1/4 6.5 ACRES

SE 1/4 NW 1/4 19.7 ACRES

NE 1/4 SW 1/4 39.8 ACRES

NW 1/4 SW 1/4 50.8 ACRES

SW 1/4 SW 1/4 37.2 ACRES

SE 1/4 SW 1/4 21.4 ACRES

NE 1/4 SE 1/4 38.1 ACRES

NW 1/4 SE 1/4 40.0 ACRES

SW 1/4 SE 1/4 37.7 ACRES

SE 1/4 SE 1/4 35.6 ACRES

SECTION 19

NE 1/4 NE 1/4 38.1 ACRES

NW 1/4 NE 1/4 39.8 ACRES

SW 1/4 NE 1/4 40.0 ACRES

SE 1/4 NE 1/4 40.0 ACRES

NE 1/4 SW 1/4 31.6 ACRES

NW 1/4 SW 1/4 35.0 ACRES

SW 1/4 SW 1/4 39.8 ACRES

SE 1/4 SW 1/4 40.0 ACRES

NE 1/4 SE 1/4 40.0 ACRES

NW 1/4 SE 1/4 36.7 ACRES

SW 1/4 SE 1/4 25.9 ACRES

SE 1/4 SE 1/4 37.6 ACRES

SECTION 20

NE 1/4 NW 1/4 13.1 ACRES

NW 1/4 NW 1/4 40.0 ACRES

SW 1/4 NW 1/4 39.8 ACRES

SE 1/4 NW 1/4 10.2 ACRES

NE 1/4 SW 1/4 12.0 ACRES

NW 1/4 SW 1/4 39.3 ACRES

SW 1/4 SW 1/4 38.8 ACRES

SE 1/4 SW 1/4 6.4 ACRES

SECTION 21

NE 1/4 NW 1/4 2.1 ACRES

NW 1/4 NW 1/4 22.6 ACRES

SW 1/4 NW 1/4 4.8 ACRES

SECTION 28

NE 1/4 NE 1/4 39.7 ACRES

NW 1/4 NE 1/4 34.0 ACRES

SW 1/4 NE 1/4 29.1 ACRES
SE 1/4 NE 1/4 36.7 ACRES
NE 1/4 NW 1/4 39.7 ACRES
NW 1/4 NW 1/4 38.9 ACRES
SW 1/4 NW 1/4 39.6 ACRES
SE 1/4 NW 1/4 33.6 ACRES
NE 1/4 SW 1/4 32.6 ACRES
NW 1/4 SW 1/4 38.9 ACRES
SW 1/4 SW 1/4 40.0 ACRES
SE 1/4 SW 1/4 31.2 ACRES

SECTION 29

NE 1/4 NE 1/4 38.6 ACRES
NW 1/4 NE 1/4 34.0 ACRES
SW 1/4 NE 1/4 33.2 ACRES
SE 1/4 NE 1/4 39.2 ACRES
NE 1/4 NW 1/4 38.0 ACRES
NW 1/4 NW 1/4 53.7 ACRES
SW 1/4 NW 1/4 44.8 ACRES
SE 1/4 NW 1/4 29.6 ACRES
NE 1/4 SE 1/4 37.2 ACRES
NW 1/4 SE 1/4 31.8 ACRES
SW 1/4 SE 1/4 31.2 ACRES
SE 1/4 SE 1/4 40.0 ACRES

SECTION 30

TOWNSHIP 3 NORTH, RANGE 29 EAST, W.M.

- Water Delivery System: Diversion through 6 headgates, gaging station, through 6' x 30' canal, to farms

On 5/1/98, the Department mailed the applicant notice of its Initial Review, determining that THE USE OF 7215.0 ACRE-FEET FROM MCKAY RESERVOIR, A TRIBUTARY OF UMATILLA RIVER FOR SUPPLEMENTAL IRRIGATION OF 8800.4 ACRES IS ALLOWABLE FROM MARCH 1 THROUGH NOVEMBER 1 OF EACH YEAR. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 5/15/98, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

Findings of Fact

The Umatilla Basin Program allows the following uses: SUPPLEMENTAL IRRIGATION OF 8800.40 ACRES

Senior water rights exist on MCKAY RESERVOIR, A TRIBUTARY OF UMATILLA RIVER or on downstream waters.

MCKAY RESERVOIR, A TRIBUTARY OF UMATILLA RIVER is not within or above a State Scenic Waterway.

The Department finds that no more than 7215.0 AF would be necessary for the proposed use. The amount of water requested, 7215.00 ACRE-FEET, is allowable.

This application for permit succeeds permit 51665. The permit contained the condition that upon termination of the permit another application for a permit would be required to provide supplemental irrigation to certain lands in the Westland Irrigation District.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff.

The interagency team did not recommend that any additional conditions of use be imposed on this application.

There is no evidence in the record of the presence of game fish at the described point of diversion.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Umatilla Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

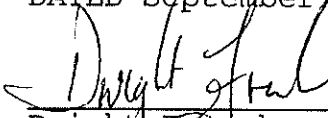
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED September 1, 1998



 Dwight French
 Water Rights Section Manager

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

PLACED IN FILE
 SEP 1 1998
 OREGON WATER RESOURCES DEPT.

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and,

if you claim to represent the public interest, a precise statement of the public interest represented;

- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;

- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;

- Any citation of legal authority to support your protest, if known; and

- If you are not the applicant, the \$200 protest fee required by ORS 536.050 and proof of service of the protest upon the applicant.

- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.

- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.

Requests for Standing

Under the provisions of 537.153(5), persons other than the applicant who support a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order. A request for standing shall be in writing, include a statement that the requester supports the proposed final order, and a statement of how the requester would be harmed if the proposed final order is modified. The fee required at the time of submitting this request is \$50.00. If a hearing is scheduled, an additional fee of \$150.00 must be submitted along with a request for intervention. Forms to request standing are available from the Department.

Your protest or request for standing must be received in the Water Resources Department no later than **October 16, 1998**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or

- the applicant requests a contested case hearing within 30 days after the close of the protest period.

This document was prepared by Dallas Miller. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me toll free within Oregon at 1-800-624-3199 extension 272. Outside of Oregon you can dial 1-503-378-8455.

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 Adam Sussman. His extension number is 262.

If you have other questions about the Department or any of its programs please contact our Water Rights Information Group at extension 499.

DM-WEEK 162