

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
R-86768, Coos County)

FINAL ORDER INCORPORATING
SETTLEMENT AGREEMENT

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On February 13, 2007, Daniel E. Davis submitted an application for a permit to store water 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.
2. The Department has received comments related to the possible issuance of the attached permit.
3. The Department has evaluated the application and any comments received, and finds that as conditioned, the proposed use will not impair or be detrimental to the public interest described in ORS 537.409(6).
4. The Department received a review from Oregon Department of Fish and Wildlife related to the possible issuance of a permit. The attached permit is conditioned to address concerns raised in that review.
5. Water is available for the proposed use as described in the attached permit.
6. The use, as described in the attached permit, will not injure existing water rights and does not pose potential detrimental impacts to fishery resources.

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

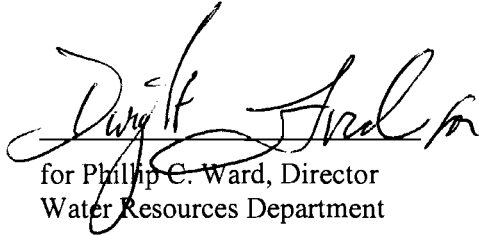
Conclusions of Law

Application R-86768 is consistent with the requirements of ORS 537.409. Therefore, the proposed use will not impair or be detrimental to the public interest.

Now Therefore, it is Ordered:

Application R-86768 is approved pursuant to ORS 537.409, and Permit R-14659 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on *Oct 14*, 2008.



for Phillip C. Ward, Director
Water Resources Department

This order was produced by Jeana Eastman. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0859.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Right Applications)
R-86767, R-86768, R-86769, and)
S-86770 in the name of Daniel Davis)
Applicant)
 SETTLEMENT
 AGREEMENT

The Oregon Water Resources Department (“OWRD”) and Daniel Davis (“Applicant”) do hereby stipulate and agree in this “Settlement Agreement” as follows:

Background

- I. On February 13, 2007, Daniel E. Davis submitted applications for a permit to store water pursuant to ORS 537.409 (#R-86767, #R-86768, #R-86769), and an application for a water use permit pursuant to ORS 537.147 (#S-86770).
- II. On June 21, 2007, OWRD issued Final Orders denying each application.
- III. On review of information received subsequent to the Final Orders, OWRD determined that the applications could be approved and permits issued.
- IV. OWRD and Applicant agree that all issues related to applications R-86767, R-86768, R-86769, and S-86770 are resolved solely on the following terms.

Terms of the Agreement

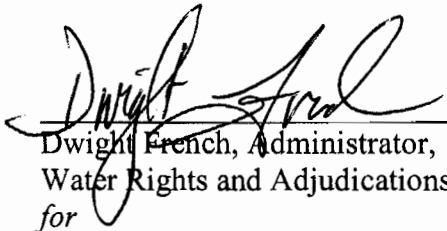
- 1. The Applicant waives all right and opportunity to request reconsideration or exception and to seek judicial review of this Settlement Agreement, the Final Orders and Permits.
- 2. The Department shall issue Final Orders Incorporating Settlement Agreement and Permits consistent with the attached draft permits if signed and returned to the Department by August 1, 2008.
- 3. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
- 4. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.

RECEIVED

AUG 29 2008

WATER RESOURCES DEPT
SALEM, OREGON

5. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Final Order Incorporating Settlement Agreement and draft Permit, and understands and agrees with the contents thereof.
6. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
7. This Settlement Agreement may be signed in counterparts.



Dwight French, Administrator,
Water Rights and Adjudications Division
for
Phillip C. Ward, Director
Oregon Water Resources Department

9-4-08
Date



Daniel Davis, Applicant

8-25-08
Date

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
R-86767, Coos County)

**FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER**

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On FEBRUARY 13, 2007, DANIEL E. DAVIS submitted an application for a permit to store water 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.
2. The Department has received comments related to the possible issuance of the attached permit.
3. The Department has evaluated the application and any comments received, and finds that as conditioned, the proposed use will not impair or be detrimental to the public interest described in ORS 537.409(6).
4. The Department received a review from Oregon Department of Fish and Wildlife related to the possible issuance of a permit. The attached permit is conditioned to address concerns raised in that review. Water is available for the proposed use as described in the attached permit.
5. The use, as described in the attached permit, will not injure existing water rights and does not pose potential detrimental impacts to fishery resources.

Conclusions of Law

Application R-86767 is consistent with the requirements of ORS 537.409. Therefore, the proposed use will not impair or be detrimental to the public interest.

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

RECEIVED

Now Therefore, it is Ordered:

Application R-86767 is approved pursuant to ORS 537.409, and Permit _____ is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on August ____, 2008.

DRAFT – NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department

This order was produced by Dwight French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0819.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DANIEL E. DAVIS
 PO BOX 1741
 BANDON OR 97411

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

APPLICATION FILE NUMBER: R-86767

SOURCE OF WATER: JOHNSON CREEK, TRIBUTARY TO PACIFIC OCEAN

STORAGE FACILITY: RESERVOIR 4

MAXIMUM VOLUME: 40.0 ACRE FEET, FURTHER LIMITED TO AN INSTANTANEOUS RATE OF 0.75 CUBIC FEET PER SECOND (CFS)

DATE OF PRIORITY: FEBRUARY 13, 2007

USE: MULTIPLE PURPOSE

WATER MAY BE APPROPRIATED DURING THE PERIOD: MAY 1 THROUGH JULY 31, AND OCTOBER 1 THROUGH OCTOBER 31

	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
POINT OF DIVERSION	29 S	14 W	WM	6	NE SE	3215 FEET SOUTH AND 1068 FEET WEST FROM NE CORNER, SECTION 6
CENTER OF RESERVOIR	29 S	14 W	WM	6		

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
29 S	14 W	WM	6	NE SE

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion, and maintain the meter(s) in good working order. The permittee 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; where a meter is located within a private structure, the watermaster shall request access upon reasonable notice.

The permittee shall monitor stream flow at the Johnson Creek point of diversion prior to and during diversion, and only divert water when flows exceed the following amounts: 4.0 CFS in May, 4.0 CFS in June, 1.0 CFS in July, and 2.0 CFS in October. In addition, the permittee shall report annually to the Water Resources Department all the natural stream flow data measured at the point of diversion on Johnson Creek.

RECEIVED
AUG 29 2008
 WATER RESOURCES DEPT
 SALEM, OREGON

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 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.

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.

Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish-screening and by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
4. 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.
5. This permit does not allow unauthorized inundation of property not under the ownership of the permit holder.
6. 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, Section 030 adopted November 13, 1991 shall be followed.
7. 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.
8. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.

9. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2013.
10. 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.
11. 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 capacity is equal to or greater than 9.2 acre-feet.
12. If no secondary permit exists and the reservoir capacity is 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 _____ 2008.

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

Mailing List for FO

Scheduled Mailing Date:

Application: R-86767

Permit: DRAFT

Original mailed to Applicant with CBU form:

DANIEL E. DAVIS
PO BOX 1741
BANDON OR 97411

Copies of FO sent to:

1. File R-86767
2. Water Availability (Ken Stahr)
3. Watermaster District 19

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Clay Jordan, 460 Jordan Lane, Roseburg, OR 97470

Copies of Map sent to (remember to reduce copy margins):

1. Watermaster District 19
2. Region Manager: sw

<p style="text-align: center;">Copies Mailed</p> <p>by: _____</p> <p style="text-align: center;">(STAFF)</p> <p>on: _____</p> <p style="text-align: center;">(DATE)</p>
--

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
R-86768, Coos County)

**FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER**

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On FEBRUARY 13, 2007, DANIEL E. DAVIS submitted an application for a permit to store water 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.
2. The Department has received comments related to the possible issuance of the attached permit.
3. The Department has evaluated the application and any comments received, and finds that as conditioned, the proposed use will not impair or be detrimental to the public interest described in ORS 537.409(6).
4. The Department received a review from Oregon Department of Fish and Wildlife related to the possible issuance of a permit. The attached permit is conditioned to address concerns raised in that review. Water is available for the proposed use as described in the attached permit.
5. The use, as described in the attached permit, will not injure existing water rights and does not pose potential detrimental impacts to fishery resources.

Conclusions of Law

Application R-86768 is consistent with the requirements of ORS 537.409. Therefore, the proposed use will not impair or be detrimental to the public interest.

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

RECEIVED

AUG 29 2008

WATER RESOURCES DEPT
SALEM, OREGON

Now Therefore, it is Ordered:

Application R-86768 is approved pursuant to ORS 537.409, and Permit _____ is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on August ____, 2008.

for Phillip C. Ward, Director
Water Resources Department

This order was produced by Dwight French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0819.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DANIEL E. DAVIS
 PO BOX 1741
 BANDON OR 97411

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

APPLICATION FILE NUMBER: R-86768

SOURCE OF WATER: JOHNSON CREEK, TRIBUTARY TO PACIFIC OCEAN

STORAGE FACILITY: RESERVOIR 1-A

MAXIMUM VOLUME: 44.0 ACRE FEET, FURTHER LIMITED TO AN INSTANTANEOUS RATE OF 0.75 CUBIC FEET PER SECOND (CFS)

DATE OF PRIORITY: FEBRUARY 13, 2007

USE: MULTIPLE PURPOSE

WATER MAY BE APPROPRIATED DURING THE PERIOD: MAY 1 THROUGH JULY 31, AND OCTOBER 1 THROUGH OCTOBER 31

	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
POINT OF DIVERSION	29 S	14 W	WM	6	NE SE	3215 FEET SOUTH AND 1068 FEET WEST FROM NE CORNER, SECTION 6
CENTER OF RESERVOIR	29 S	14 W	WM	6	SE NE	1802 FEET SOUTH AND 702 FEET WEST FROM NE CORNER, SECTION 6

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
29 S	14 W	WM	6	SE NE

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion, and maintain the meter(s) in good working order. The permittee 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; where a meter is located within a private structure, the watermaster shall request access upon reasonable notice.

The permittee shall monitor stream flow at the Johnson Creek point of diversion prior to and during diversion, and only divert water when flows exceed the following amounts: 4.0 CFS in May, 4.0 CFS in June, 1.0 CFS in July, and 2.0 CFS in October. In addition, the permittee shall report annually to the Water Resources Department all the natural stream flow data measured at the point of diversion on Johnson Creek.

RECEIVED

AUG 29 2008

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 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.

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.

Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish-screening and by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
4. 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.
5. This permit does not allow unauthorized inundation of property not under the ownership of the permit holder.
6. 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, Section 030 adopted November 13, 1991 shall be followed.
7. 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.
8. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.

9. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2013.
10. 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.
11. 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 capacity is equal to or greater than 9.2 acre-feet.
12. If no secondary permit exists and the reservoir capacity is 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 _____ 2008.

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

RECEIVED
AUG 29 2008
WATER RESOURCES DEPT
SALEM, OREGON

Mailing List for FO

Scheduled Mailing Date:

Application: R-86768

Permit: DRAFT

Original mailed to Applicant with CBU form:

DANIEL E. DAVIS
PO BOX 1741
BANDON OR 97411

Copies of FO sent to:

1. File R-86768
2. Water Availability (Ken Stahr)
3. Watermaster District **Error! Reference source not found., Error! Reference source not found.**

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Clay Jordan, 460 Jordan Lane, Roseburg, OR 97460

Copies of Map sent to (remember to reduce copy margins):

1. Watermaster District 19
2. Region Manager: SW

<p style="text-align: center;">Copies Mailed</p> <p>by: _____</p> <p style="text-align: center;">(STAFF)</p> <p>on: _____</p> <p style="text-align: center;">(DATE)</p>
--

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
R-86769, Coos County)

**FINAL ORDER
APPROVING THE STORAGE OF
SURFACE WATER**

Authority

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

Findings of Fact

1. On FEBRUARY 13, 2007, DANIEL E. DAVIS submitted an application for a permit to store water 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.
2. The Department has received comments related to the possible issuance of the attached permit.
3. The Department has evaluated the application and any comments received, and finds that as conditioned, the proposed use will not impair or be detrimental to the public interest described in ORS 537.409(6).
4. The Department received a review from Oregon Department of Fish and Wildlife related to the possible issuance of a permit. The attached permit is conditioned to address concerns raised in that review. Water is available for the proposed use as described in the attached permit.
5. The use, as described in the attached permit, will not injure existing water rights and does not pose potential detrimental impacts to fishery resources.

Conclusions of Law

Application R-86769 is consistent with the requirements of ORS 537.409. Therefore, the proposed use will not impair or be detrimental to the public interest.

APPEAL RIGHTS

Appeal to a circuit court: This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

Petition to the Department for Reconsideration of the Final Order: A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

RECEIVED

AUG 29 2008

**WATER RESOURCES DEPT
SALEM, OREGON**

Now Therefore, it is Ordered:

Application R-86769 is approved pursuant to ORS 537.409, and Permit _____ is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on August ____, 2008.

for Phillip C. Ward, Director
Water Resources Department

This order was produced by Dwight French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0819.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DANIEL E. DAVIS
 PO BOX 1741
 BANDON OR 97411

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

APPLICATION FILE NUMBER: R-86769

SOURCE OF WATER: JOHNSON CREEK, TRIBUTARY TO PACIFIC OCEAN

STORAGE FACILITY: RESERVOIR 3

MAXIMUM VOLUME: 22.6 ACRE FEET, FURTHER LIMITED TO AN INSTANTANEOUS RATE OF 0.75 CUBIC FEET PER SECOND (CFS)

DATE OF PRIORITY: FEBRUARY 13, 2007

USE: MULTIPLE PURPOSE

WATER MAY BE APPROPRIATED DURING THE PERIOD: MAY 1 THROUGH JULY 31, AND OCTOBER 1 THROUGH OCTOBER 31

	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
POINT OF DIVERSION	29 S	14 W	WM	6	NE SE	3215 FEET SOUTH AND 1068 FEET WEST FROM NE CORNER, SECTION 6
CENTER OF RESERVOIR	29 S	14 W	WM	6	NE NE	875 FEET SOUTH AND 680 FEET WEST FROM NE CORNER, SECTION 6

The Area To Be Submerged:

Twp	Rng	Mer	Sec	Q-Q
29 S	14 W	WM	6	NE NE

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion, and maintain the meter(s) in good working order. The permittee 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; where a meter is located within a private structure, the watermaster shall request access upon reasonable notice.

The permittee shall monitor stream flow at the Johnson Creek point of diversion prior to and during diversion, and only divert water when flows exceed the following amounts: 4.0 CFS in May, 4.0 CFS in June, 1.0 CFS in July, and 2.0 CFS in October. In addition, the permittee shall report annually to the Water Resources Department all the natural stream flow data measured at the point of diversion on Johnson Creek.

RECEIVED

AUG 29 2008

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 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.

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.

Notwithstanding that ODFW has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish-screening and by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
4. 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.
5. This permit does not allow unauthorized inundation of property not under the ownership of the permit holder.
6. 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, Section 030 adopted November 13, 1991 shall be followed.
7. 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.
8. If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.

9. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2013.
10. 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.
11. 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 capacity is equal to or greater than 9.2 acre-feet.
12. If no secondary permit exists and the reservoir capacity is 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 _____ 2008.

DRAFT – NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

RECEIVED
AUG 29 2008
WATER RESOURCES DEPT
SALEM, OREGON

Mailing List for FO

Scheduled Mailing Date:

Application: R-86769

Permit: DRAFT

Original mailed to Applicant with CBU form:

DANIEL E. DAVIS
PO BOX 1741
BANDON OR 97411

Copies of FO sent to:

1. File R-86769
2. Water Availability (Ken Stahr)
3. Watermaster District 19

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Clay Jordan, 460 Jordan Lane, Roseburg, OR 97470

Copies of Map sent to (remember to reduce copy margins):

1. Watermaster District19
2. Region Manager: SW

<p style="text-align: center;">Copies Mailed</p> <p>by: _____ (STAFF)</p> <p>on: _____ (DATE)</p>
--

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
S-86770, Coos County)

**FINAL ORDER
APPROVING THE USE OF
STORED WATER**

Authority

ORS 537.147 establishes the process by which an application to use stored water exclusively may be submitted. OAR Chapter 690, Divisions 310 and 340 implement the statute, and provide the Department's procedures and criteria for evaluating applications to use stored water.

Findings of Fact

1. On February 21, 2007, DANIEL E. DAVIS submitted an application for a water-use permit pursuant to ORS 537.147. The Department provided public notice of the application in the Department's weekly public notice on February 27, 2007. A 30-day comment period followed.
2. The Department has evaluated the application and any comments received, and finds that no public interest issue in ORS 537.170(8) would be affected adversely by the proposed use.

Conclusions of Law

Application S-86770 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

Now Therefore, it is Ordered:

Application S-86770 is approved pursuant to ORS 537.147. Payment of the permit recording fee of \$250, has been received and Permit _____ is issued authorizing the proposed water use.

Dated at Salem, Oregon on August ____, 2008.

for Phillip C. Ward, Director

This order was produced by Dwight French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0819.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

RECEIVED

AUG 29 2008

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application)
S-86770, Coos County)

**FINAL ORDER
APPROVING THE USE OF
STORED WATER**

Authority

ORS 537.147 establishes the process by which an application to use stored water exclusively may be submitted. OAR Chapter 690, Divisions 310 and 340 implement the statute, and provide the Department's procedures and criteria for evaluating applications to use stored water.

Findings of Fact

1. On February 21, 2007, DANIEL E. DAVIS submitted an application for a water-use permit pursuant to ORS 537.147. The Department provided public notice of the application in the Department's weekly public notice on February 27, 2007. A 30-day comment period followed.
2. The Department has evaluated the application and any comments received, and finds that no public interest issue in ORS 537.170(8) would be affected adversely by the proposed use.

Conclusions of Law

Application S-86770 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

Now Therefore, it is Ordered:

Application S-86770 is approved pursuant to ORS 537.147. Payment of the permit recording fee of \$250, has been received and a permit shall be issued authorizing the proposed water use.

Dated at Salem, Oregon on August ____, 2008.

for Phillip C. Ward, Director

This order was produced by Dwight French. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0819.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition is filed, the petition shall be deemed denied.

RECEIVED

STATE OF OREGON

COUNTY OF COOS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DANIEL E. DAVIS
 PO BOX 1741
 BANDON OR 97411

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

APPLICATION FILE NUMBER: S-86770

SOURCE OF WATER: RESERVOIR 4 UNDER APPLICATION R-86767, RESERVOIR 1-A UNDER APPLICATION R-86768, AND RESERVOIR 3 UNDER APPLICATION R-86769

PURPOSE OR USE: SUPPLEMENTAL CRANBERRY USE ON 33.0 ACRES

MAXIMUM VOLUME: 106.6 ACRE FEET (AF), BEING 40.0 AF FROM RESERVOIR 4, 44.0 AF FROM RESERVOIR 1-A, AND 22.6 AF FROM RESERVOIR 3

PERIOD OF USE: YEAR-ROUND

DATE OF PRIORITY: FEBRUARY 13, 2007

Authorized Point of Diversion:

	Twp	Rng	Mer	Sec	Q-Q	Survey Coordinates
RESERVOIR 4	29 S	14 W	WM	6	NE SE	2575 FEET SOUTH AND 804 FEET WEST FROM NE CORNER, SECTION 6
RESERVOIR 1-A	29 S	14 W	WM	6	SE NE	1802 FEET SOUTH AND 702 FEET WEST FROM NE CORNER, SECTION 6
RESERVOIR 3	29 S	14 W	WM	6	NE NE	875 FEET SOUTH AND 680 FEET WEST FROM NE CORNER, SECTION 6

The amount of water diverted for cranberry operations, together with amounts secured under any other rights existing for the same lands, is limited as follows: for temperature control, 0.15 cubic foot per second per acre; for flood harvesting or pest control, 0.05 cubic foot per second per acre; for irrigation of cranberries, one fortieth of one cubic foot per second and 3.0 acre feet per acre for each acre irrigated during the irrigation season of each year. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.

Authorized Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
29 S	14 W	WM	6	NE NE	9.4
29 S	14 W	WM	6	SE NE	16.2
29 S	14 W	WM	6	NE SE	7.4

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion, and maintain the meter(s) in good working order. The Watermaster may allow an alternate measuring devices be installed instead of totalizing flow meters such as a staff

gauge in each reservoir. The permittee may be required to keep a complete record of the amount of water used each month, and may be required to submit a report which includes the recorded water-use measurements to the Department annually. 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; where a meter is located within a private structure, the watermaster shall request access upon reasonable notice.

The water user shall install, maintain, and operate Oregon Department of Fish and Wildlife (ODFW) approved fish screening and by-pass devices if either or both are required by ODFW. Fish screening is to prevent fish from entering the proposed diversion, while by-pass devices provide adequate upstream and downstream passage for fish.

STANDARD CONDITIONS

1. 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.
2. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
3. 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.
4. 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.
5. 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.
6. 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, Section 030 adopted November 13, 1991 shall be followed.
7. 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.
8. Complete application of the water to the use shall be made on or before October 1, 2013. If the water is not completely applied before this date, and the water user wishes to continue development under the permit, the water user must submit an application for extension of time, which may be approved based upon the merit of the application.
9. Within one year after complete application of water to the proposed use, the water user shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

RECEIVED

AUG 29 2008

**WATER RESOURCES DEPT
SALEM, OREGON**

10. This permit does not allow unauthorized inundation of property not under the ownership of the permit holder.

Issued _____ 2008

DRAFT – NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department

Mailing List for FO

Scheduled Mailing Date:

Application: S-86770

Permit: DRAFT

Original mailed to Applicant with CBU form:

DANIEL E. DAVIS
PO BOX 1741
BANDON OR 97411

Copies Mailed	
by: _____	
	(STAFF)
on: _____	
	(DATE)

Copies of FO sent to:

1. File S-86770
2. Water Availability (Ken Stahr)

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Clay Jordan, 460 Jordan Lane, Roseburg, OR 97470

Copies of Map sent to (remember to reduce copy margins):

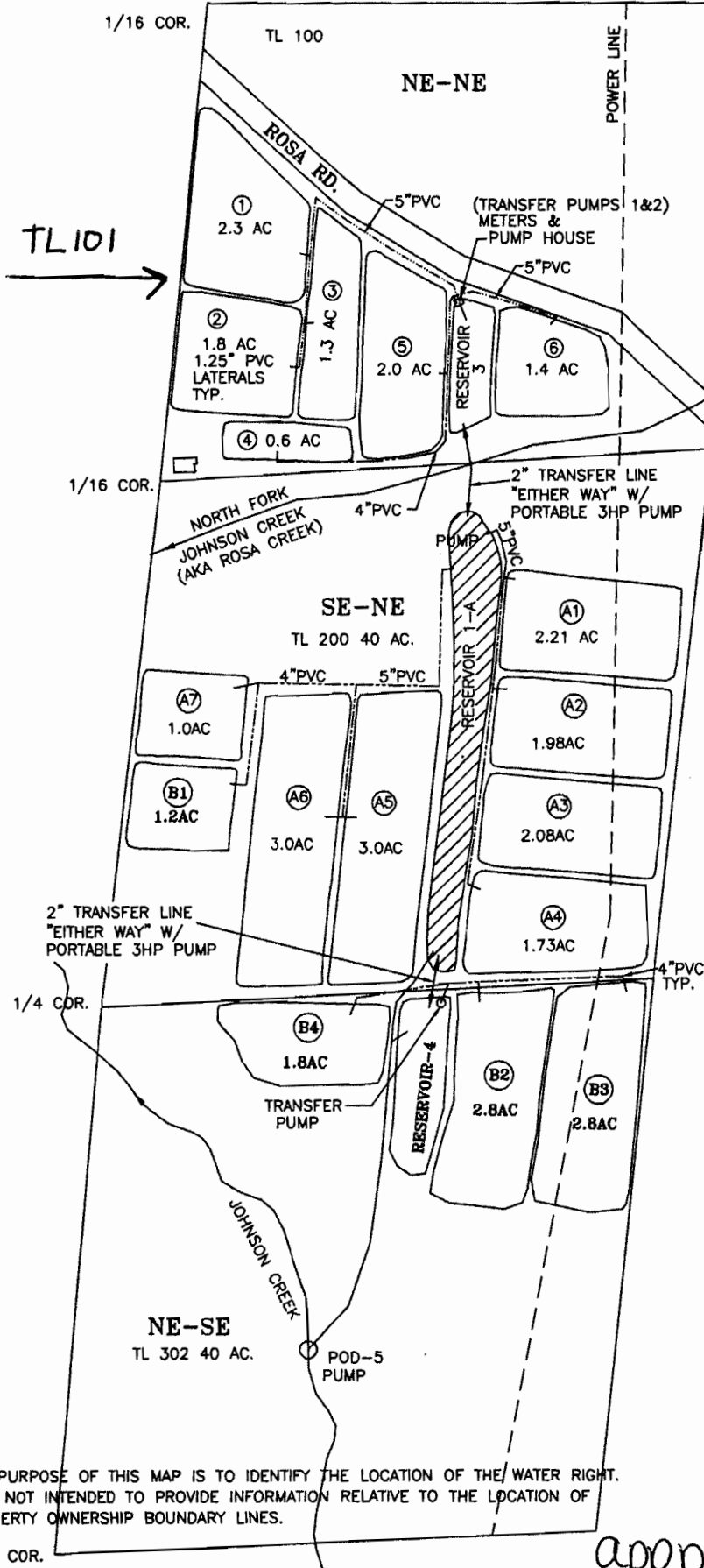
1. Watermaster District 19
2. Region: SW

RECEIVED
AUG 29 2008
WATER RESOURCES DEPT
SALEM, OREGON

APPLICATION MAP IN THE NAME OF DANIEL E. DAVIS

SECTION 6, TOWNSHIP 29 SOUTH, RANGE 14 WEST, W.M.
COOS CO. OREGON

T28S
31 32
6 5
T29S



1 INCH = 400 FEET

RESERVOIR 1-A: 22 AF PLUS CONCURRENT APPLICATIONS OF 20 AF NEW RESERVOIR-4 AND 11.3 AF RESERVOIR-3 (USE ENLARGEMENT OF PERMIT R-11770). ALL THREE WITH A SUM TOTAL OF 53.3 AF. WITH MULTIPLE REFILLS TO 150 AF FROM JOHNSON CREEK FOR MULTIPURPOSE USE.

FOR CRANBERRY OPERATIONS
SEE SURFACE WATER APP.

BOGS: 1,2,3,4,5 & 6=	9.4 AC
BOGS: A1,A2,A3,A4,A5,A6 & A7=	15.0 AC
BOGS: B1,B2,B3 & B4=	8.6 AC
TOTAL=	33.0 AC

POD-5:
POD-5 IS LOCATED 3215 SOUTH AND 1068 WEST FROM THE NORTHEAST CORNER OF SECTION 6; BEING WITHIN THE SE¼ NE¼ OF SECTION 6, TOWNSHIP 29 SOUTH, RANGE 14 WEST, W.M. COOS COUNTY.

RESERVOIR 1-A
CENTER LOCATION IS 1802' SOUTH AND 702' WEST OF THE NORTHEAST CORNER OF SAID SECTION 6.

RECEIVED
RECEIVED
FEB 13 2007
FEB 02 2007

WATER RESOURCES DEPT
SALEM, OREGON

CONCURRENT APPLICATIONS 2 OF 4
3- RESERVOIRS & 1- SURFACE WATER

JORDAN ENGINEERING
460 JORDAN LANE
ROSEBURG, OR 97470
(541) 673-1931
Johnson-live-app-0112207

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

appno R-86768
Permit No R-141059