

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-86828

**Final Order**

*Hearing and Appeal Rights*

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a Final Order in other than 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 either 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

*Application History*

On April 11, 2007, JOHN MCCAWE JR submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on September 30, 2008. The protest period closed November 14, 2008, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the fish screening condition.

The condition as modified in the attached draft permit is:

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

#### Order

Application S-86828 is therefore approved with the above modifications to the Proposed Final Order. Upon payment of outstanding fees in the amount of \$300.00, a permit shall be issued authorizing the proposed water use, as limited by the conditions set forth therein.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

*If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.*

DATED March 12, 2009



for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Kerry Kavanagh. 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 at 503-986-0816.*

*If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.*

*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 Ste A, Salem OR 97301-1266, Fax: 503-986-0901.*

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF JACKSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

JOHN MCCAWE JR  
PO BOX 21749  
SEATTLE, WA 98111

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

APPLICATION FILE NUMBER: S-86828

SOURCE OF WATER: LOST CREEK RESERVOIR, CONSTRUCTED UNDER PERMIT R-8142,  
A TRIBUTARY OF ROGUE RIVER

PURPOSE OR USE: IRRIGATION USE ON 110.0 ACRES

MAXIMUM VOLUME: 385.0 ACRE FEET EACH YEAR

PERIOD OF USE: APRIL 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 11, 2007

POINTS OF RE-DIVERSION LOCATIONS:

POD 1 (PORTABLE PUMP STATION) - BETWEEN POINTS:

1) LOT 3 (NESW), SECTION 28, T34S, R1W, W.M.; 2800 FEET SOUTH  
AND 1350 FEET EAST FROM NW CORNER, SECTION 28; AND

2) LOT 6 (SENE), SECTION 28, T34S, R1W, W.M.; 2200 FEET SOUTH  
AND 2640 FEET EAST FROM NW CORNER, SECTION 28

POD 2 - LOT 2 (NESE), SECTION 29, T34S, R1W, W.M.; 3200 FEET SOUTH  
AND 110 FEET WEST FROM NE CORNER, SECTION 29

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 a diversion of ONE-EIGHTIETH of one cubic foot per second and 4.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	NW ¼ NW ¼	12.0 ACRES
	SW ¼ NW ¼	16.0 ACRES
LOT 6	(SE ¼ NW ¼)	7.2 ACRES
LOT 3	(NE ¼ SW ¼)	1.2 ACRES
LOT 4	(NW ¼ SW ¼)	13.7 ACRES

## SECTION 28

	NE ¼ NE ¼	22.7 ACRES
	SW ¼ NE ¼	1.0 ACRE
	SE ¼ NE ¼	22.1 ACRES
LOT 2	(NE ¼ SE ¼)	14.1 ACRES

## SECTION 29

TOWNSHIP 34 SOUTH, RANGE 1 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded water use measurements to the Department annually or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

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

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

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Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

The use of water under this right is subject to the terms and conditions of contract Number 079E101581, or satisfactory replacement, between the Bureau of Reclamation and the applicant or land owner, a copy of which is on file in the records of the Water Resources Department.

#### **STANDARD CONDITIONS**

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

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.

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, shall be followed.

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

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Completion of construction and 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 permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

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 \_\_\_\_\_, 2009

**DRAFT - THIS IS NOT A PERMIT**

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for Phillip C. Ward, Director  
Water Resources Department