

**Oregon Water Resources Department
Water Rights Division**

Water Rights Application
Number S-87035

Proposed Final Order

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

Application History

On December 7, 2007, Greenberry Irrigation District submitted an application to the Department for the following water use permit:

- Amount of Water: 50.0 CUBIC FEET PER SECOND (CFS)
- Use of Water: SUPPLEMENTAL IRRIGATION USE ON 7373.0 ACRES
- Source of Water: WILLAMETTE RIVER, A TRIBUTARY OF COLUMBIA RIVER
- Area of Proposed Use: BENTON COUNTY WITHIN GREENBERRY IRRIGATION DISTRICT BOUNDARIES

On May 16, 2008, the Department mailed the applicant notice of its Initial Review, determining that *"The use of 50.0 CFS not to exceed 9,000 AF of water from Willamette River, tributary of Columbia River, for supplemental irrigation use on 7373.0 acres is allowable during the full period requested, March 1 through October 31."* The applicant did not notify the Department to stop processing the application within 14 days of that date.

On May 20, 2008, 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.

Within 30 days of the Department's public notice, written comments were received from Lisa Brown on behalf of WaterWatch. Ms. Brown expressed concerns about fish protection and compliance with federal and state environmental laws. She stated that any supplemental right should be regulated in unison with any regulation of the underlying primary right, specifically involving regulation associated with, but not limited to, the Endangered Species Act and the Clean Water Act. She expressed concerns about water availability in relation to pending municipal extensions in the Willamette River Basin. Further, she commented that a supplemental right should be tied to a primary right and that it must be cancelled upon expiration or cancellation of the underlying right.

Ms. Brown's comments are addressed under the Findings of Fact section.

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

- recommendations by other state agencies
- 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

A permit to appropriate water for supplemental irrigation use under this application shall only be issued once permits to appropriate water for underlying primary irrigation use under applications S-84436 and S-87034 have been issued.

The Willamette Basin Program allows SUPPLEMENTAL IRRIGATION USE.

Senior water rights exist on WILLAMETTE RIVER, A TRIBUTARY OF COLUMBIA RIVER.

WILLAMETTE RIVER, A TRIBUTARY OF COLUMBIA RIVER is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at an 80 percent exceedance probability) during the full season requested.

The Department finds that the amount of water requested, 50.0 CFS, is an acceptable amount.

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 (DEQ), Fish and Wildlife (ODFW), and Agriculture. WRD and ODFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application.

On behalf of DEQ, Michael J. Wolf recommended that the permit be conditioned as follows:

1. for supplemental use only, to be used only if a contract for stored water could not be obtained from the U.S. Bureau of Reclamation;
2. to allow diversion only when flows in the mainstem Willamette River at Albany meet or exceed the following flows identified in the Willamette Basin Total Maximum Daily Load (TMDL): May 16 - October 14 - Salmon and Trout Rearing and Migration: 3980.0 CFS and October 15 - May 15 - Salmon and Steelhead Spawning Use: 4160.0 CFS;
3. with consideration to any additional flow thresholds as identified by the ODFW;
4. with consideration to the feasibility of withdrawal of the allocated water, or a portion thereof, early in the irrigation season for storage within the district for future use during the irrigation season; and
5. to offset the impacts of the withdrawal on river temperature.

On behalf of ODFW, Steven R. Mamoyac recommended that the permit be conditioned as follows:

1. 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.
2. 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.
3. The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current 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.

4. A permit shall only be issued as supplemental to leased stored water, and exercised only if Greenberry Irrigation District is unable to acquire a contract for stored water because stored water is not available through a contract.
5. Diversion shall only be allowed when flows in the mainstem Willamette River are met or exceeded based on ODFW and DEQ recommended minimum flows as seen in Table 1. Flows should be met at Albany (USGS ID# 1417000) as recommended by DEQ except during the out-migration period of April, May and June where minimum flows shall be met at both Salem (USGS ID# 1419100) and Albany before withdrawal is allowed.

Table 1

Date	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Salem	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Albany
March 1-31	6000	4160
April 1-15	19200	4160
April 16-30	17000	4160
May 1-15	15000	4160
May 16-31	15000	3980
June 1-15	12600	3980
June 16-30	8500	3980
July 1-31	5630	3980
August 1-31	5630	3980
September 1-30	5630	3980
October 1-14	5630	3980
October 15-31	5630	4160

The Department has considered all comments submitted under OAR 690-310-0090(4) and OAR 690-33-330 and has confirmed with DEQ and ODFW that the attached draft permit is conditioned accordingly.

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 Willamette Basin Program, or a 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.

When issuing permits, ORS 537.211(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public interest. This includes evaluation of the recommended limitations and conditions submitted by WaterWatch and the interagency team. The attached draft permit is conditioned accordingly.

Recommendation

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

DATED March 24, 2009



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

for Phillip C. Ward, Director
Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this proposed final order. Protests must be received in the Water Resources Department no later than **May 8, 2009**. Protests must be in writing, and must include the following:

1. Your name, address, and telephone number;
2. 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;
3. A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;

4. A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
5. Any citation of legal authority to support your protest, if known; and
6. If you are not the applicant, the protest fee of \$350 required by ORS 536.050 and proof of service of the protest upon the applicant.
7. 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.
8. *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 ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a proposed final order can request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.

Requests for standing must be received in the Water Resources Department no later than **May 8, 2009**. Requests for standing must be in writing, and must include the following:

1. The requester's name, mailing address and telephone number;
2. If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
3. A statement that the requester supports the proposed final order as issued;
4. A detailed statement of how the requester would be harmed if the proposed final order is modified; and
5. A standing fee of \$100.00. If a hearing is scheduled, an additional fee of \$250.00 must be submitted along with a request for intervention.

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 either:

1. upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
2. the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default.

This document was prepared by Brook Geffen. 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 503-986-0808.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". 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 BENTON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

GREENBERRY IRRIGATION DISTRICT
30742 VENELL PLACE
CORVALLIS, OR 97333

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

APPLICATION FILE NUMBER: S-87035

SOURCE OF WATER: WILLAMETTE RIVER, A TRIBUTARY OF COLUMBIA RIVER

PURPOSE OR USE: SUPPLEMENTAL IRRIGATION UP TO 7373.0 ACRES PER
IRRIGATION SEASON LOCATED WITHIN AN AREA OF 10991.8 ACRES

MAXIMUM RATE: 50.0 CUBIC FEET PER SECOND (CFS)

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 7, 2007

Points of Diversion:

POD #1 - SWSW, SECTION 25, T13S, R5W, W.M.; 1300 FEET NORTH AND
1300 FEET EAST FROM SW CORNER, SECTION 25

POD #2 - SWNW, SECTION 19, T13S, R5W, W.M.; 3146 FEET NORTH AND
1281 FEET EAST FROM SW CORNER, SECTION 19

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 2.5 acre-feet for each acre irrigated during the
irrigation season of each year.

THE PLACE OF USE IS LIMITED TO 7373.0 ACRES WITHIN THE FOLLOWING
10991.8 ACRES:

NE ¼ NE ¼	7.4 ACRES	SW ¼ NW ¼	36.0 ACRES
NW ¼ NE ¼	7.4 ACRES	SE ¼ NW ¼	36.0 ACRES
SW ¼ NE ¼	38.0 ACRES	NE ¼ SW ¼	33.0 ACRES
SE ¼ NE ¼	35.0 ACRES	NW ¼ SW ¼	33.0 ACRES
NE ¼ NW ¼	9.0 ACRES		
NW ¼ NW ¼	8.0 ACRES		

SECTION 15

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 7.0 ACRES
SECTION 16

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 39.0 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 28.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 34.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 38.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 15.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 38.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 37.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 38.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 2.0 ACRES
SECTION 21

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 30.0 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 13.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 6.0 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 38.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 35.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 18.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 15.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 16.0 ACRES
SECTION 22

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 6.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 8.2 ACRES
SECTION 23

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 5.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 15.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 5.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 39.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 44.6 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 17.8 ACRES
SECTION 26

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 20.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 11.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 10.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
SECTION 27

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 5.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8.0 ACRES

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 30.0 ACRES
SECTION 28

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 12.0 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 4.5 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 39.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 34.0 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 9.2 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 41.3 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 28.4 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 11.8 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 30.5 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 36.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
SECTION 29

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 24.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 10.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 24.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 26.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 14.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 28.0 ACRES
SECTION 32

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 30.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 30.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 39.5 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 39.5 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 29.8 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 37.3 ACRES
SECTION 33

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 5.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 12.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 37.6 ACRES

NE ¼ SW ¼ 40.0 ACRES
 NE ¼ SW ¼ 39.2 ACRES
 NW ¼ SW ¼ 35.0 ACRES
 NW ¼ SW ¼ 40.0 ACRES
 SW ¼ SW ¼ 39.6 ACRES
 SW ¼ SW ¼ 27.6 ACRES
 SE ¼ SW ¼ 33.2 ACRES
 SE ¼ SW ¼ 39.8 ACRES

SECTION 34

NE ¼ NW ¼ 1.8 ACRES
 NW ¼ NW ¼ 10.0 ACRES
 NE ¼ SW ¼ 36.0 ACRES
 NW ¼ SW ¼ 37.8 ACRES
 SW ¼ SW ¼ 39.6 ACRES
 SE ¼ SW ¼ 40.0 ACRES
 NE ¼ SE ¼ 8.0 ACRES
 NW ¼ SE ¼ 34.8 ACRES
 SW ¼ SE ¼ 28.0 ACRES
 SE ¼ SE ¼ 35.0 ACRES

SECTION 35

TOWNSHIP 12 SOUTH, RANGE 5 WEST, W.M.

NE ¼ NE ¼ 9.4 ACRES
 NW ¼ NE ¼ 6.0 ACRES
 SW ¼ NE ¼ 13.5 ACRES
 NE ¼ NW ¼ 18.0 ACRES
 NW ¼ NW ¼ 35.0 ACRES
 SW ¼ NW ¼ 40.0 ACRES
 NE ¼ SW ¼ 40.0 ACRES
 NW ¼ SW ¼ 39.4 ACRES
 SW ¼ SW ¼ 40.0 ACRES
 SE ¼ SW ¼ 40.0 ACRES
 NE ¼ SE ¼ 2.3 ACRES
 NW ¼ SE ¼ 32.3 ACRES
 SW ¼ SE ¼ 22.0 ACRES
 SE ¼ SE ¼ 2.7 ACRES

SECTION 2

NE ¼ NE ¼ 15.3 ACRES
 NW ¼ NE ¼ 24.3 ACRES
 SW ¼ NE ¼ 38.5 ACRES
 SE ¼ NE ¼ 27.0 ACRES
 NE ¼ NW ¼ 40.0 ACRES
 NW ¼ NW ¼ 40.0 ACRES
 SW ¼ NW ¼ 40.0 ACRES
 SE ¼ NW ¼ 40.0 ACRES
 NE ¼ SW ¼ 40.0 ACRES
 NW ¼ SW ¼ 40.0 ACRES

SW ¼ SW ¼ 40.0 ACRES
 SE ¼ SW ¼ 40.0 ACRES
 NE ¼ SE ¼ 39.0 ACRES
 NW ¼ SE ¼ 38.5 ACRES
 SW ¼ SE ¼ 38.2 ACRES
 SE ¼ SE ¼ 37.9 ACRES

SECTION 3

NE ¼ NE ¼ 40.0 ACRES
 NW ¼ NE ¼ 40.0 ACRES
 SW ¼ NE ¼ 40.0 ACRES
 SE ¼ NE ¼ 40.0 ACRES
 NE ¼ NW ¼ 41.0 ACRES
 NW ¼ NW ¼ 21.3 ACRES
 SW ¼ NW ¼ 39.0 ACRES
 SE ¼ NW ¼ 40.0 ACRES
 NE ¼ SW ¼ 40.0 ACRES
 NW ¼ SW ¼ 21.8 ACRES
 SW ¼ SW ¼ 5.2 ACRES
 SE ¼ SW ¼ 36.8 ACRES
 NE ¼ SE ¼ 40.0 ACRES
 NW ¼ SE ¼ 40.0 ACRES
 SW ¼ SE ¼ 39.4 ACRES
 SE ¼ SE ¼ 40.0 ACRES

SECTION 4

NE ¼ NE ¼ 26.2 ACRES
 SE ¼ NE ¼ 6.0 ACRES
 SW ¼ SE ¼ 1.2 ACRES
 SE ¼ SE ¼ 2.5 ACRES

SECTION 5

NE ¼ NE ¼ 15.0 ACRES
 NW ¼ NE ¼ 38.0 ACRES
 SW ¼ NE ¼ 24.2 ACRES
 SE ¼ NE ¼ 9.0 ACRES
 SW ¼ NW ¼ 5.8 ACRES
 SE ¼ NW ¼ 16.5 ACRES
 NE ¼ SW ¼ 40.0 ACRES
 NW ¼ SW ¼ 11.2 ACRES
 SW ¼ SW ¼ 10.0 ACRES
 SE ¼ SW ¼ 30.0 ACRES
 NE ¼ SE ¼ 28.7 ACRES
 NW ¼ SE ¼ 40.0 ACRES
 SW ¼ SE ¼ 28.0 ACRES
 SE ¼ SE ¼ 14.6 ACRES

SECTION 8

NE ¼ NE ¼ 29.3 ACRES

NW ¼ NE ¼ 40.0 ACRES
 SW ¼ NE ¼ 38.0 ACRES
 SE ¼ NE ¼ 32.0 ACRES
 NE ¼ NW ¼ 37.6 ACRES
 NW ¼ NW ¼ 28.0 ACRES
 SW ¼ NW ¼ 38.0 ACRES
 SE ¼ NW ¼ 38.0 ACRES
 NE ¼ SW ¼ 40.0 ACRES
 NW ¼ SW ¼ 38.0 ACRES
 SW ¼ SW ¼ 32.0 ACRES
 SE ¼ SW ¼ 40.0 ACRES
 NE ¼ SE ¼ 40.0 ACRES
 NW ¼ SE ¼ 40.0 ACRES
 SW ¼ SE ¼ 40.0 ACRES
 SE ¼ SE ¼ 40.0 ACRES

SECTION 9

NE ¼ NE ¼ 37.8 ACRES
 NW ¼ NE ¼ 34.2 ACRES
 SW ¼ NE ¼ 23.1 ACRES
 SE ¼ NE ¼ 35.2 ACRES
 NE ¼ NW ¼ 40.0 ACRES
 NW ¼ NW ¼ 40.0 ACRES
 SW ¼ NW ¼ 35.5 ACRES
 SE ¼ NW ¼ 30.9 ACRES
 NE ¼ SW ¼ 37.0 ACRES
 NW ¼ SW ¼ 40.0 ACRES
 SW ¼ SW ¼ 40.0 ACRES
 SE ¼ SW ¼ 35.6 ACRES
 NE ¼ SE ¼ 37.8 ACRES
 NW ¼ SE ¼ 32.7 ACRES
 SW ¼ SE ¼ 40.0 ACRES
 SE ¼ SE ¼ 34.0 ACRES

SECTION 10

NE ¼ NE ¼ 39.0 ACRES
 NW ¼ NE ¼ 31.2 ACRES
 SW ¼ NE ¼ 30.0 ACRES
 SE ¼ NE ¼ 30.0 ACRES
 NE ¼ NW ¼ 40.0 ACRES
 NW ¼ NW ¼ 40.0 ACRES
 SW ¼ NW ¼ 40.0 ACRES
 SE ¼ NW ¼ 40.0 ACRES
 NE ¼ SW ¼ 38.0 ACRES
 NW ¼ SW ¼ 40.0 ACRES
 SW ¼ SW ¼ 40.0 ACRES
 SE ¼ SW ¼ 40.0 ACRES
 NE ¼ SE ¼ 14.0 ACRES
 NW ¼ SE ¼ 17.4 ACRES

SW ¼ SE ¼ 12.0 ACRES
 SE ¼ SE ¼ 10.0 ACRES

SECTION 11

NW ¼ NW ¼ 30.0 ACRES
 SW ¼ NW ¼ 30.0 ACRES

SECTION 12

NW ¼ NW ¼ 27.0 ACRES
 SW ¼ NW ¼ 25.6 ACRES
 NW ¼ SW ¼ 42.2 ACRES
 SW ¼ SW ¼ 16.7 ACRES

SECTION 13

NE ¼ NW ¼ 25.6 ACRES
 NE ¼ NW ¼ 39.4 ACRES
 NW ¼ NW ¼ 38.0 ACRES
 NW ¼ NW ¼ 33.8 ACRES
 SW ¼ NW ¼ 40.0 ACRES
 SW ¼ NW ¼ 37.2 ACRES
 SE ¼ NW ¼ 32.2 ACRES
 SE ¼ NW ¼ 15.6 ACRES
 NE ¼ SW ¼ 27.2 ACRES
 NW ¼ SW ¼ 38.4 ACRES
 SW ¼ SW ¼ 36.8 ACRES
 SE ¼ SW ¼ 37.9 ACRES
 NE ¼ SE ¼ 22.9 ACRES
 NW ¼ SE ¼ 39.1 ACRES
 SW ¼ SE ¼ 40.2 ACRES
 SE ¼ SE ¼ 20.7 ACRES

SECTION 14

NE ¼ NE ¼ 38.0 ACRES
 NW ¼ NE ¼ 40.0 ACRES
 SW ¼ NE ¼ 38.0 ACRES
 SE ¼ NE ¼ 36.9 ACRES
 NE ¼ NW ¼ 38.0 ACRES
 NW ¼ NW ¼ 40.0 ACRES
 SW ¼ NW ¼ 40.0 ACRES
 SE ¼ NW ¼ 10.5 ACRES
 NE ¼ SW ¼ 38.0 ACRES
 NW ¼ SW ¼ 40.0 ACRES
 SW ¼ SW ¼ 40.0 ACRES
 SE ¼ SW ¼ 37.7 ACRES
 NE ¼ SE ¼ 37.6 ACRES
 NW ¼ SE ¼ 40.0 ACRES
 SW ¼ SE ¼ 39.0 ACRES
 SE ¼ SE ¼ 38.9 ACRES

SECTION 15

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 31.0 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 36.0 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 39.0 ACRES
 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.0 ACRES
 SW $\frac{1}{4}$ SW $\frac{1}{4}$ 11.4 ACRES
 SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
 SW $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES
 SECTION 16

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 20.0 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 28.0 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 39.0 ACRES
 SE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 14.0 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 13.0 ACRES
 SW $\frac{1}{4}$ SE $\frac{1}{4}$ 10.0 ACRES
 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 10.0 ACRES
 SECTION 17

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 18.0 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 7.0 ACRES
 SECTION 20

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 30.0 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 37.0 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 35.0 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 18.0 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 4.6 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 13.0 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 18.0 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 18.0 ACRES
 SECTION 21

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 10.5 ACRES
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ 33.0 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 33.2 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 2.3 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 33.1 ACRES
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 36.4 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 39.0 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 37.5 ACRES
 SECTION 22

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 36.3 ACRES
 NW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 30.7 ACRES
 NE $\frac{1}{4}$ NW $\frac{1}{4}$ 20.0 ACRES
 NW $\frac{1}{4}$ NW $\frac{1}{4}$ 15.0 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 23.0 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 31.8 ACRES
 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 8.0 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 19.8 ACRES
 SW $\frac{1}{4}$ SW $\frac{1}{4}$ 8.3 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 20.0 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 9.2 ACRES
 SECTION 23

NW $\frac{1}{4}$ NW $\frac{1}{4}$ 28.8 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 20.5 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 18.4 ACRES
 SECTION 24

TOWNSHIP 13 SOUTH, RANGE 5 WEST, W.M.

1. 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. The permittee shall 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
2. 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.
3. Use of water under this water right is allowed only when flows in the mainstem Willamette River are met or exceeded based the flows as identified in Table 1 below. Flows must be met at Albany (USGS ID# 1417000) except during the out-migration period of April, May, and June when minimum flows shall be met at both Salem (USGS ID# 1419100) and Albany before withdrawal is allowed.

Table 1

Date	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Salem	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Albany
March 1-31	6000	4160
April 1-15	19200	4160
April 16-30	17000	4160

Date	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Salem	Minimum Bypass Flows in CFS for USGS Gauge Location, Willamette River at: Albany
May 1-15	15000	4160
May 16-31	15000	3980
June 1-15	12600	3980
June 16-30	8500	3980
July 1-31	5630	3980
August 1-31	5630	3980
September 1-30	5630	3980
October 1-14	5630	3980
October 15-31	5630	4160

4. There is a base map for this permit that covers 10991.8 acres. Each year, no later than April 30 or prior to appropriation of water, whichever comes first, the permittee shall submit a map to the Department that demarcates the place of use under this water right and the place of use of underlying primary water rights. The place of use shall be within the 10991.8 acres shown on the base map, and shall not exceed 7373.0 acres annually.

The annual map shall also show the place of use for irrigation water rights within Greenberry Irrigation District that are Greenberry Irrigation District water rights, as well as non-Greenberry Irrigation District water rights.

5. Water use under this permit is not allowed if there are not contract(s) for stored water in place for the same lands identified for use under the annual map unless the applicant has a valid request for a stored water contract(s) before the Bureau of Reclamation and is pursuing the issuance of the contract in good faith.
6. The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows. If standards are not met, mitigative measures, such as riparian restoration along stream corridors, may be required by the Department to offset the impacts of the withdrawal on water

quality. The applicant is encouraged to pursue riparian restoration and water conservation practices on an ongoing non-regulatory basis.

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 635-415, shall be followed.

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 application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____, 2009

DRAFT - THIS IS **NOT** A PERMIT

for Phillip C. Ward, Director
Water Resources Department

Mailing List for PFO Copies

Application #S-87035

PFO Date March 24, 2009

Original mailed to applicant:

Greenberry Irrigation District, 30742 VENELL PLACE, CORVALLIS, OR 97333

Copies sent to:

- i. WRD - File # S-87035
- ii. Water Availability: Ken Stahr

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>

PFO and Map Sheet Copies sent to:

- iii. WRD - Watermaster # 2
- iv. Regional Manager:
- v. ODFW District Biologist: Steve Mamoyac
- vi. DEQ: · Jared Rubin
- i. DOA: Jim Johnson

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)
WaterWatch of Oregon, Lisa Brown, 213 SW St., STE 208, Portland, OR 97204

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

CASEWORKER : geffenba