

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

In the Matter of Water Rights Application        )  
S-87260, Jackson 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 August 18, 2008, Rogue Aggregates, Inc 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 August 26, 2008. A 30-day comment period followed.
2. The Department has evaluated the application and any comments received, and finds that no public interest in ORS 537.170(8) would be affected adversely by the proposed use.

**Conclusions of Law**

Application S-87260 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

**Now Therefore, it is Ordered:**

Application S-87260 is approved pursuant to ORS 537.147. Upon resolution of the outstanding issues below, a permit shall be issued authorizing the proposed water use.

Please submit payment of outstanding permit recording fees in the amount of \$5.00, and documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded. a permit shall be issued authorizing the proposed water use.

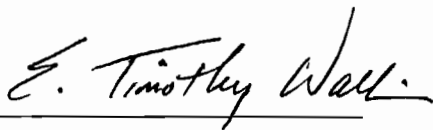
Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

*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.*

**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.

Dated at Salem, Oregon on OCTOBER 15 2009.



for Phillip C. Ward, Director

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 or [Jeana.M.Eastman@wrд.state.or.us](mailto:Jeana.M.Eastman@wrд.state.or.us).

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 JACKSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

ROGUE AGGREGATES, INC  
 PO BOX 4430  
 MEDFORD OR 97501

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

APPLICATION FILE NUMBER: S-87260

SOURCE OF WATER: LOST CREEK RESERVOIR CONSTRUCTED UNDER PERMIT R-8142

PURPOSE OR USE: MINING

MAXIMUM VOLUME: 5.0 ACRE FEET

DATE OF PRIORITY: AUGUST 18, 2008

PERIOD: YEAR-ROUND

**Authorized Point of ReDiversion:**

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
36 S	3 W	WM	19	SW NW	SOUTH 28 DEGREES 38 MINUTES EAST, 1823 FEET FROM NW CORNER, SECTION 19

**Authorized Place of Use:**

Twp	Rng	Mer	Sec	Q-Q
36 S	3 W	WM	18	SW SW
36 S	3 W	WM	19	NE NW
36 S	3 W	WM	19	NW NW
36 S	3 W	WM	19	SW NW

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 in good working order.
- B. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information the periods of water use and the place and nature of use of water under the permit.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The water user 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 water. The water user may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

The use of water under this right is subject to the terms and conditions of Water Storage Agreement Between The United States of America and Rogue Aggregates, Inc., Medford, Oregon, for Originally Authorized Water Storage Space in Lost Creek Lake Project, Oregon, or a satisfactory replacement, between the Bureau of Reclamation and the applicant, a copy of which is on file in the records of the Water Resources Department.

### 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, shall be followed.
7. 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.
8. 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 – NOT A PERMIT

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for Phillip C. Ward, Director  
Water Resources Department