

**Oregon Water Resources Department  
Water Rights/Adjudications Division**

Water Rights Application  
Number R-87489

**Final Order**

*Appeal Rights*

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 June 30, 2009, 4 DSD, LLC. submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on June 29, 2010. The protest period closed August 13, 2010, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

**Order**

Application R-87489 is therefore approved as proposed by the Proposed Final Order. Upon resolution of the outstanding issues described below, a permit shall be issued authorizing the proposed water use. Prior to issuance of a permit, outstanding fees in the amount of \$400 must be paid, and dam plans and specifications must be submitted and approved.

Failure to meet these requirements 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 September 20, 2010**

*E. Timothy Wall*

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.  
STATE OF OREGON

DRAFT

COUNTY OF WHEELER

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

4 DSD, LLC.  
175 PHILLIPS RD  
WOODSIDE, CA 94062

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

APPLICATION FILE NUMBER: R-87489

SOURCE OF WATER: RUNOFF, LOW GILCHRIST SPRING, AND HIGH GILCHRIST SPRING, TRIBUTARIES OF SIXSHOOTER CREEK

STORAGE FACILITY: POND A

PURPOSE OR USE OF THE STORED WATER: IRRIGATION AND LIVESTOCK

MAXIMUM VOLUME: 200.0 ACRE FEET EACH YEAR

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: JANUARY 1 THROUGH APRIL 14

DATE OF PRIORITY: JUNE 30, 2009

THE AREA SUBMERGED BY THE RESERVOIR, WHEN FULL, WILL BE 9.0 ACRES. THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 49.0 FEET.

DAM LOCATION: NE ¼ NW ¼, SECTION 15, T11S, R24E, W.M.; 985 FEET SOUTH AND 1675 FEET EAST FROM NW CORNER, SECTION 15

POINTS OF DIVERSION LOCATIONS:

LOW GILCHRIST SPRING - NE ¼ NW ¼, SECTION 15, T11S, R24E, W.M.;  
1120 FEET SOUTH AND 2465 FEET EAST FROM NW CORNER, SECTION 15

HIGH GILCHRIST SPRING - SW ¼ NE ¼, SECTION 15, T11S, R24E, W.M.;  
1723 FEET SOUTH AND 2658 FEET EAST FROM NW CORNER, SECTION 15

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

NE ¼ NW ¼  
SE ¼ NW ¼  
SECTION 15  
TOWNSHIP 11 SOUTH, RANGE 24 EAST, W.M.

## Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
- B. Before water use may begin under this permit, the user shall install measuring devices in order to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director.
- C. The permittee shall maintain all required devices in good working order.
- D. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- E. 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.
- F. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Use of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 1048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (cfs)
January	500
February	1000
March	2000
April	2000

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

The permittee shall pass all live flow outside the storage season described above.

This permit allows an annual appropriation (not to exceed the specified volume). 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 to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

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.

Notwithstanding that Oregon Department of Fish and Wildlife 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/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

#### **DAM CONDITIONS**

To be added upon approval by the Department's dam-safety engineer.

**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.

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.

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.

Construction shall be completed and the permitted volume of water shall be stored within five years of the date of permit issuance. If additional time is needed, 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 storage 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

**DRAFT - THIS IS NOT A PERMIT**

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for Phillip C. Ward, Director  
Water Resources Department