

**Oregon Water Resources Department  
Water Rights Division**

Water Rights Application  
Number R-86935

*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.

**Superseding Final Order Incorporating Settlement Agreement**

*Application History*

On June 29, 2007, Gary Young submitted an application to the Department for a water use permit to store water from Beaver Creek, a tributary of Crooked River, for irrigation.

The Department issued a Proposed Final Order on June 9, 2009, recommending the application be denied because the proposed use of water is not consistent with the Deschutes Basin Program, OAR 690-505-0030(1)(c).

On July 27, 2009, a timely protest was filed by the applicant. The protest included additional information which clarified that the use of water would also be for livestock and wildlife. The additional information is sufficient for compliance with the Deschutes Basin Program, OAR 690-505-0030(1)(c). The updated uses are reflected in the attached draft permit.

A settlement agreement was signed by all parties as of January 12, 2010.

The Department issued a Final Order Incorporating Settlement Agreement on March 18, 2010. However, based on further review, the Department has determined that the March 18, 2010 Final Order Incorporating Settlement Agreement omitted several required permit conditions. Therefore, this Superseding Order shall address all pertinent permit conditions.

A superseding settlement agreement was signed by all parties as of March 14, 2011. The terms of the Settlement Agreement have been incorporated into this Superseding Final Order and a copy of the Settlement Agreement is included below.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Final Order Incorporating Settlement Agreement issued March 18, 2010 requires modification to include the following conditions:

Upon submittal and approval of dam plans and specifications, dam conditions shall be added to the attached draft permit.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, 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.

| Deschutes River Scenic Waterway |                               |
|---------------------------------|-------------------------------|
| <b>Month</b>                    | <b>Minimum Flow<br/>(cfs)</b> |
| March 1-15                      | 4500                          |
| March 16-31                     | 4000                          |
| April 1-14                      | 4000                          |

The proposed use would not impair or be detrimental to the public interest. The Protestant and the Department have agreed to permit conditions set forth in the draft permit.

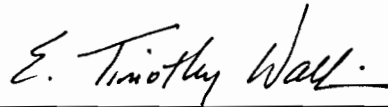
## Order

Application R-86935 is therefore approved with modifications to the Final Order issued March 18, 2010, further modified by the Superseding Settlement Agreement signed by all parties on March 14, 2011. Upon approval of dam plans and specifications by Department Dam Safety staff, a permit consistent with the attached draft permit shall be issued.

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 April 14, 2011**



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 questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". 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 CROOK

DRAFT PERMIT TO STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

GARY YOUNG  
PO BOX 14  
PAULINA, OR 97751

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

APPLICATION FILE NUMBER: R-86935

SOURCE OF WATER: BEAVER CREEK, A TRIBUTARY OF CROOKED RIVER

STORAGE FACILITY: BEAVER CREEK WEST RESERVOIR

PURPOSE OR USE OF THE STORED WATER: IRRIGATION, LIVESTOCK, AND  
WILDLIFE

MAXIMUM VOLUME: 61.25 ACRE FEET

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

DATE OF PRIORITY: JUNE 29, 2007

THE AREA SUBMERGED BY THE RESERVOIR, WHEN FULL, WILL BE 3.75 ACRES AND  
THE MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 40.0 FEET.

POINT OF DIVERSION: NE ¼ SE ¼, SECTION 34, T16S, R23E, W.M.; 3432 FEET  
SOUTH AND 660 FEET WEST FROM NE CORNER, SECTION 34

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

NW ¼ NE ¼  
SW ¼ NE ¼  
SECTION 34  
TOWNSHIP 16 SOUTH, RANGE 23 EAST, W.M.

Measurement, recording and reporting conditions:

1. A. Before water may be diverted for storage 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.

- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded measurements to the Department annually or more frequently as may be required by the Director.
2.
  - A. Before water may be diverted for storage under this permit, a staff gage that measures the entire range 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. The Director may require the permittee to keep and maintain a record of the water level measurements on a periodic schedule as established by the Director.
3. 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.
4. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.
5. The permittee shall maintain all required devices in good working order.

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.

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.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, 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.

| Deschutes River Scenic Waterway |                           |
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#### **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

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

In the Matter of Water Right Application     )  
R-86935 in the name of Gary Young         )     SUPERSEDING  
   )     SETTLEMENT  
                  *Applicant/*                             )     AGREEMENT  
                  *Protestant*

The Oregon Water Resources Department (OWRD) and Gary Young (collectively “the parties”) do hereby stipulate and agree in this “Settlement Agreement” (Agreement) as follows:

**A. Background**

1. On June 29, 2007, the Oregon Water Resources Department received Application R-86935 for storage of 61.25 acre feet in Crook County.
2. On June 9, 2009, OWRD issued a Proposed Final Order (PFO) recommending that the application be denied because the stated proposed use was inconsistent with the Deschutes Basin Program.
3. On July 27, 2009, Gary Young filed a timely protest.
4. A settlement agreement was signed by all parties as of January 12, 2010.
5. On March 18, 2010, the Department issued a Final Order Incorporating Settlement Agreement and draft permit pending submittal of permit recording fees in the amount of \$400.
6. Based on further review, the Department determined that the March 18, 2010 Final Order Incorporating Settlement Agreement omitted several permit conditions. Thus, the Final Order Incorporating Settlement Agreement requires modification to include the following conditions:

Upon submittal and approval of dam plans and specifications, dam conditions shall be added to the attached draft permit.

Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR 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.

**RECEIVED**

MAR 15 2011

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| Deschutes River Scenic Waterway |                           |
|---------------------------------|---------------------------|
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| April 1-14                      | 4000                      |

7. OWRD and Gary Young agree that all issues related to Application R-86935 are resolved solely on the following terms.

**B. Consent**

1. Gary Young hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the draft Superseding Final Order Incorporating Settlement Agreement and draft permit for Application R-86935 which are hereby incorporated by reference.
2. Gary Young understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
3. Gary Young understands and agrees that this Agreement and the Superseding Final Order Incorporating Settlement Agreement and draft permit issued pursuant to this Agreement constitute the complete and final resolution of the protest.
4. Gary Young waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Superseding Final Order Incorporating Settlement Agreement for Application R-86935 issued by OWRD.


**C. Terms of the Agreement**

1. OWRD shall issue a Superseding Final Order Incorporating Settlement Agreement consistent with this Agreement and draft permit. Upon submittal and approval of dam plans and specifications, the Department will issue a Permit consistent with the attached draft Permit.
2. 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.
3. 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.

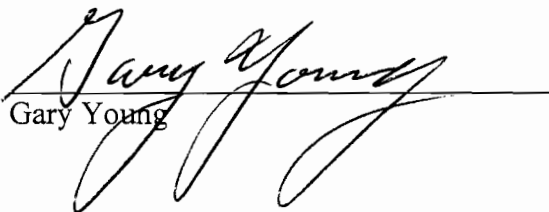
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MAR 15 2011

4. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Superseding Final Order Incorporating Settlement Agreement and draft permit, and understands and agrees with the contents thereof.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. 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

2-28-11  
Date

  
Gary Young

3/14/11  
Date

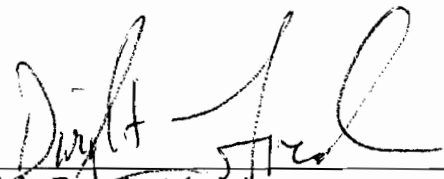
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MAR 15 2011

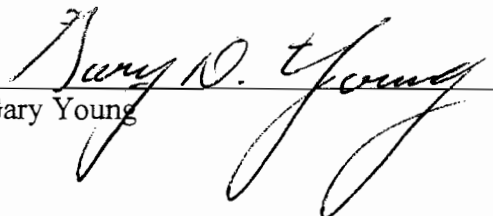
WATER RESOURCES DEPT  
SALEM, OREGON  
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1. OWRD shall issue a Final Orders Incorporating Settlement Agreement consistent with this Agreement and will issue a Permit consistent with the attached draft Permit.
2. Each Party to this Settlement Agreement 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.
3. 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.
4. 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.
5. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
6. 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

12/24/09  
Date

  
\_\_\_\_\_  
Gary Young

1/12/10  
Date