

Oregon Water Resources Department
Water Rights Services Division

Water Rights Application
Number R-87387

Prior to the issuance of a permit, the Department must receive permit recording fees in the amount of \$357.00. Please include your application number on your check made out to the Oregon Water Resources Department.

Proposed Final Order

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

Application History

On January 30, 2009, R. J. and Susan Claus submitted an application to the Department for the following water use permit:

- Amount of Water: 200.55 ACRE FEET (AF)
- Use of Water: FISH CULTURE, LIVESTOCK, WILDLIFE, AND STORAGE FOR IRRIGATION
- Source of Water: SNIPTION CANYON, SCHOTT CANYON, AND THREE UNNAMED STREAMS, TRIBUTARY TO THIRTYMILE CREEK; CRAZY FORK CANYON, SUNSHINE CANYON, SANDY CANYON, WILLOW CANYON, BUCK HOLLOW, AND SIX UNNAMED STREAMS, TRIBUTARY TO SNIPTION CANYON; TWO UNNAMED STREAMS, TRIBUTARY TO CRAZY FORK CANYON; THREE UNNAMED STREAMS, TRIBUTARY TO WILLOW CANYON; SQUAW CANYON, AND THREE UNNAMED STREAMS, TRIBUTARY TO BUCK HOLLOW, AND TWO UNNAMED STREAMS, TRIBUTARY TO SCHOTT CANYON
- Area of Proposed USE: GILLIAM COUNTY WITHIN SECTION 13, 25, 26, 27, 33, 34, 35, 36, TOWNSHIP 4 SOUTH, RANGE 20 EAST, SECTION 18, 19, 20, 30, TOWNSHIP 4 SOUTH, RANGE 21 EAST AND SECTION 1 AND 2, TOWNSHIP 5 SOUTH, RANGE 20 EAST, W.M.

On December 18, 2009, the Department mailed the applicant notice of its Initial Review, determining that "*The storage of 146.74 AF of water from Sniption Canyon, Schott Canyon, and three unnamed streams, tributary to Thirty Mile Creek; Crazy Fork Canyon, Sunshine Canyon, Sandy Canyon, Willow Canyon, Buck Hollow, and six unnamed streams, tributary to Sniption Canyon; two unnamed streams, tributary to Crazy Fork Canyon; three unnamed streams, tributary to Willow Canyon; Squaw Canyon and three unnamed streams, tributary to Buck Hollow and two unnamed streams, tributary to Schott Canyon for storage for irrigation, livestock, fish culture and wildlife uses is allowable from November 1 through April 14.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.

Within 30 days of the Department's public notice, written comments were received from Water Watch and Native Fish Society. A comment evaluation was completed, and the comments provided were considered by the Department.

On May 29, 2011, the applicant provided the Department with amended maps, and clarification of the volumes of water to be stored in the reservoirs.

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

The John Day Basin Program allows fish culture, livestock, wildlife, and storage for irrigation use.

Senior water rights exist on Sniption Canyon, a tributary of Thirtymile Creek; six unnamed streams, tributaries of Sniption Canyon; Crazy Fork, a tributary of Sniption Canyon; two unnamed streams, tributaries of Crazy Fork; Sunshine Canyon, a tributary of Sniption Canyon; Sandy Canyon, a tributary of Sniption Canyon; Willow Canyon, a tributary of Sniption Canyon; three unnamed streams, tributaries of Willow Canyon; Buck Hollow, a tributary of Sniption Canyon; Squaw Canyon, a tributary of Buck Hollow; three unnamed streams, tributaries of Buck Hollow; Schott Canyon, a tributary of Thirtymile Creek; unnamed stream, a tributary of Schott Canyon; three unnamed streams, tributaries of Thirtymile Creek; and unnamed stream, a tributary of Schott Canyon, or on downstream waters.

Sniption Canyon, a tributary of Thirtymile Creek; six unnamed streams, tributaries of Sniption Canyon; Crazy Fork, a tributary of Sniption Canyon; two unnamed streams, tributaries of Crazy Fork; Sunshine Canyon, a tributary of Sniption Canyon; Sandy Canyon, a tributary of Sniption Canyon; Willow Canyon, a tributary of Sniption Canyon; three unnamed Streams, tributaries of Willow Canyon; Buck Hollow, a tributary of Sniption Canyon; Squaw Canyon, a tributary of Buck Hollow; three unnamed streams, tributaries of Buck Hollow; Schott Canyon, a tributary of Thirtymile Creek; unnamed stream, a tributary of Schott Canyon; three unnamed streams, tributaries of Thirtymile Creek; and unnamed stream, a tributary of Schott Canyon, are above the John Day River 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 calculation is in the file. This calculation determined that water is available for further appropriation (at a 50 percent exceedance probability) November 1 through April 14 for fish culture, livestock, wildlife, and storage for irrigation use.

The Department finds that no more than 159.5 AF would be necessary for the proposed use. The amount of water allowed shall be restricted to 159.5 AF.

In accordance with OAR 690-033-0330, 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 as follows:

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. The permittee shall maintain all required devices in good working order.
- C. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The permittee shall keep a complete record of the amount of water stored each month, and shall submit a report which includes the recorded report water-storage 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.
- E. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 state or federal water quality standards due to reduced flows.

The diversion of water as proposed in this application is not allowed April 15 through September 30 per OAR 690-033, which sets public interest standards for threatened, endangered or sensitive fish species.

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 uses requested in this application are allowed in the John Day Basin Program, or a preference for these uses 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 application is in compliance with the State Agency Coordination Program regarding 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 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. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions, contingent upon approval of Applications G-17171 and S-87388.

DATED July 19, 2011



for Phillip C. Ward, Director
Water Resources Department

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

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 **September 2, 2011**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- 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;
- A detailed description of how the action proposed in this Proposed Final Order would impair or be detrimental to your interest;

- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) the specific public interest in ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified public interest in ORS 537.170(8) would be impaired or be detrimentally affected;
- If you are the applicant, the protest fee of \$300 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$600 required by ORS 536.050 and proof of service of the protest upon the applicant.
- 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.
- *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 **September 2, 2011**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;

- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$150. If a hearing is scheduled, an additional fee of \$350 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:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- 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 Michele McAleer. 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 503-986-0853.

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.
STATE OF OREGON

DRAFT

COUNTY OF GILLIAM

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

R. J. AND SUSAN CLAUS
22211 SW PACIFIC HWY
SHERWOOD, OR 97140

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

APPLICATION FILE NUMBER: R-87387

SOURCE OF WATER: SNIPTION CANYON, A TRIBUTARY OF THIRTYMILE CREEK; SIX UNNAMED STREAMS, TRIBUTARIES OF SNIPTION CANYON; CRAZY FORK, A TRIBUTARY OF SNIPTION CANYON; TWO UNNAMED STREAMS, TRIBUTARIES OF CRAZY FORK; SUNSHINE CANYON, A TRIBUTARY OF SNIPTION CANYON; SANDY CANYON, A TRIBUTARY OF SNIPTION CANYON; WILLOW CANYON, A TRIBUTARY OF SNIPTION CANYON; THREE UNNAMED STREAMS, TRIBUTARIES OF WILLOW CANYON; BUCK HOLLOW, A TRIBUTARY OF SNIPTION CANYON; SQUAW CANYON, A TRIBUTARY OF BUCK HOLLOW; THREE UNNAMED STREAMS, TRIBUTARIES OF BUCK HOLLOW; SCHOTT CANYON, A TRIBUTARY OF THIRTYMILE CREEK; UNNAMED STREAM, A TRIBUTARY OF SCHOTT CANYON; THREE UNNAMED STREAMS, TRIBUTARIES OF THIRTYMILE CREEK; AND UNNAMED STREAM, A TRIBUTARY OF SCHOTT CANYON

STORAGE FACILITIES: RESERVOIRS 1 AND 2, TRIBUTARY TO PRIOR CANYON; 3, 4, 5, 6, 7, 19, 20, 34, 35 AND 49, 50, 51, TRIBUTARY TO UNNAMED STREAMS, TRIBUTARY TO SNIPTION CANYON; 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81 AND 82, TRIBUTARY TO SNIPTION CANYON; 8, 9, 10, 11, 12, 13, 14, 15, 16, AND 17, TRIBUTARY TO CRAZY FORK CANYON; 18, TRIBUTARY TO SUNSHINE CANYON; 21, 22, AND 23, TRIBUTARY TO SANDY CANYON; 24, 25, 26, 27, 28, 29, 30, 31, 32 AND 33, TRIBUTARY TO WILLOW CANYON; 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47 AND 48, TRIBUTARY TO BUCK HOLLOW; 52, 53, AND 54, TRIBUTARY TO SQUAW CANYON; 55, 56, 57, 58, 59 AND 60, TRIBUTARY TO SCHOTT CANYON; AND 61, 62 AND 63, TRIBUTARY TO UNNAMED STREAM, TRIBUTARY TO THIRTYMILE CREEK; RESERVOIR 83 (CONSTRUCTED UNDER PERMIT R-13956, IDENTIFIED AS RESERVOIR 2), TRIBUTARY TO SNIPTION CANYON, BEING AN ENLARGEMENT; RESERVOIR 84 (CONSTRUCTED UNDER PERMIT R-13956, IDENTIFIED AS RESERVOIR 3), TRIBUTARY TO CRAZY FORK CANYON, BEING AN ENLARGEMENT; RESERVOIR 85 (CONSTRUCTED UNDER PERMIT R-13956, IDENTIFIED AS RESERVOIR 4), TRIBUTARY TO SUNSHINE CANYON, BEING AN ENLARGEMENT; RESERVOIR 86 (CONSTRUCTED UNDER PERMIT R-13957, IDENTIFIED AS RESERVOIR 7), TRIBUTARY TO BUCK HOLLOW, BEING AN ENLARGEMENT.

PURPOSE OR USE OF THE STORED WATER: FISH CULTURE, LIVESTOCK, WILDLIFE, AND STORAGE FOR IRRIGATION, TO BE APPROPRIATED UNDER APPLICATION S-87388

MAXIMUM VOLUME: 159.5 ACRE FEET EACH YEAR, BEING AS FOLLOWS:

0.1 ACRE FOOT IN RESERVOIRS 5, 11, 14, 26, 30, 31, 45, 46, 47, 48, 49, 58, 59, 60, 61, 62, AND 63;

0.3 ACRE FOOT IN RESERVOIRS 34 AND 35;

0.5 ACRE FOOT IN RESERVOIRS 6, 7, 8, 9, 10, 12, 13, 15, 16, 19, 20, 36, 37, 38, 39, 50, 51, 52, 64, AND 65;

0.8 ACRE FOOT IN RESERVOIRS 18, 21, 22, 24, 25, 27, 28, 29, AND 53;

1.0 ACRE FOOT IN RESERVOIR 4;

2.0 ACRE FEET IN RESERVOIRS 1, 2, AND 3;

3.0 ACRE FEET IN RESERVOIRS 32, 40, 41, 42, 43, 44, 55, 66, 67, 69, 76, 77, 78, 79, 80, 81, AND 83;

4.0 ACRE FEET IN RESERVOIRS 84, 85, 86;

5.0 ACRE FEET IN RESERVOIRS 17, 23, 33, 54, 56, 57, 68, 70, 71, 72, 73, 74, 75, AND 82

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

DATE OF PRIORITY: JANUARY 30, 2009

THE AREA SUBMERGED BY THE RESERVOIR(S), WHEN FULL, WILL BE 37.69 ACRES AND THE MAXIMUM DEPTH OF WATER WILL BE 10.0 FEET. THE MAXIMUM HEIGHT OF THE DAM(S) SHALL NOT EXCEED 10.0 FEET.

DAM/RESERVOIR LOCATION(S) :

RESERVOIR 1 - SESE, SECTION 18, T4S, R21E, W.M.; 800 FEET NORTH AND 100 FEET WEST FROM SE CORNER, SECTION 18

RESERVOIR 2 - NESE, SECTION 18, T4S, R21E, W.M.; 1700 FEET NORTH AND 400 FEET WEST FROM SE CORNER, SECTION 18

RESERVOIR 3 - SESE, SECTION 18, T4S, R21E, W.M.; 600 FEET NORTH AND 1200 FEET WEST FROM SE CORNER, SECTION 18

RESERVOIR 4 - NWSE, SECTION 18, T4S, R21E, W.M.; 1400 FEET NORTH AND 1800 FEET WEST FROM SE CORNER, SECTION 18

RESERVOIR 5 - NWSE, SECTION 18, T4S, R21E, W.M.; 2050 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 18

RESERVOIR 6 - NWSW, SECTION 20, T4S, R21E, W.M.; 2200 FEET NORTH AND 800 FEET EAST FROM SW CORNER, SECTION 20

RESERVOIR 7 - SENE, SECTION 19, T4S, R21E, W.M.; 2500 FEET SOUTH AND 100 FEET WEST FROM NE CORNER, SECTION 19

RESERVOIR 8 - NESE, SECTION 13, T4S, R20E, W.M.; 100 FEET SOUTH AND 800 FEET WEST FROM E1/4 CORNER, SECTION 13

RESERVOIR 9 - NESE, SECTION 13, T4S, R20E, W.M.; 500 FEET SOUTH AND 500 FEET WEST FROM E1/4 CORNER, SECTION 13

RESERVOIR 10 - NESE, SECTION 13, T4S, R20E, W.M.; 800 FEET SOUTH AND 200 FEET WEST FROM E1/4 CORNER, SECTION 13

RESERVOIR 11 - SWSW, SECTION 18, T4S, R21E, W.M.; 1400 FEET SOUTH AND 300 FEET EAST FROM W1/4 CORNER, SECTION 18

RESERVOIR 12 - SWSW, SECTION 18, T4S, R21E, W.M.; 2000 FEET SOUTH AND 1300 FEET EAST FROM W1/4 CORNER, SECTION 18

RESERVOIR 13 - NENW, SECTION 19, T4S, R21E, W.M.; 200 FEET SOUTH AND 1900 FEET EAST FROM NW CORNER, SECTION 19

RESERVOIR 14 - NENW, SECTION 19, T4S, R21E, W.M.; 800 FEET SOUTH AND 2500 FEET EAST FROM NW CORNER, SECTION 19

RESERVOIR 15 - NENW, SECTION 19, T4S, R21E, W.M.; 1100 FEET SOUTH AND 2200 FEET EAST FROM NW CORNER, SECTION 19

RESERVOIR 16 - SENW, SECTION 19, T4S, R21E, W.M.; 600 FEET NORTH AND 2400 FEET EAST FROM W1/4 CORNER, SECTION 19

RESERVOIR 17 - NWSE, SECTION 19, T4S, R21E, W.M.; 700 FEET SOUTH AND 2800 FEET EAST FROM W1/4 CORNER, SECTION 19

RESERVOIR 18 - SESW, SECTION 19, T4S, R21E, W.M.; 300 FEET NORTH AND 1600 FEET EAST FROM SW CORNER, SECTION 19

RESERVOIR 19 - SWSE, SECTION 19, T4S, R21E, W.M.; 700 FEET NORTH AND 2000 FEET WEST FROM SE CORNER, SECTION 19

RESERVOIR 20 - SWSE, SECTION 19, T4S, R21E, W.M.; 1000 FEET NORTH AND 2400 FEET WEST FROM SE CORNER, SECTION 19

RESERVOIR 21 - NWNE, SECTION 25, T4S, R20E, W.M.; 200 FEET SOUTH AND 100 FEET EAST FROM N1/4 CORNER, SECTION 25

RESERVOIR 22 - NWNE, SECTION 25, T4S, R20E, W.M.; 1000 FEET SOUTH AND 1000 FEET EAST FROM N1/4 CORNER, SECTION 25

RESERVOIR 23 - NESE, SECTION 25, T4S, R20E, W.M.; 2800 FEET SOUTH AND 1700 FEET EAST FROM N1/4 CORNER, SECTION 25

RESERVOIR 24 - SENE, SECTION 26, T4S, R20E, W.M.; 1500 FEET SOUTH AND 900 FEET WEST FROM NE CORNER, SECTION 26

RESERVOIR 25 - SENE, SECTION 26, T4S, R20E, W.M.; 2600 FEET SOUTH AND 1300 FEET WEST FROM NE CORNER, SECTION 26

RESERVOIR 26 - SWNE, SECTION 26, T4S, R20E, W.M.; 2100 FEET SOUTH AND 1800 FEET WEST FROM NE CORNER, SECTION 26

RESERVOIR 27 - NWSE, SECTION 26, T4S, R20E, W.M.; 3200 FEET SOUTH AND 1400 FEET WEST FROM NE CORNER, SECTION 26

RESERVOIR 28 - SESE, SECTION 26, T4S, R20E, W.M.; 4000 FEET SOUTH AND 1100 FEET WEST FROM NE CORNER, SECTION 26

RESERVOIR 29 - NENE, SECTION 35, T4S, R20E, W.M.; 600 FEET SOUTH AND 700 FEET WEST FROM NE CORNER, SECTION 35

RESERVOIR 30 - NWNE, SECTION 35, T4S, R20E, W.M.; 1000 FEET SOUTH AND 2200 FEET WEST FROM NE CORNER, SECTION 35

RESERVOIR 31 - SWNE, SECTION 35, T4S, R20E, W.M.; 2100 FEET SOUTH AND 2100 FEET WEST FROM NE CORNER, SECTION 35

RESERVOIR 32 - SENE, SECTION 35, T4S, R20E, W.M.; 2200 FEET SOUTH AND 600 FEET WEST FROM NE CORNER, SECTION 35

RESERVOIR 33 - NESE, SECTION 35, T4S, R20E, W.M.; 3100 FEET SOUTH AND 400 FEET WEST FROM NE CORNER, SECTION 35

RESERVOIR 34 - SENW, SECTION 36, T4S, R20E, W.M.; 300 FEET NORTH AND 3000 FEET WEST FROM E1/4 CORNER, SECTION 36

RESERVOIR 35 - SWNE, SECTION 36, T4S, R20E, W.M.; 100 FEET NORTH AND 1900 FEET WEST FROM E1/4 CORNER, SECTION 36

RESERVOIR 36 - NWNW, SECTION 26, T4S, R20E, W.M.; 200 FEET SOUTH AND 1000 FEET EAST FROM NW CORNER, SECTION 26

RESERVOIR 37 - NWNW, SECTION 26, T4S, R20E, W.M.; 1100 FEET SOUTH AND 900 FEET EAST FROM NW CORNER, SECTION 26

RESERVOIR 38 - SWNW, SECTION 26, T4S, R20E, W.M.; 2300 FEET SOUTH AND 500 FEET EAST FROM NW CORNER, SECTION 26

RESERVOIR 39 - NESE, SECTION 27, T4S, R20E, W.M.; 3700 FEET SOUTH AND 100 FEET WEST FROM NE CORNER, SECTION 27

RESERVOIR 40 - SESE, SECTION 34, T4S, R20E, W.M.; 100 FEET NORTH AND 1400 FEET EAST FROM S1/4 CORNER, SECTION 34

RESERVOIR 41 - SESE, SECTION 34, T4S, R20E, W.M.; 770 FEET NORTH AND 1400 FEET EAST FROM S1/4 CORNER, SECTION 34

RESERVOIR 42 - NESE, SECTION 34, T4S, R20E, W.M.; 1440 FEET NORTH AND 260 FEET EAST FROM SW CORNER, SESE, SECTION 34

RESERVOIR 43 - NESE, SECTION 34, T4S, R20E, W.M.; 2140 FEET NORTH AND 1630 FEET EAST FROM S1/4 CORNER, SECTION 34

RESERVOIR 44 - SENE, SECTION 34, T4S, R20E, W.M.; 2760 FEET NORTH AND 1690 FEET EAST FROM S1/4 CORNER, SECTION 34

RESERVOIR 45 - NENW, SECTION 35, T4S, R20E, W.M.; 600 FEET SOUTH AND 1900 FEET EAST FROM NW CORNER, SECTION 35

RESERVOIR 46 - SENW, SECTION 35, T4S, R20E, W.M.; 1600 FEET SOUTH AND 1700 FEET EAST FROM NW CORNER, SECTION 35

RESERVOIR 47 - NENW, SECTION 35, T4S, R20E, W.M.; 1300 FEET SOUTH AND 1450 EAST FROM NW CORNER, SECTION 35

RESERVOIR 48 - NWNE, SECTION 34, T4S, R20E, W.M.; 800 FEET SOUTH AND 2300 FEET WEST FROM NE CORNER, SECTION 34

RESERVOIR 49 - NWSW, SECTION 35, T4S, R20E, W.M.; 2800 FEET SOUTH AND 1200 FEET EAST FROM NW CORNER, SECTION 35

RESERVOIR 50 - NWSW, SECTION 35, T4S, R20E, W.M.; 3200 FEET SOUTH AND 900 FEET EAST FROM NW CORNER, SECTION 35

RESERVOIR 51 - SWSW, SECTION 35, T4S, R20E, W.M.; 4200 FEET SOUTH AND 400 FEET EAST FROM NW CORNER, SECTION 35

RESERVOIR 52 - NENE, SECTION 27, T4S, R20E, W.M.; 200 FEET SOUTH AND 1200 FEET WEST FROM NE CORNER, SECTION 27

RESERVOIR 53 - SENE, SECTION 27, T4S, R20E, W.M.; 1800 FEET SOUTH AND 1300 FEET WEST FROM NE CORNER, SECTION 27

RESERVOIR 54 - SESE, SECTION 27, T4S, R20E, W.M.; 4500 FEET SOUTH AND 700 FEET WEST FROM NE CORNER, SECTION 27

RESERVOIR 55 - NWSW, SECTION 27, T4S, R20E, W.M.; 1100 FEET SOUTH AND 600 FEET EAST FROM W1/4 CORNER, SECTION 27

RESERVOIR 56 - SWSW, SECTION 27, T4S, R20E, W.M.; 2400 FEET SOUTH AND 400 FEET EAST FROM W1/4 CORNER, SECTION 27

RESERVOIR 57 - NENE, SECTION 33, T4S, R20E, W.M.; 1600 FEET NORTH AND 400 FEET WEST FROM E1/4 CORNER, SECTION 33

RESERVOIR 58 - NESW, SECTION 27, T4S, R20E, W.M.; 700 FEET SOUTH AND 2100 FEET EAST FROM W1/4 CORNER, SECTION 27

RESERVOIR 59 - NESW, SECTION 27, T4S, R20E, W.M.; 1100 FEET SOUTH AND 1600 FEET EAST FROM W1/4 CORNER, SECTION 27

RESERVOIR 60 - NENW, SECTION 34, T4S, R20E, W.M.; 2500 FEET NORTH AND 1800 FEET EAST FROM W1/4 CORNER, SECTION 34

RESERVOIR 61 - NENW, SECTION 1, T5S, R20E, W.M.; 2000 FEET NORTH AND 1900 FEET EAST FROM W1/4 CORNER, SECTION 1

RESERVOIR 62 - NWNE, SECTION 1, T5S, R20E, W.M.; 1500 FEET NORTH AND 3800 FEET EAST FROM W1/4 CORNER, SECTION 1

RESERVOIR 63 - NENE, SECTION 1, T5S, R20E, W.M.; 1400 FEET NORTH AND 5100 FEET EAST FROM W1/4 CORNER, SECTION 1

RESERVOIR 64 - SWNE, SECTION 19, T4S, R21E, W.M.; 3200 FEET NORTH AND 1100 FEET EAST FROM S1/4 SECTION 19

RESERVOIR 65 - NWSE, SECTION 19, T4S, R21E, W.M.; 2300 FEET NORTH AND 500 FEET EAST FROM S1/4 SECTION 19

RESERVOIR 66 - SESW, SECTION 19, T4S, R21E, W.M.; 500 FEET NORTH AND 500 FEET WEST FROM S1/4 CORNER, SECTION 19

RESERVOIR 67 - SESW, SECTION 19, T4S, R21E, W.M.; 200 FEET NORTH AND 800 FEET WEST FROM S1/4 CORNER, SECTION 19

RESERVOIR 68 - NENW, SECTION 30, T4S, R21E, W.M.; 500 FEET SOUTH AND 1500 FEET EAST FROM NW CORNER, SECTION 30

RESERVOIR 69 - NWNW, SECTION 30, T4S, R21E, W.M.; 1100 FEET SOUTH AND 600 FEET EAST FROM NW CORNER, SECTION 30

RESERVOIR 70 - SWNW, SECTION 30, T4S, R21E, W.M.; 1800 FEET SOUTH AND 300 FEET EAST FROM NW CORNER, SECTION 30

RESERVOIR 71 - SENE, SECTION 25, T4S, R20E, W.M.; 2300 FEET SOUTH AND 100 FEET WEST FROM NE CORNER, SECTION 25

RESERVOIR 72 - NESE, SECTION 25, T4S, R20E, W.M.; 2800 FEET SOUTH AND 500 FEET WEST FROM NE CORNER, SECTION 25

RESERVOIR 73 - NESE, SECTION 25, T4S, R20E, W.M.; 3300 FEET SOUTH AND 800 FEET WEST FROM NE CORNER, SECTION 25

RESERVOIR 74 - SWSE, SECTION 25, T4S, R20E, W.M.; 5200 FEET SOUTH AND 2600 FEET WEST FROM NE CORNER, SECTION 25

RESERVOIR 75 - NENW, SECTION 36, T4S, R20E, W.M.; 4100 FEET NORTH AND 1500 FEET EAST FROM SW CORNER, SECTION 36

RESERVOIR 76 - SWNW, SECTION 36, T4S, R20E, W.M.; 3700 FEET NORTH AND 800 FEET EAST FROM SW CORNER, SECTION 36

RESERVOIR 77 - SWNW, SECTION 36, T4S, R20E, W.M.; 3000 FEET NORTH AND 600 FEET EAST FROM SW CORNER, SECTION 36

RESERVOIR 78 - NWSW, SECTION 36, T4S, R20E, W.M.; 2600 FEET NORTH AND 300 FEET EAST FROM SW CORNER, SECTION 36

RESERVOIR 79 - NESE, SECTION 35, T4S, R20E, W.M.; 1700 FEET NORTH AND 200 FEET WEST FROM SE CORNER, SECTION 35

RESERVOIR 80 - SWSE, SECTION 35, T4S, R20E, W.M.; 1000 FEET NORTH AND 1500 FEET WEST FROM SE CORNER, SECTION 35

RESERVOIR 81 - SESW, SECTION 35, T4S, R20E, W.M.; 100 FEET NORTH AND 3200 FEET WEST FROM SE CORNER, SECTION 35

RESERVOIR 82 - NWNW, SECTION 2, T5S, R20E, W.M.; 200 FEET SOUTH AND 400 FEET EAST FROM NW CORNER, SECTION 2

RESERVOIR 83 - NENE, SECTION 19, T4S, R21E, W.M.; 2640 FEET NORTH AND 50 FEET WEST FROM E1/4 CORNER, SECTION 19

RESERVOIR 84 - NESW, SECTION 19, T4S, R21E, W.M.; 2860 FEET SOUTH AND 2550 FEET EAST FROM NW CORNER, SECTION 19

RESERVOIR 85 - NENW, SECTION 30, T4S, R21E, W.M.; 2770 FEET SOUTH AND 3880 FEET WEST FROM E1/4 CORNER, SECTION 19

RESERVOIR 86 - SESE, SECTION 27, T4S, R20E, W.M.; 210 FEET NORTH AND 520 FEET WEST FROM SE CORNER, SECTION 27

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

	<u>Livestock</u>	<u>Wildlife</u>	<u>Fish</u>	<u>Storage (Irrigation)</u>
NESE		X		X
SECTION 13				

Place of Use, cont.:

	<u>Livestock</u>	<u>Wildlife</u>	<u>Fish</u>	<u>Storage (Irrigation)</u>
NWNE	X	X		
SENE		X	X	X
NESE		X	X	x
SWSE		X		X
SECTION 25				
SWNE	X	X		
SENE		X		X
NWNW		X		X
SWNW		X		X
NWSE		X		X
SESE		X		X
SECTION 26				
NENE		X		X
SENE		X		X
NESW	X	X		
NWSW	X	X		
SWSW	X	X		
NESE		X		X
SESE		X		X
SECTION 27				
NENE	X	X		
SECTION 33				
NWNE	X			
SENE		X		
NENW	X	X		
NESE		X		X
SESE		X		X
SECTION 34				
NENE		X		X
NWNE	X	X		
SWNE		X	X	
SENE		X		X
NENW	X	X		
SENW	X	X		
NWSW	X	X		
SWSW	X	X		
SESW		X		X
NESE		X		X
SWSE		X		X
SECTION 35				

Place of Use, cont.:

	<u>Livestock</u>	<u>Wildlife</u>	<u>Fish</u>	<u>Storage (Irrigation)</u>
SWNE	X	X		
NENW		X		X
SWNW		X	X	X
SENW	X	X		
NWSW		X		X

SECTION 36**TOWNSHIP 4 SOUTH, RANGE 20 EAST, W.M.**

SWSW	X	X		X
NESE		X		X
NWSE	X	X		
SESE		X		X

SECTION 18

SWNE		X		X
SENE	X	X		
NENW	X	X		X
SENW		X		X
NESW		X		
SESW		X		X
NWSE		X	X	X
SWSE	X	X		

SECTION 19

NWSW	X	X		
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SECTION 20

NENW		X	X	X
NWNW		X		X
SWNW		X	X	X

SECTION 30**TOWNSHIP 4 SOUTH, RANGE 21 EAST, W.M.**

NENE	X	X		
NWNE	X	X		
NENW	X	X		

SECTION 1

NWNW		X		X
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SECTION 2**TOWNSHIP 5 SOUTH, RANGE 20 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. The permittee shall maintain all required devices in good working order.
- C. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The permittee shall keep a complete record of the amount of water stored each month, and shall submit a report which includes the recorded report water-storage 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.
- E. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

If the volume of the completed reservoir is 9.2 acre feet or more and a dam is used to impound the water, the height of the dam shall be less than 10.0 feet.

Diversion 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 14048000, 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
November	500
December	500

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.

The Director may require the user 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, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

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.

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 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.

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 state or federal water quality standards due to reduced 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

for Phillip C. Ward, Director
Water Resources Department

Mailing List for PFO Copies

Application #R-87387

PFO Date: July 19, 2011

Original mailed to applicant:

R. J. AND SUSAN CLAUS, 22211 SW PACIFIC HWY, SHERWOOD, OR 97140

Copies sent to:

1. WRD - File # R-87387
2. Water Availability: Ken Stahr

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

PFO and Map Copies sent to:

3. WRD - Watermaster # 21
4. Regional Manager: NC
5. ODFW District Biologist: Jeff Neal
6. Columbia River Intertribal Fish Commission
7. USFW
8. NW Power Planning Council

Protest/
Standing Dates
checked

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

9. WaterWatch of Oregon and Native Fish Society, 213 SW Ash, Suite #208, Portland, OR 97204.

"\$20 LETTER" sent to Interested Persons who have not protested or paid for copies

CASEWORKER : Michele McAleer