

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

In the Matter of Water Rights Application       )  
R-87625, Wheeler County                               )

**FINAL ORDER  
INCORPORATING SETTLEMENT  
AGREEMENT**

**Authority**

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

**Findings of Fact**

1. On MAY 19, 2010, DAYSPRING PARTNERS LLC submitted an application for a permit to store water pursuant to ORS 537.409.  
Storage Volume: 15.0 ACRE FEET  
Dam Height: LESS THAN 10 FEET  
Source: WEST BRANCH ROCK CREEK, TRIBUTARY TO ROCK CREEK  
Location: WHEELER COUNTY IN SECTION 22 TOWNSHIP 13 SOUTH, RANGE 24 EAST, W.M.
2. The required examination fees were paid.
3. The Department provided public notice of the application in the Department's weekly public notice on June 1, 2010. A 60-day comment period followed and no comments were received.
4. Clackamas County Circuit Court Judge Susie L. Norby issued an order relating to the processing of reservoir applications filed under ORS 537.409. In this order, Judge Norby determined that an application for stored water filed under ORS 537.409 is not complete unless/until the Department receives sufficient information to demonstrate that the reservoir:

**APPEAL RIGHTS**

**Appeal to a circuit court:** This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

**Petition to the Department for Reconsideration of the Final Order:** A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

- a. does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and
  - b. does not injure any existing water right.
5. Shortly after the Department determined the application was complete, the Department again provided public notice of the application.
6. The Department received comments from Brian Posewitz, on behalf of WaterWatch of Oregon, Inc, during the second comment period. The comments were considered by the Department and a comment evaluation was completed.
7. On February 11, 2011, a timely protest was filed by WaterWatch of Oregon, Inc., on a related application, R-87630.
8. A Settlement Agreement was signed by all parties as of March 12, 2012. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.
9. The Department has determined that the proposed source has not been withdrawn from further appropriation.
10. The proposed reservoir is not prohibited under ORS 390.835.
11. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.
12. The Department finds that existing water rights would not be injured by the proposed use.
13. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.

#### **Conclusions of Law**

1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87625 is consistent with the requirements of ORS 537.409.

#### **Now Therefore, it is Ordered:**

Application R-87625 is approved, and Permit R-14950 is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on

APRIL 27, 2012

E. Timothy Wall.

E. Timothy Wallin, Water Rights Program Manager

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@ wrd.state.or.us](mailto:Jeana.M.Eastman@ wrd.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.

[13] J. Jost and J. L. Loebl, *Combinatorics*, Springer-Verlag, Berlin, 1997.

A. P. WITTENBERG, JR. AND J. H. WILSON

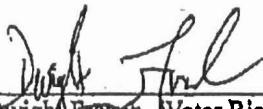
3. Dayspring and WaterWatch understand and agree that, except for a separate Contribution Agreement between Dayspring and WaterWatch and a separate agreement regarding Dayspring's Applications R-87630, R-87625 and R-87687, this Agreement and all documents referenced set forth the entire Agreement of the parties with respect to the subject matter.
4. Dayspring and WaterWatch understand and agree that this Agreement and the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use issued pursuant to this Agreement constitutes the complete and final resolution of the WaterWatch protest to the Preliminary Determination on Transfer Application T-11137.
5. Effective upon the issuance of the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use Dayspring waives any and all rights to petition for judicial review of this Agreement, and waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use and any resulting certificates.
6. Effective upon the issuance of the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use WaterWatch waives any and all rights to petition for judicial review of this Agreement, and waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use and any resulting certificates.
7. Notwithstanding the waiver agreed to above in paragraphs B.5 and B.6, Dayspring and WaterWatch retain the right to petition the Department to correct any scrivener's error in the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use issued pursuant to this Agreement and any resulting certificates, and otherwise to enforce the terms of this Agreement.

#### **C. Terms of the Agreement**

1. In addition to all terms and conditions set forth in the Preliminary Determination for T-11137, the final order approving the transfer will include the Department's standard conditions requiring the measurement, recording and reporting of water use under the transferred rights.
2. The Final Order Incorporating Settlement Agreement Approving a Change in Place of Use will revise the table under Paragraph 17 of the Preliminary Determination to identify the use permitted after transfer as "Supplemental Irrigation," not "Irrigation."
3. Dayspring will comply with all terms and conditions of the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use and the water right certificates issued pursuant to the Final Order. On condition that the Department and Dayspring comply with all terms and conditions of this Agreement, WaterWatch will not further protest or challenge approval of Transfer Application T-11137 referenced in this Agreement.

4. The Department will issue a Final Order Incorporating Settlement Agreement Approving a Change in Place of Use consistent with the Draft Final Order Incorporating Settlement Agreement Approving a Change in Place of Use attached to this Agreement.
5. Dayspring will build two additional miles of fencing along Rock Creek. The fencing will be placed at locations within the Property and along Rock Creek as selected by Dayspring and will be reasonably designed and located to prevent livestock from entering riparian areas of Rock Creek. This constitutes an agreement between WaterWatch and Dayspring that is unenforceable by the Department and is memorialized in this Agreement for the convenience of the two parties.
6. Within 30 days of full execution of this Agreement, Dayspring will file affidavits of voluntary cancellation with the Department to cancel all of its interest in 30.75 cfs of existing/historic mining rights appurtenant to the Property with priority dates ranging from 1875 to 1936 (Certificates 11475, 11676, 11928, 25081, 25977 and 25978). WaterWatch acknowledges that Dayspring does not own the entire place of use described in Certificates 11475, 25977 and 25978 (totaling 9.0 cfs), and that as a result, the Department may limit the proposed cancellation of such rights to the extent of interest held by Dayspring.
7. This Agreement may be amended or modified only by a written agreement signed by all of the parties, or by WaterWatch and Dayspring if such amendment or modification would not alter the duties or responsibilities of the Department under this Agreement.
8. Each person signing this Agreement represents, warrants, and agrees that he/she has the full right and authority to enter into this Agreement on behalf of the party for whom he/she is signing.
9. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Agreement, and that it has signed this Agreement of its own free will and accord.
10. Each Party to this Agreement certifies that it has read the entire Agreement, including the draft of the Final Order Incorporating Settlement Agreement Approving a Change in Place of Use, and understands and agrees with the contents thereof.
11. This Agreement may be signed in counterparts.
12. By signing this Agreement, WaterWatch withdraws its Protest to the Department's Preliminary Determination proposing approval of Transfer Application T-11137 and nullifies the requirement under OAR 690-380-4030 for the Department to hold a hearing on the matter.

In witness whereof, the Parties have executed this Settlement Agreement, effective as of the last date set forth next to the parties' signature.

  
Dwight French, Water Right Services Division Administrator, for  
Phillip C. Ward, Director,  
Oregon Water Resources Department

3/1/12  
Date

  
James C. Ward  
Dayspring Partners LLC.

3/7/12  
Date

  
WaterWatch of Oregon, Inc.  
John Delbe  
Executive Director

3/12/12  
Date

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

|                                       |   |                          |
|---------------------------------------|---|--------------------------|
| In the Matter of Transfer Application | ) | DRAFT FINAL ORDER        |
| T-11137, Wheeler County               | ) | INCORPORATING SETTLEMENT |
|                                       | ) | AGREEMENT APPROVING A    |
|                                       | ) | CHANGE IN PLACE OF USE   |

**Authority**

ORS 540.505 to 540.580 establishes the process in which a water right holder may submit a request to transfer the point of diversion, place of use, or character of use authorized under an existing water right. OAR Chapter 690, Division 380 implements the statutes and provides the Department's procedures and criteria for evaluating transfer applications.

**Applicant**

DAYSRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY, SUITE 250  
PORTLAND OR 97224

**Findings of Fact**

**Background**

1. On September 29, 2010, DAYSRING PARTNERS LLC filed an application to change the place of use under Certificates 25670, 25922, 37254, and 86550. The Department assigned the application number T-11137.
2. On November 23, 2010, the Department requested that the applicant provide additional supporting documentation that shows water use on all of the "From" lands, including recent photographs of ditch use.
3. On November 23, 2010, the Department requested that the applicant provide an overview map(s) to show the intent of the transfer, and a revised transfer application, if the revised map(s) resulted in corresponding change(s) to the transfer application.
4. On November 23, 2010, the Department noted that a 0.3 acre discrepancy between "from" and "to" acreages would likely result in the loss of those acres if T-11137 was approved as proposed, and requested clarification from the applicant.

This final order is subject to judicial review by the Court of Appeals under ORS 183.482. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.482(1). Pursuant to ORS 536.075 and OAR 137-003-0675, 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.

5. On December 16, 2010, the applicant submitted photographs of irrigated areas and irrigation ditches, along with other evidence of use.
6. On December 16, 2010, the applicant submitted an overview map showing the proposed "to" and "remaining right" lands at the Flat Ranch site if T-11137 is approved, and submitted amended transfer maps. The applicant also submitted amendments to the proposed "from" and "to" lands under Certificate 37254. These changes addressed the 0.3 acre discrepancy noted in Finding of Fact #4.
7. On January 6, 2011, the applicant's agent requested the completion date be extended to October 1, 2013.
8. On February 2, 2012, the applicant's agent requested the completion date be extended to October 1, 2014.
9. The portion of the first right to be transferred is as follows:

**Certificate:** 25670 in the name of PAUL H. OWENS (confirmed by John Day River (F) decree)

**Use:** IRRIGATION of 71.1 ACRES

**Priority Date:** 1866

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to September 30, measured at point of diversion.

**Source:** ROCK CREEK

**Authorized Place of Use:**

| IRRIGATION |      |     |     |       |      |       |
|------------|------|-----|-----|-------|------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | GLOT | ACRES |
| 13 S       | 25 E | WM  | 6   | NW NE | L2   | 36.3  |
| 13 S       | 25 E | WM  | 6   | SW NE |      | 14.2  |
| 13 S       | 25 E | WM  | 6   | NE NW | L3   | 4.0   |
| 13 S       | 25 E | WM  | 6   | SE NW |      | 0.1   |
| 13 S       | 25 E | WM  | 6   | NE SW |      | 15.2  |
| 13 S       | 2 E  | WM  | 6   | SE SW |      | 1.0   |
| 13 S       | 2 E  | WM  | 6   | NW SE |      | 0.3   |
| TOTAL:     |      |     |     |       |      | 71.1  |

10. Certificate 25670 does not describe the location of the point of diversion, however information is available from Transfer Application T-11137 indicating that the point of diversion is located as follows:

**Authorized Point of Diversion:**

| POD | TWP  | RNG  | MER | SEC | Q-Q   | MEASURED DISTANCES                                                           |
|-----|------|------|-----|-----|-------|------------------------------------------------------------------------------|
| C   | 13 S | 24 E | WM  | 27  | SW NE | 1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE NORTH 1/4 CORNER OF SECTION 27 |

11. Transfer Application T-11137 proposes to change the place of use of the right to:

| IRRIGATION |      |     |     |       |         |       |
|------------|------|-----|-----|-------|---------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | TAX LOT | ACRES |
| 12 S       | 24 E | WM  | 36  | NE NE | 2300    | 30.8  |
| 12 S       | 24 E | WM  | 36  | NW NE | 2300    | 2.6   |
| 12 S       | 24 E | WM  | 36  | SW NE | 2300    | 10.6  |
| 12 S       | 24 E | WM  | 36  | SE NE | 2300    | 27.1  |
| TOTAL:     |      |     |     |       |         | 71.1  |

12. The portion of the second right to be transferred is as follows:

**Certificate:** 25922 in the name of GEORGE TROSPER (confirmed by John Day River (F) decree)

**Use:** IRRIGATION of 34.0 ACRES and STORAGE in ROCK CREEK LAKE RESERVOIR

**Priority Date:** 1899

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 165 acre feet from West Fork Rock Creek for Storage in Rock Creek Lake Reservoir. Rock Creek and Rock Creek Lake: 1/40 cubic foot per second per acre irrigated to June 1 and 1/80 cubic foot per second per acre thereafter; further limited to one acre-foot per calendar month to June 1 and four acre-feet per acre during season April 1 to September 30, measured at point of diversion.

**Source:** ROCK CREEK, WEST FORK ROCK CREEK AND ROCK CREEK LAKE

**Authorized Place of Use:**

| IRRIGATION |      |     |     |       |       |      |
|------------|------|-----|-----|-------|-------|------|
| TWP        | RNG  | MER | SEC | Q-Q   | ACRES |      |
| 12 S       | 24 E | WM  | 36  | SE NE | 0.7   |      |
| 12 S       | 24 E | WM  | 36  | NE SE | 1.5   |      |
| 12 S       | 24 E | WM  | 36  | SW SE | 20.6  |      |
| 12 S       | 24 E | WM  | 36  | SE SE | 11.2  |      |
| TOTAL:     |      |     |     |       |       | 34.0 |

13. Certificate 25922 does not describe the location of the points of diversion, however information is available from Transfer Application T-11137 indicating that the points of diversion are located as follows:

**Authorized Points of Diversion:**

| POD | TWP  | RNG  | MER | SEC | Q-Q   | MEASURED DISTANCES                                                      |
|-----|------|------|-----|-----|-------|-------------------------------------------------------------------------|
| A   | 13 S | 24 E | WM  | 21  | SE SE | 1,620 FEET SOUTH AND 650 FEET WEST FROM THE EAST ¼ CORNER OF SECTION 21 |
| B   | 13 S | 24 E |     | 22  | SW NE | 140 FEET NORTH AND 2,740 FEET EAST FROM THE WEST ¼ CORNER OF SECTION 22 |

| POD | TWP  | RNG  | MER | SEC | Q-Q   | MEASURED DISTANCES                                                         |
|-----|------|------|-----|-----|-------|----------------------------------------------------------------------------|
| C   | 13 S | 24 E | WM  | 27  | SW NE | 1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE NORTH ¼ CORNER OF SECTION 27 |

14. Transfer Application T-11137 proposes to change the place of use of the right to:

| IRRIGATION |      |     |     |       |      |       |
|------------|------|-----|-----|-------|------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | GLOT | ACRES |
| 12 S       | 24 E | WM  | 36  | NE NE |      | 1.5   |
| 12 S       | 24 E | WM  | 36  | NW NE |      | 14.4  |
| 12 S       | 24 E | WM  | 36  | SW NE |      | 3.0   |
| 12 S       | 24 E | WM  | 36  | SE NE |      | 6.2   |
| 12 S       | 24 E | WM  | 36  | NE SE |      | 7.0   |
| 12 S       | 24 E | WM  | 36  | NW SE |      | 0.4   |
| 12 S       | 25 E | WM  | 31  | NW SW | L3   | 1.5   |
| TOTAL:     |      |     |     |       |      | 34.0  |

15. The portion of the third right to be transferred is as follows:

**Certificate:** 37254 in the name of CLINTON O. and FLORA H. HARRIS (perfected under Permits S-22984)

**Use:** SUPPLEMENTAL IRRIGATION of 102.5 ACRES

**Priority Date:** MAY 3, 1954

**Limit/Duty:** The amount of water to which such right is entitled, for the purposes aforesaid, is limited to an amount actually beneficially used for said purposes, and shall not exceed 410.0 acre feet stored water only, measured at the point of diversion from the stream. The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to a diversion of 4 acre feet for each acre irrigated during the irrigation season of each year.

**Source:** ROCK CREEK LAKE, tributary to the JOHN DAY RIVER

**Authorized Point of Diversion:**

| TWP  | RNG  | MER | SEC | Q-Q   | MEASURED DISTANCES                                                  |
|------|------|-----|-----|-------|---------------------------------------------------------------------|
| 13 S | 24 E | WM  | 22  | SW NE | 140 FEET NORTH AND 2,740 FEET EAST FROM THE W¼ CORNER OF SECTION 22 |

**Authorized Place of Use:**

| SUPPLEMENTAL IRRIGATION |      |     |     |       |       |       |
|-------------------------|------|-----|-----|-------|-------|-------|
| TWP                     | RNG  | MER | SEC | Q-Q   | ACRES |       |
| 12 S                    | 24 E | WM  | 25  | SE SE | 0.2   |       |
| 12 S                    | 24 E | WM  | 36  | NE NE | 28.6  |       |
| 12 S                    | 24 E | WM  | 36  | NW NE | 0.5   |       |
| 12 S                    | 24 E | WM  | 36  | SW NE | 4.6   |       |
| 12 S                    | 24 E | WM  | 36  | SE NE | 33.1  |       |
| 12 S                    | 24 E | WM  | 36  | NE SE | 6.3   |       |
| 12 S                    | 24 E | WM  | 36  | NW SE | 0.4   |       |
| 12 S                    | 24 E | WM  | 36  | SW SE | 17.6  |       |
| 12 S                    | 24 E | WM  | 36  | SE SE | 11.2  |       |
| TOTAL:                  |      |     |     |       |       | 102.5 |

16. Transfer Application T-11137 indicated that the authorized point of diversion is referred to as POD B.

17. Transfer Application T-11137 proposes to change the place of use of the right to:

| SUPPLEMENTAL IRRIGATION |      |     |     |       |      |       |
|-------------------------|------|-----|-----|-------|------|-------|
| TWP                     | RNG  | MER | SEC | Q-Q   | GLOT | ACRES |
| 12 S                    | 24 E | WM  | 36  | NE NE |      | 1.5   |
| 12 S                    | 24 E | WM  | 36  | NW NE |      | 14.4  |
| 12 S                    | 24 E | WM  | 36  | SW NE |      | 0.9   |
| 12 S                    | 24 E | WM  | 36  | SE NE |      | 6.0   |
| 12 S                    | 24 E | WM  | 36  | NE SE |      | 6.7   |
| 12 S                    | 24 E | WM  | 36  | SW SE |      | 20.6  |
| 12 S                    | 24 E | WM  | 36  | SE SE |      | 10.8  |
| 13 S                    | 24 E | WM  | 1   | NE NE | L1   | 1.6   |
| 13 S                    | 24 E | WM  | 1   | NW NE | L2   | 6.8   |
| 13 S                    | 24 E | WM  | 1   | SW NE |      | 18.8  |
| 13 S                    | 24 E | WM  | 1   | SE NE |      | 12.9  |
| 12 S                    | 25 E | WM  | 31  | NW SW | L3   | 1.5   |
| TOTAL:                  |      |     |     |       |      | 102.5 |

18. The portion of the fourth right to be transferred is as follows:

**Certificate:** 86550 in the name of CLINTON O. and FLORA H. HARRIS (perfected under Permit S-22983)

**Use:** IRRIGATION of 71.5 ACRES and SUPPLEMENTAL IRRIGATION of 31.0 ACRES

**Priority Date:** APRIL 30, 1954

**Rate:** 1.68 CUBIC FEET PER SECOND

**Limit/Duty:** The amount of water used for irrigation, together with the amount secured under any other right existing for the same lands, shall be limited to ONE-FORTIETH of one cubic foot per second per acre, or its equivalent for each acre irrigated and shall be further limited to a diversion of not to exceed 4 acre-feet per acre for each acre irrigated during the irrigation season of each year, and shall conform to such reasonable rotation system as may be ordered by the proper state officer.

**Source:** ROCK CREEK, tributary to the JOHN DAY RIVER

**Authorized Point of Diversion:**

| TWP  | RNG  | MER | SEC | Q-Q   | MEASURED DISTANCES                                                                 |
|------|------|-----|-----|-------|------------------------------------------------------------------------------------|
| 13 S | 24 E | WM  | 27  | SW NE | 1,460 FEET SOUTH AND 1,290 FEET EAST FROM THE N $\frac{1}{4}$ CORNER OF SECTION 27 |

**Authorized Place of Use:**

| IRRIGATION |      |     |     |       |       |
|------------|------|-----|-----|-------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | ACRES |
| 12 S       | 24 E | WM  | 25  | SE SE | 0.2   |
| 12 S       | 24 E | WM  | 36  | NE NE | 28.6  |
| 12 S       | 24 E | WM  | 36  | NW NE | 0.5   |
| 12 S       | 24 E | WM  | 36  | SW NE | 4.6   |
| 12 S       | 24 E | WM  | 36  | SE NE | 32.4  |

| IRRIGATION |      |     |     |       |       |
|------------|------|-----|-----|-------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | ACRES |
| 12 S       | 24 E | WM  | 36  | NE SE | 4.8   |
| 12 S       | 24 E | WM  | 36  | NW SE | 0.4   |
| TOTAL:     |      |     |     |       | 71.5  |

| SUPPLEMENTAL IRRIGATION |      |     |     |       |       |
|-------------------------|------|-----|-----|-------|-------|
| TWP                     | RNG  | MER | SEC | Q-Q   | ACRES |
| 12 S                    | 24 E | WM  | 36  | SE NE | 0.7   |
| 12 S                    | 24 E | WM  | 36  | NE SE | 1.5   |
| 12 S                    | 24 E | WM  | 36  | SW SE | 17.6  |
| 12 S                    | 24 E | WM  | 36  | SE SE | 11.2  |
| TOTAL:                  |      |     |     |       | 31.0  |

19. Transfer Application T-11137 indicated that the authorized point of diversion is referred to as POD C.

20. Transfer Application T-11137 proposes to change the place of use of the right to:

| IRRIGATION |      |     |     |       |      |       |
|------------|------|-----|-----|-------|------|-------|
| TWP        | RNG  | MER | SEC | Q-Q   | GLOT | ACRES |
| 12 S       | 24 E | WM  | 36  | SW SE |      | 20.6  |
| 12 S       | 24 E | WM  | 36  | SE SE |      | 10.8  |
| 13 S       | 24 E | WM  | 1   | NE NE | L1   | 1.6   |
| 13 S       | 24 E | WM  | 1   | NW NE | L2   | 6.8   |
| 13 S       | 24 E | WM  | 1   | SW NE |      | 18.8  |
| 13 S       | 24 E | WM  | 1   | SE NE |      | 12.9  |
| TOTAL:     |      |     |     |       |      | 71.5  |

| SUPPLEMENTAL IRRIGATION |      |     |     |       |      |       |
|-------------------------|------|-----|-----|-------|------|-------|
| TWP                     | RNG  | MER | SEC | Q-Q   | GLOT | ACRES |
| 12 S                    | 24 E | WM  | 36  | NE NE |      | 1.5   |
| 12 S                    | 24 E | WM  | 36  | NW NE |      | 14.4  |
| 12 S                    | 24 E | WM  | 36  | SW NE |      | 0.9   |
| 12 S                    | 24 E | WM  | 36  | SE NE |      | 6.0   |
| 12 S                    | 24 E | WM  | 36  | NE SE |      | 6.7   |
| 12 S                    | 25 E | WM  | 31  | NW SW | L3   | 1.5   |
| TOTAL:                  |      |     |     |       |      | 31.0  |

21. Notice of the application for transfer was published on October 5, 2010, pursuant to OAR 690-380-4000. No comments were filed in response to the notice.

22. The proposed changes would result in the routing of return flows around at least one diversion of other existing water rights, resulting in injury to those rights. Rights that are likely to be injured include Certificates 25080, 69338, and 25921.

23. On January 6, 2011, the Department mailed a copy of the draft Preliminary Determination to the applicant proposing to deny Transfer Application T-11137 unless the applicant requested to pursue consent to injury of the affected water rights. The draft Preliminary Determination cover letter set forth a deadline of February 4, 2011, for the applicant to respond.

24. On January 25, 2011, the applicant provided proof of their ownership of the affected water rights and consented to any injury to Certificates 25080, 25921, and 69338 that may result from T-11137.
25. On January 31, 2011, the Department mailed a copy of the revised draft Preliminary Determination proposing to approve Transfer Application T-1137 to the applicant. The draft Preliminary Determination proposed approval based on consent of the holder of the potentially injured water rights. The revised draft Preliminary Determination cover letter set forth a deadline of March 25, 2011, for the applicant to respond. The applicant requested that the Department proceed with issuance of a Preliminary Determination.
26. On February 8, 2011, the Department issued a Preliminary Determination proposing to approve Transfer Application T-11137 and mailed a copy to the applicant. Additionally, notice of the Preliminary Determination for the transfer application was published on the Department's weekly notice on February 15, 2011, pursuant to ORS 540.520 and OAR 690-380-4020.
27. On March 17, 2011, WaterWatch of Oregon timely submitted a Protest of the Preliminary Determination. No other timely protests were received by the Department.
28. On \_\_\_\_\_, 2012, the Department, WaterWatch of Oregon and Dayspring Partners LLC entered into a settlement agreement pursuant to which WaterWatch of Oregon withdrew its protest of the Preliminary Determination. This Final Order reflects modifications agreed upon as a result of the settlement agreement.

***Transfer Review Criteria [OAR 690-380-4010(2)]***

29. Evidence was submitted with the application and amendments indicating that water has been used within the last five years according to the terms and conditions of the right. Aerial photographs of the lands to which the right is appurtenant suggest that there has been an extended period of time during which the right was not exercised. However, the information in the record is not sufficient to initiate cancellation proceedings under ORS 540.631.
30. A diversion structure and ditch sufficient to use the full amount of water allowed under the existing rights were present within the five-year period prior to submittal of Transfer Application T-11137.
31. The proposed changes would not result in enlargement of the rights.
32. The proposed changes would result in the routing of return flows around at least one diversion of other existing water rights, resulting in injury to those rights. Rights that are likely to be injured include Certificates 25080, 69338, and 25921. The applicant is the owner of the potentially injured rights and has consented to the injury pursuant ORS 540.530. The proposed changes would not result in injury to other water rights.

### **Conclusions of Law**

The change in place of use proposed in application T-11137 appears to be consistent with the requirements of ORS 540.505 to 540.580 and OAR 690-380-5000. The application is approved pursuant to the terms and conditions below.

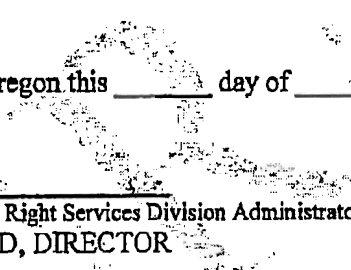
### **Now, therefore, it is ORDERED:**

1. The change in place of use proposed in Transfer Application T-11137 is approved.
2. The right to the use of the water is restricted to beneficial use at the place of use described, and is subject to all other conditions and limitations contained in Certificates 25670, 25922, 37254, 86550, and any related decree.
3. Water right certificates 25670, 25922, 37254, and 86550 are cancelled. New certificates will be issued describing that portion of the rights not affected by this transfer.
4. Water use measurement conditions at each point of diversion:
  - a. Before water use may begin under this order, the water user shall install a totalizing flow meter, or, with prior approval of the Director, another suitable measuring device, at each point of diversion.
  - b. The water user shall maintain the meters or measuring devices in good working order.
  - c. The water user shall allow the Watermaster access to the meters or measuring devices; provided however, where the meters or measuring devices are located within a private structure, the Watermaster shall request access upon reasonable notice.
5. Water use measurement conditions at Rock Creek Lake Reservoir:
  - a. Before water use may begin under this order, the water user shall install a weir or Parshall flume, or, with prior approval of the Director, other suitable measuring devices, that measure the entire range and stage between empty and full in the reservoir.
  - b. Before water use may begin under this order, if the reservoir is located in channel, weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, an adjustable outlet valve must be installed. The water user shall maintain such devices in good working order. A written waiver may be obtained, if in the judgment of the Director, the installation of weirs or other suitable measuring devices, or the adjustable outlet valve, will provide no public benefit.
  - c. The water user 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.
6. Prior to diverting water, the water user shall install a headgate to control and regulate the quantity of water diverted. The type and plans of the headgate must be approved by the Department prior to beginning construction and shall be installed under the general

supervision of the Department. The water user shall maintain the headgate as required by the Department.

7. The water user shall maintain a complete record of water used each month and shall submit a report which includes the recorded water-use measurements to the District 4 Watermaster in Canyon City annually or more frequently as may be required by the Director. The water use reports shall include recorded monthly water-use measurements from each point of diversion. The reports also shall include dates of measurement and other information as may be requested by the Director. The frequency or timing of the reports may be modified upon a determination by the Director that an alternate frequency is needed or appropriate. The method of reporting may be by e-mail, facsimile or standard mail as agreed upon between the water user and Watermaster.
8. The former place of use of the transferred rights shall no longer receive water under the rights.
9. The approved changes shall be completed and full beneficial use of the water shall be made on or before **October 1, 2014**. A Claim of Beneficial Use prepared by a Certified Water Right Examiner shall be submitted by the applicant to the Department within one year after the deadline for completion of the changes and full beneficial use of the water.
10. When satisfactory proof of the completed changes is received, new certificates confirming the rights transferred will be issued.

Dated at Salem, Oregon this \_\_\_\_\_ day of \_\_\_\_\_ 2012.

  
Dwight French, Water Right Services Division Administrator for  
PHILLIP C. WARD, DIRECTOR

*Mailing Date:* \_\_\_\_\_

**BEFORE THE OREGON WATER RESOURCES DEPARTMENT**

|                                        |   |            |
|----------------------------------------|---|------------|
| In the Matter of Applications R-87630, | ) |            |
| R-87625 and R-87687 in the name of     | ) |            |
| Dayspring Partners LLC                 | ) |            |
| <i>Applicant</i>                       | ) |            |
| and                                    | ) | SETTLEMENT |
|                                        | ) | AGREEMENT  |
| WaterWatch of Oregon, Inc.             | ) |            |
| <i>Protestant</i>                      | ) |            |

The Oregon Water Resources Department ("the Department"), Dayspring Partners LLC ("Dayspring") and WaterWatch of Oregon, Inc. ("WaterWatch"), (collectively "the parties") do hereby stipulate and agree in this Settlement Agreement ("Agreement") as follows:

**A. Background**

1. Dayspring is the owner of real property, known generally as the Antone Ranch, in Wheeler County, Oregon ("Property").
2. On June 24, 2010, Dayspring filed an application for a reservoir permit. The Department assigned the application number R-87630.
3. On December 28, 2010, the Department issued a Proposed Final Order ("PFO") recommending approval and issuance of a permit.
4. On February 11, 2011, WaterWatch filed a timely protest.
5. Dayspring and WaterWatch reached agreement to resolve all disputes regarding four pending applications by Dayspring (T-11137, R-87630, R-87625 and R-87687). The agreement regarding R-87630 (to store water from an unnamed tributary of Rock Creek in a reservoir named Metolius Lake), R-87625 (to store water from the West Branch of Rock Creek in a reservoir named Spanish View Lake), and R-87687 (to store water from Shingle Creek in a reservoir named Maley Lake) is memorialized in this agreement. The agreement regarding T-11137 is memorialized in a separate document.

**B. Consent**

1. Dayspring hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the draft Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 which are attached hereto.
2. WaterWatch hereby acknowledges that it has read and understands the terms of this Agreement, and the terms of the draft Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 which are attached hereto.

3. Dayspring and WaterWatch understand and agree that, except for a separate Contribution Agreement between Dayspring and WaterWatch and a separate agreement regarding Dayspring's transfer application T-11137, this Agreement and all documents referenced set forth the entire Agreement of the parties with respect to the subject matter.
4. Dayspring and WaterWatch understand and agree that this Agreement and the Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 issued pursuant to this Agreement constitutes the complete and final resolution of the WaterWatch protest to the PFO on Application R-87630.
5. Effective upon the issuance of the Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687, Dayspring 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 Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687.
6. Effective upon the issuance of the Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687, WaterWatch 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 Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687.
7. Notwithstanding the waiver agreed to above in paragraphs B.5 and B.6, Dayspring and WaterWatch retain the right to petition the Department to correct any scrivener's error in the Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 issued pursuant to this Agreement, and otherwise to enforce the terms of this Agreement.

**C. Terms of the Agreement**

1. In addition to the terms and conditions set forth in the PFO for application R-87630, and in addition to terms and conditions as the Department otherwise may require for R-87625 and R-87687 (including the Department's standard terms and conditions), the permits for all three reservoirs will include the following conditions:
  - a. The reservoir shall be constructed and maintained outside the current channel of the source stream such that flows in the source stream that are not diverted and/or stored under the permit will pass the reservoir site without flowing through the reservoir.
  - b. Except as required by other conditions and/or directives of the Department, or as may occur through return flow following irrigation under a secondary permit for use of the water stored under this permit, the permittee shall not release water from the reservoir into Rock Creek, or into any surface waterway reaching Rock Creek. For purposes of this Paragraph, "other conditions and/or directives of the Department" do not include the terms and /or conditions of this permit that require

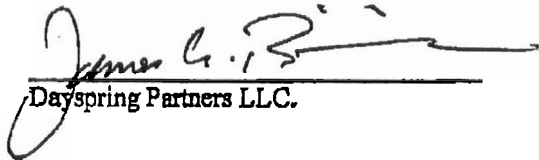
the permittee to pass live flow outside the permitted storage season and/or after storing the total amount permitted under this permit.

2. In addition to terms and conditions as the Department otherwise may require for R-87625 and R-87687 (including the Department's standard terms and conditions), the permits for the reservoirs will include measurement, recording and reporting conditions substantially identical to those in the draft permit proposed for application R-87630. The specific types of measuring devices for each reservoir will be determined in consultation between Dayspring and the Department to ensure compliance with the condition while maintaining flexibility for Dayspring to use the most cost effective and efficient devices for the particular measurement need.
3. Dayspring will comply with all terms and conditions of the permits referenced in this Agreement.
4. Dayspring represents that it has no present intention to develop a destination resort on the Property.
5. On condition that the Department and Dayspring comply with all terms and conditions of this Agreement, WaterWatch will not further protest or challenge any of the applications referenced in this Agreement.
6. The Department will issue a Final Order Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 consistent with the draft Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687 attached to this Agreement.
7. By signing this Agreement, WaterWatch withdraws its protest to the Department's PFO proposing approval of application R-87630. Each person signing this Agreement represents, warrants, and agrees that he/she has the full right and authority to enter into this Agreement on behalf of the party for whom he/she is signing.
8. Each Party to this Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Agreement of its own free will and accord.
9. Each Party to this Agreement certifies that it has read the entire Agreement, including the draft Final Orders Incorporating Settlement Agreement for Applications R-87630, R-87625 and R-87687, and understands and agrees with the contents thereof.
10. This Agreement may be amended or modified only by a written agreement signed by all of the parties, or by WaterWatch and Dayspring if such amendment or modification would not alter the duties or responsibilities of OWRD under this Agreement.
11. This Agreement may be signed in counterparts.

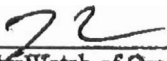
In witness whereof, the Parties have executed this Settlement Agreement, effective as of the last date set forth next to the parties' signature.

  
Dwight French, Water Right Services Administrator, for  
Phillip C. Ward, Director,  
Oregon Water Resources Department

3/1/12  
Date

  
James G. B.  
Dayspring Partners LLC.

3/7/12  
Date

  
Water Watch of Oregon, Inc.  
John Devere  
Executive Director

Date

**Oregon Water Resources Department  
Water Rights Services Division**

Water Rights Application  
Number R-87630

**DRAFT Final Order Incorporating Settlement Agreement**

*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.

*Application History*

On June 24, 2010, Dayspring Partners LLC submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on December 28, 2010, recommending approval of the application with conditions.

On February 11, 2011, a timely protest was filed by WaterWatch of Oregon, Inc.

A Settlement Agreement was signed by all parties as of \_\_\_\_\_. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

The Applicant, the Protestant, and the Department have agreed to permit conditions set forth in the attached draft permit, including the following conditions which modify the Proposed Final Order:

The reservoir shall be constructed and maintained outside the current channel of the source stream such that flows in the source stream that are not diverted and/or stored under the permit will pass the reservoir site without flowing through the reservoir.

Except as required by other conditions and/or directives of the Department, or as may occur through return flow following irrigation under a secondary permit for use of the water stored under this permit, the permittee shall not release water from the reservoir into Rock Creek, or into any surface waterway reaching Rock Creek. For purposes of this paragraph, "other conditions and/or directives of the Department" do not include the terms and/or conditions of this permit that require the permittee to pass live flow outside the permitted storage season and/or after storing the total amount permitted under this permit.

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

### **Order**

Application R-87630 is therefore approved as proposed by the Proposed Final Order further modified by the Settlement Agreement.

Upon the submission and approval of dam plans and specifications, a permit shall be issued authorizing the proposed water use. Please note the approval of dam plans and specifications may include conditions pertaining to the construction, maintenance, and operation of the reservoir in addition to the permit conditions included in the Proposed Final Order.

Prior to issuance of a permit and construction of the project, final dam designs and specifications must be submitted to the Department and approved by the Department's dam-safety engineer. Said plans and specifications are due no later than 60 days from the date of this Final Order. Failure to submit the required plans and specifications within 60 days from the date of this Final Order may result in the proposed rejection of Application R-87630.

*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**

CB- DRAFT ---

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E. Timothy Wallin, Water Rights Program Manager  
for Phillip C. Ward, Director  
Water Resources Department

*This document was prepared by Jeana Eastman. 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 503-986-0859.*

*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.*

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DAYSRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY SUITE 250  
PORTLAND, OR 97224

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

APPLICATION FILE NUMBER: R-87630

SOURCE OF WATER: UNNAMED STREAM AND SPRINGS, TRIBUTARIES OF ROCK CREEK

STORAGE FACILITY: METOLIUS LAKE

PURPOSE OR USE OF THE STORED WATER: FISH LIFE, RECREATION, AND WILDLIFE

MAXIMUM VOLUME: 75.0 ACRE FEET EACH YEAR

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

DATE OF PRIORITY: JUNE 24, 2010

THE AREA SUBMERGED BY THE RESERVOIR, WHEN FULL, WILL BE 11.4 ACRES AND THE  
MAXIMUM HEIGHT OF THE DAM SHALL NOT EXCEED 25.0 FEET.

DAM LOCATION: NW 1/4 NE 1/4, SECTION 22, T13S, R24E, W.M.; 190 FEET SOUTH AND 1520  
FEET WEST FROM NE CORNER, SECTION 22

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

SW 1/4 SE 1/4  
SECTION 15

NE 1/4 NE 1/4  
NW 1/3 NE 1/4  
SECTION 22

TOWNSHIP 13 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. The permittee shall measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season.
- C. The permittee shall maintain all required devices in good working order.
- D. 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.
- 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.

The reservoir shall be constructed and maintained outside the current channel of the source stream such that flows in the source stream that are not diverted and/or stored under the permit will pass the reservoir site without flowing through the reservoir.

Except as required by other conditions and/or directives of the Department, or as may occur through return flow following irrigation under a secondary permit for use of the water stored under this permit, the permittee shall not release water from the reservoir into Rock Creek, or into any surface waterway reaching Rock Creek. For purposes of this paragraph, "other conditions and/or directives of the Department" do not include the terms and/or conditions of this permit that require the permittee to pass live flow outside the permitted storage season and/or after storing the total amount permitted under this permit.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8 inches 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 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 (cubic feet per second) |
| January                  | 500                                  |
| February                 | 1000                                 |
| March 1 - April 14       | 2000                                 |

#### **DAM CONDITIONS**

Conditions may be added upon approval of dam designs and specifications.

#### **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

C-- DRAFT --

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for Phillip C. Ward, Director  
Water Resources Department

# Mailing List for FO Copies

Application #R-87630

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**Original mailed to applicant with claim of beneficial use form:**

DAYSRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY SUITE 250  
PORTLAND OR 97224

**Copies sent to:**

WRD - File # R-87630  
WRD - Ken Stahr  
WRD - Dam Safety (for reservoir applications only)

**FO and Map Copies sent to (remember to reduce copy margins):**

WRD - Watermaster District #: 4  
WRD - Regional Manager (not to SCR): NC

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

1. Pagel, Martha / Langford, Shonee  
Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301
2. Bruce, Steven, CWRE #439  
Skookum Water Associates, Inc., P.O. Box 80174, Portland, OR 97280
3. Posewitz, Brian J.  
8508 SE Eleventh Ave, Portland OR 97202

CASEWORKER : Jcana Eastman

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

In the Matter of Water Right Application )  
R-87625, Wheeler County )

**FINAL ORDER  
INCORPORATING SETTLEMENT -  
AGREEMENT**

**Authority**

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

**Findings of Fact**

1. On MAY 19, 2010, DAYSPRING PARTNERS LLC submitted an application for a permit to store water pursuant to ORS 537.409.  
Storage Volume: 15.0 ACRE FEET  
Dam Height: LESS THAN 10 FEET  
Source: WEST BRANCH ROCK CREEK, TRIBUTARY TO ROCK CREEK  
Location: WHEELER COUNTY IN SECTION 22 TOWNSHIP 13 SOUTH, RANGE 24 EAST, W.M.
2. The required examination fees were paid.
3. The Department provided public notice of the application in the Department's weekly public notice on June 1, 2010. A 60-day comment period followed and no comments were received.
4. Clackamas County Circuit Court Judge Susie L. Norby issued an order relating to the processing of reservoir applications filed under ORS 537.409. In this order, Judge Norby determined that an application for stored water filed under ORS 537.409 is not complete unless/until the Department receives sufficient information to demonstrate that the reservoir:

**APPEAL RIGHTS**

**Appeal to a circuit court:** This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

**Petition to the Department for Reconsideration of the Final Order:** A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

- a. does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and
  - b. does not injure any existing water right.
5. Shortly after the Department determined the application was complete, the Department again provided public notice of the application.
6. The Department received comments from Brian Posewitz, on behalf of WaterWatch of Oregon, Inc, during the second comment period. The comments were considered by the Department and a comment evaluation was completed.
7. On February 11, 2011, a timely protest was filed by WaterWatch of Oregon, Inc., on a related application, R-87630.
8. A Settlement Agreement was signed by all parties as of \_\_\_\_\_. The terms of the Settlement Agreement are incorporated into this Final Order and a copy of the Settlement Agreement is included below.
9. The Department has determined that the proposed source has not been withdrawn from further appropriation.
10. The proposed reservoir is not prohibited under ORS 390.835.
11. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.
12. Because water is available, the Department finds that existing water rights would not be injured by the proposed use.
13. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.

#### **Conclusions of Law**

1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87625 is consistent with the requirements of ORS 537.409.

#### **Now Therefore, it is Ordered:**

Application R-87625 is approved, and Permit R-DRAFT is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on

--- DRAFT ---

---

E. Timothy Wallin, Water Rights Program Manager  
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@wrd.state.or.us](mailto:Jeana.M.Eastman@wrd.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 WHEELER

DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DAYSRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY, STE 250  
PORTLAND OR 97224

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

APPLICATION FILE NUMBER: R-87625

SOURCE OF WATER: WEST BRANCH ROCK CREEK, TRIBUTARY TO ROCK CREEK

STORAGE FACILITY: SPANISH VIEW LAKE

MAXIMUM VOLUME: 15.0 ACRE FEET

DATE OF PRIORITY: MAY 19, 2010

WATER MAY BE APPROPRIATED AS FOLLOWS: JANUARY 1 THROUGH APRIL 14

USE: MULTIPLE PURPOSE

**Dam Location/Authorized Points of Diversion:**

|                                                   | Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances                                             |
|---------------------------------------------------|------|------|-----|-----|-------|----------------------------------------------------------------|
| DAM                                               | 13 S | 24 E | WM  | 22  | SW NE | 1480 FEET SOUTH AND 1990 FEET WEST FROM NE CORNER, SECTION 22  |
| POINT OF RE-DIVERSION FROM WEST BRANCH ROCK CREEK | 13 S | 24 E | WM  | 22  | SW NE | 140 FEET NORTH AND 2740 FEET EAST FROM W1/4 CORNER, SECTION 22 |
| POINT OF RE-DIVERSION FROM WEST BRANCH ROCK CREEK | 13 S | 24 E | WM  | 22  | SE NW | 2190 FEET SOUTH AND 2870 FEET WEST FROM NE CORNER, SECTION 22  |
| WEST BRANCH ROCK CREEK                            | 13 S | 24 E | WM  | 21  | SE SE | 1620 FEET SOUTH AND 650 FEET WEST FROM E1/4 CORNER, SECTION 21 |

**The Area To Be Submerged:**

| Twp  | Rng  | Mer | Sec | Q-Q   |
|------|------|-----|-----|-------|
| 13 S | 24 E | WM  | 22  | NW NE |
| 13 S | 24 E | WM  | 22  | SW NE |
| 13 S | 24 E | WM  | 22  | NE NW |

**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 measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season.
- C. Before water use may begin under this permit, permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at the West Branch Rock Creek.
- D. The permittee shall maintain all required devices in good working order.
- E. 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.
- F. 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.
- G. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The reservoir shall be constructed and maintained outside the current channel of the source stream such that flows in the source stream that are not diverted and/or stored under the permit will pass the reservoir site without flowing through the reservoir.

Except as required by other conditions and/or directives of the Department, or as may occur through return flow following irrigation under a secondary permit for use of the water stored under this permit, the permittee shall not release water from the reservoir into Rock Creek, or into any surface waterway reaching Rock Creek. For purposes of this paragraph, "other conditions and/or directives of the Department" do not include the terms and/or conditions of this permit that require the permittee to pass live flow outside the permitted storage season and/or after storing the total amount permitted under this permit.

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 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 ODFW 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 by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

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.

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) |
| February                 | 1000               |
| March                    | 2000               |
| April 1 - 14             | 2000               |

#### 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. 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.
3. 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.
4. 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.
5. 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.
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.
7. 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.
8. Construction shall be completed and up to the permitted annual volume of water shall be stored within five years of the date of permit issuance.
9. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
10. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.

11. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:

- a. the dimensions of the reservoir;
- b. the maximum capacity of the reservoir in acre-feet; and
- c. a map identifying the location of the reservoir prepared in compliance with Water Resource Department standards.

Issued \_\_\_\_\_

-- DRAFT --

\_\_\_\_\_  
for Phillip C. Ward, Director  
Water Resources Department

# Mailing List for FO

Scheduled Mailing Date:

Application: R-87625

Permit: R-DRAFT

Original mailed to Applicant with CBU form:

DAYSRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY, STE 250  
PORTLAND OR 97224

Copies of FO and map sent to:

1. File R-87625
2. Water Availability (Ken Stahr)
3. Watermaster District 4, Eric W. Julsrud
4. Region Manager: NC REGION

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Pagel, Martha / Langford, Shonee  
Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301
2. Bruce, Steven, CWRE #439  
Skookum Water Associates, Inc., P.O. Box 80174, Portland, OR 97280
3. Posewitz, Brian J.  
8508 SE Eleventh Ave, Portland OR 97202

**Copies Mailed**

by: \_\_\_\_\_

(STAFF)

on: \_\_\_\_\_

(DATE)

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

In the Matter of Water Rights Application )  
R-87687, Wheeler County )

**DRAFT FINAL ORDER  
INCORPORATING SETTLEMENT  
AGREEMENT**

**Authority**

Oregon Revised Statutes (ORS) 537.409 establishes the process by which an application to store waters of the public may be submitted.

**Findings of Fact**

1. On JANUARY 28, 2011, DAYSPRING PARTNERS LLC submitted an application for a permit to store water pursuant to ORS 537.409:  
Storage Capacity: 9.1 ACRE FEET  
Dam Height: LESS THAN 10 FEET  
Source: SHINGLE CREEK, TRIBUTARY TO PINE HOLLOW  
Location: WHEELER COUNTY IN SECTION 28, TOWNSHIP 12 SOUTH, RANGE 24 EAST, W.M.
2. The required examination fees were paid.
3. The Department provided public notice of the application in the Department's weekly public notice on March 15, 2011. A 60-day comment period followed.
4. Within the 60-day comment period, the Department received comments from Brian Posewitz, on behalf of WaterWatch of Oregon, Inc. The comments were considered by the Department and a comment evaluation was completed.

**APPEAL RIGHTS**

**Appeal to a circuit court:** This is a final order in other than a contested case. Any party affected by a final order in other than a contested case issued by the Water Resources Commission or Water Resources Department may appeal the order to the appropriate circuit court (ORS 536.075). A petition for judicial review must be filed within the 60-day time period specified by ORS 183.484 (2).

**Petition to the Department for Reconsideration of the Final Order:** A person entitled to judicial review of this order may also file a petition for the Department's reconsideration of the order. The petition for reconsideration must be filed with the Department within 60 calendar days after the date of the order. A copy of the petition must also be delivered or mailed to all other persons and agencies requiring notification under statute or rule (OAR 137-004-0080). The petition must set forth the specific grounds for reconsideration, and may be supported by a written argument. The petition may include a request for a stay of the order if the petition complies with the requirements of OAR 137-003-0090 (2). The Department may grant or deny the petition by summary order. If the Department takes no action, the petition is deemed denied as provided by ORS 183.484 (2). A final order remains in effect during reconsideration until stayed or changed. Following reconsideration, the agency must enter a new order, which may be an order affirming the existing order (OAR 137-004-0080). Reconsideration cannot be granted after the filing of a petition for judicial review, unless permitted by the court (OAR 137-004-0080 (6)).

ORS 537.409 does not provide an opportunity to request a contested-case hearing. Appeal rights on this final order approving the application are limited to the above procedures.

5. Clackamas County Circuit Court Judge Susie L. Norby issued an order relating to the processing of reservoir applications filed under ORS 537.409. In this order, Judge Norby determined that an application for stored water filed under ORS 537.409 is not complete unless/until the Department receives sufficient information to demonstrate that the reservoir:
  - a. does not pose a significant detrimental impact to existing fishery resources as determined on the basis of information submitted by the State Department of Fish and Wildlife; and
  - b. does not injure any existing water right.
6. Shortly after the Department determined the application was complete, the Department again provided public notice of the application. The Department did not receive any comments during the second comment period.
7. On February 11, 2011, a timely protest was filed by WaterWatch of Oregon, Inc., on a related application, R-87630.
8. A Settlement Agreement was signed by all parties as of \_\_\_\_\_. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.
9. The Department has determined that the proposed source has not been withdrawn from further appropriation.
10. The proposed reservoir is not prohibited under ORS 390.835.
11. Water is available for the proposed use according to the Department's water-availability model and the watermaster's assessment.
12. The Department finds that existing water rights would not be injured by the proposed use.
13. The Department relies on the Oregon Department of Fish and Wildlife's review and recommendations in determining whether a proposed use would pose a significant detrimental impact to existing fishery resources. The Department has determined that, as conditioned, the proposed use will not pose a significant detrimental impact to existing fishery resources.

#### **Conclusions of Law**

1. Water is available for the proposed use.
2. The proposed use will not injure existing water rights.
3. The proposed use will not pose a significant detrimental impact to existing fishery resources.
4. Application R-87687 is consistent with the requirements of ORS 537.409.

#### **Now Therefore, it is Ordered:**

Application R-87687 is approved, and Permit R-DRAFT is issued as limited by the conditions contained therein.

Dated at Salem, Oregon on

--- DRAFT ---

\_\_\_\_\_  
E. Timothy Wallin, Water Rights Program Manager  
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@wrd.state.or.us](mailto:Jeana.M.Eastman@wrd.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 WHEELER  
DRAFT PERMIT TO STORE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

DAYSPRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY SUITE 250  
PORTLAND OR 97224

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

APPLICATION FILE NUMBER: R-87687

SOURCE OF WATER: SHINGLE CREEK, TRIBUTARY TO PINE HOLLOW

STORAGE FACILITY: MALEY LAKE

MAXIMUM VOLUME: 9.1 ACRE FEET

DATE OF PRIORITY: JANUARY 28, 2011

WATER MAY BE APPROPRIATED AS FOLLOWS: JANUARY 1 THROUGH APRIL 14

USE: MULTIPLE PURPOSE

**Dam Location/Authorized Point of Diversion:**

|                  | Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances                                               |
|------------------|------|------|-----|-----|-------|------------------------------------------------------------------|
| DAM              | 12 S | 24 E | WM  | 28  | NE SW | 1490 FEET NORTH AND 1860 FEET EAST<br>FROM SW CORNER, SECTION 28 |
| SHINGLE<br>CREEK | 12 S | 24 E | WM  | 28  | SW SW | 560 FEET NORTH AND 840 FEET EAST<br>FROM SW CORNER, SECTION 28   |

**The Area To Be Submerged:**

| Twp  | Rng  | Mer | Sec | Q-Q   |
|------|------|-----|-----|-------|
| 12 S | 24 E | WM  | 28  | NE SW |

**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 measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season.
- C. Before water use may begin under this permit, permittee shall install totalizing flow meters or other suitable measuring devices as approved by the Director at Shingle Creek.
- D. The permittee shall maintain all required devices in good working order.
- E. 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.

- F. 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.
- G. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The reservoir shall be constructed and maintained outside the current channel of the source stream such that flows in the source stream that are not diverted and/or stored under the permit will pass the reservoir site without flowing through the reservoir.

Except as required by other conditions and/or directives of the Department, or as may occur through return flow following irrigation under a secondary permit for use of the water stored under this permit, the permittee shall not release water from the reservoir into Rock Creek, or into any surface waterway reaching Rock Creek. For purposes of this paragraph, "other conditions and/or directives of the Department" do not include the terms and/or conditions of this permit that require the permittee to pass live flow outside the permitted storage season and/or after storing the total amount permitted under this permit.

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 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 prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria, or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

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.

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 1 - 14             | 2000               |

#### 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. 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.
3. 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.
4. 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.
5. 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.
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.
7. 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.
8. Construction shall be completed and up to the permitted annual volume of water shall be stored within five years of the date of permit issuance.
9. Within one year after storage of water, the permittee shall submit a claim of beneficial use to the Oregon Water Resources Department.
10. The claim of beneficial use shall be prepared by a Certified Water Right Examiner in conformance with the requirements of OAR 690-014 if an associated secondary permit exists for the use of stored water under this permit, or if the reservoir capacity is equal to or greater than 9.2 acre-feet.
11. If no secondary permit exists and the reservoir capacity is less than 9.2 acre-feet of water, the claim of beneficial use need not be prepared by a Certified Water Right Examiner. The information submitted to the Oregon Water Resources Department shall include:
  - a. the dimensions of the reservoir;
  - b. the maximum capacity of the reservoir in acre-feet; and
  - c. a map identifying the location of the reservoir prepared in compliance with Departmental standards.

Issued \_\_\_\_\_

--- DRAFT ---

---

for Phillip C. Ward, Director  
Water Resources Department

# Mailing List for FO

Scheduled Mailing Date:

Application: R-87687

Permit: R-DRAFT

Original mailed to Applicant with CBU form:

DAYSPRING PARTNERS LLC  
15350 SW SEQUOIA PARKWAY SUITE 250  
PORTLAND OR 97224

Copies of FO and map sent to:

1. File R-87687
2. Water Availability (Ken Stahr)
3. Watermaster District 4, Eric W. Julsrud
4. Region Manager: NC REGION

Copies of FO sent to other interested persons (CWRE, Agent, Commenter, etc.):

1. Pagel, Martha / Langford, Shonee  
Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301
2. Bruce, Steven, CWRE #439  
Skookum Water Associates, Inc., P.O. Box 80174, Portland, OR 97280
3. Posewitz, Brian J.  
8508 SE Eleventh Ave, Portland OR 97202

**Copies Mailed**

by: \_\_\_\_\_

(STAFF)

on: \_\_\_\_\_

(DATE)