

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

In the Matter of Water Rights Application)
S-87788, Jackson County)

FINAL ORDER
APPROVING THE USE OF
STORED WATER

Authority

ORS 537.147 establishes the process by which an application to use stored water exclusively may be submitted. OAR Chapter 690, Divisions 310 and 340 implement the statute, and provide the Department's procedures and criteria for evaluating applications to use stored water.

Findings of Fact

1. On March 26, 2012, MICHAEL LEVITT submitted an application for a water-use permit pursuant to ORS 537.147.
2. The Department provided public notice of the application in the Department's weekly public notice on August 21, 2012. A 30-day comment period followed.
3. The Department has evaluated the application and any comments received, and finds that no public interest in ORS 537.170(8) would be affected adversely by the proposed use.

Conclusions of Law

Application S-87788 is consistent with the requirements of ORS 537.147 and OAR Chapter 690.

Now Therefore, it is Ordered:

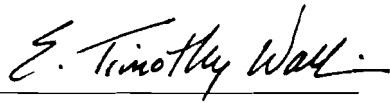
Application S-87788 is approved pursuant to ORS 537.147. **Upon the submission of documentation that any and all land use approvals have been granted by the local government and that all land use appeal periods have expired, upon the submission of an executed and valid contract with the Bureau of Reclamation authorizing appropriation of stored water from Lost Creek Reservoir, a permit shall be issued authorizing the proposed water use.** Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

NOTICE OF RIGHT TO PETITION FOR RECONSIDERATION OR JUDICIAL REVIEW

This is an order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080, you may petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

Dated at Salem, Oregon on NOVEMBER 29 2012.



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@wrд.state.or.us.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF JACKSON

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

MICHAEL LEVITT
152 W 57TH ST, 35TH FLOOR
NEW YORK NY 10019

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

APPLICATION FILE NUMBER: S-87788

SOURCE OF WATER: LOST CREEK RESERVOIR, CONSTRUCTED UNDER PERMITS R-8141 AND R-8142, TRIBUTARY TO ROGUE RIVER

PURPOSE OR USE: FROST PROTECTION AND IRRIGATION OF 3.92 ACRES

MAXIMUM VOLUME: 10.6 ACRE FEET

DATE OF PRIORITY: MARCH 26, 2012

PERIOD: MARCH 1 THROUGH OCTOBER 31

Authorized Point of Re-Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
35 S	1 W	WM	29	SE NW	710 FEET NORTH AND 1629 FEET EAST FROM W1/4 CORNER, SECTION 29

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 not to exceed 4.5 acre-feet per acre for each acre irrigated during the irrigation season of each year. The right to the use of the water for the above purpose is restricted to beneficial use on the lands or place of use described.

Authorized Place of Use:

FROST PROTECTION					
Twp	Rng	Mer	Sec	Q-Q	
35 S	1 W	WM	29	SW NW	

IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	1 W	WM	29	SW NW	2.87
35 S	1 W	WM	29	SE NW	1.05

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of re-diversion. The permittee shall maintain the meter in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.

- C. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The water user shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion, while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional, and approved in writing by ODFW prior to diversion of water. The water user may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.

The use of water under this right is subject to the terms and conditions of contract No. XXXXXX, or a satisfactory replacement, between the Bureau of Reclamation and the permittee, a copy of which must be on file in the records of the Water Resources Department.

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
3. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
4. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.
5. The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.
6. If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR Chapter 635, Division 415, shall be followed.
7. Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

8. Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued _____ 2012

DRAFT – NOT A PERMIT

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