

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number S-86717

**Proposed Final Order**

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

*Application History*

On November 17, 2006, LLOYD AND LOIS PIERCY submitted an application to the Department for the following water use permit:

- Amount of Water: 52.6 CUBIC FEET PER SECOND (CFS), BEING 24.0 CFS FOR PRIMARY IRRIGATION AND 28.6 CFS FOR SUPPLEMENTAL IRRIGATION
- Use of Water: PRIMARY IRRIGATION USE ON 960.0 ACRES AND SUPPLEMENTAL IRRIGATION USE ON 2289.4 ACRES
- Source of Water: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN
- Area of Proposed Use: Umatilla County within SECTION 4, AND SECTION 5, TOWNSHIP 3 NORTH, RANGE 30 EAST, W.M.; SECTION 27, SECTION 28, SECTION 29, SECTION 30, SECTION 31, SECTION 32, SECTION 33, AND SECTION 34, TOWNSHIP 4 NORTH, RANGE 30 EAST, W.M.

On December 19, 2006, the Department mailed the applicant notice of its Initial Review, determining that "The use of 52.6 cubic feet per second (CFS), being 24.0 CFS for primary irrigation use on 960.0 acres, and 28.6 CFS for supplemental irrigation use on 2289.4 acres, which includes raising the soil moisture to field capacity to be utilized by plant growth in the subsequent growing season, from Columbia River, a tributary of Pacific Ocean, may be allowed October 1 through April 14." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On December 19, 2006, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- recommendations by other state agencies
- any applicable basin program

- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any comments received

*Findings of Fact*

The Columbia Basin Program allows IRRIGATION USE.

Senior water rights exist on COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN, or on downstream waters.

COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at an 80 percent exceedance probability) during the full season requested.

The Department finds that the amount of water requested, 52.6 CFS, is an acceptable amount.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

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.

*Conclusions of Law*

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Columbia Basin Plan, or a preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
  - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

When issuing permits, ORS 537.211(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public interest. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED January 23, 2007



Phillip C. Ward, Director  
Water Resources Department

*for*

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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this proposed final order. Protests must be received in the Water Resources Department no later than **March 9, 2007**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the protest fee of \$250 required by ORS 536.050 and proof of service of the protest upon the applicant.

- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.*

#### Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a proposed final order can request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.

Requests for standing must be received in the Water Resources Department no later than **March 9, 2007**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the proposed final order as issued;
- A detailed statement of how the requester would be harmed if the proposed final order is modified; and
- A standing fee of \$50.00. If a hearing is scheduled, an additional fee of \$200.00 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

*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 respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Mike Reynolds at 503-986-0820.*

*If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:*

*Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.*

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON - COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

LLOYD AND LOIS PIERCY  
33927 RIVERVIEW DR  
HERMISTON, OR 97838

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

APPLICATION FILE NUMBER: S-86717

DATE OF PRIORITY: NOVEMBER 17, 2006

SOURCE OF WATER: COLUMBIA RIVER, A TRIBUTARY OF PACIFIC OCEAN

PURPOSE OR USE: PRIMARY IRRIGATION USE ON 960.0 ACRES AND SUPPLEMENTAL IRRIGATION USE ON 2289.4 ACRES, (\*WHICH INCLUDES RAISING THE SOIL MOISTURE TO FIELD CAPACITY TO BE UTILIZED BY PLANT GROWTH IN THE SUBSEQUENT GROWING SEASON)

MAXIMUM RATE: 52.6 CUBIC FEET PER SECOND AS FURTHER LIMITED BELOW

USE	MAXIMUM RATE (CFS)	LIMIT (CFS PER ACRE)	DUTY (AF PER ACRE)	PERIOD OF USE
PRIMARY IRRIGATION*	24.0	1/40	4.5 MAX	MARCH 1 - APRIL 14 AND OCTOBER 1 - OCTOBER 31
PRIMARY IRRIGATION*	24.0	1/40	FURTHER LIMITED TO 1.5	NOVEMBER 1 - FEBRUARY 29
SUPPLEMENTAL IRRIGATION*	28.6	1/80	3.0 MAX	MARCH 1 - APRIL 14 AND OCTOBER 1 - OCTOBER 31
SUPPLEMENTAL IRRIGATION*	28.6	1/80	FURTHER LIMITED TO 1.5	NOVEMBER 1 - FEBRUARY 29

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to an annual total of 4.5 acre-feet per acre for primary irrigation, and 3.0 acre-feet per acre for supplemental irrigation.

POINT OF DIVERSION LOCATION: SW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 8, T5N, R30E, W.M.; 2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NE $\frac{1}{4}$ NE $\frac{1}{4}$		18.8 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$		36.4 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$		17.6 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$		33.2 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$		27.6 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$		0.6 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$		0.2 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$		7.2 ACRES
SECTION 4		
NE $\frac{1}{4}$ NE $\frac{1}{4}$		35.4 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$		28.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$		29.6 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$		27.2 ACRES
SECTION 5		
TOWNSHIP 3 NORTH, RANGE 30 EAST, W.M.		
NE $\frac{1}{4}$ NW $\frac{1}{4}$		30.4 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$		35.4 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$		36.6 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$		33.2 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$		32.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$		35.4 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$		39.9 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		28.8 ACRES
SECTION 27		
NE $\frac{1}{4}$ NE $\frac{1}{4}$		39.2 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$		39.6 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$		36.4 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$		34.0 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$		34.4 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$		31.6 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$		32.2 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$		30.8 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$		40.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$		31.6 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$		30.9 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		40.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$		40.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$		38.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$		32.4 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$		39.8 ACRES
SECTION 28		



	<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NE ¼ NE ¼		38.4 ACRES
NW ¼ NE ¼		31.1 ACRES
SW ¼ NE ¼		32.0 ACRES
SE ¼ NE ¼		33.0 ACRES
NE ¼ SE ¼		32.0 ACRES
NW ¼ SE ¼		30.4 ACRES
SW ¼ SE ¼		31.4 ACRES
SE ¼ SE ¼		42.2 ACRES

SECTION 29

NE ¼ NE ¼	40.0 ACRES
NW ¼ NE ¼	40.0 ACRES
SW ¼ NE ¼	40.0 ACRES
SE ¼ NE ¼	40.0 ACRES
NE ¼ SE ¼	40.0 ACRES
NW ¼ SE ¼	40.0 ACRES
SW ¼ SE ¼	40.0 ACRES
SE ¼ SE ¼	40.0 ACRES

SECTION 30

NE ¼ NE ¼	40.0 ACRES
NW ¼ NE ¼	40.0 ACRES
SW ¼ NE ¼	40.0 ACRES
SE ¼ NE ¼	40.0 ACRES
NE ¼ SE ¼	40.0 ACRES
NW ¼ SE ¼	40.0 ACRES
SW ¼ SE ¼	40.0 ACRES
SE ¼ SE ¼	40.0 ACRES

SECTION 31

NE ¼ NE ¼		31.4 ACRES
NW ¼ NE ¼		15.2 ACRES
SW ¼ NE ¼		38.8 ACRES
SE ¼ NE ¼		35.0 ACRES
NE ¼ NW ¼	40.0 ACRES	
NW ¼ NW ¼	40.0 ACRES	
SW ¼ NW ¼	40.0 ACRES	
SE ¼ NW ¼	40.0 ACRES	
NE ¼ SW ¼	40.0 ACRES	
NW ¼ SW ¼	40.0 ACRES	
SW ¼ SW ¼	40.0 ACRES	
SE ¼ SW ¼	40.0 ACRES	
NE ¼ SE ¼		36.0 ACRES
NW ¼ SE ¼		35.2 ACRES
SW ¼ SE ¼		10.5 ACRES
SE ¼ SE ¼		16.0 ACRES

SECTION 32

<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NE ¼ NE ¼	37.2 ACRES
NW ¼ NE ¼	38.8 ACRES
SW ¼ NE ¼	40.0 ACRES
SE ¼ NE ¼	34.4 ACRES
NE ¼ NW ¼	38.1 ACRES
NW ¼ NW ¼	39.4 ACRES
SW ¼ NW ¼	38.5 ACRES
SE ¼ NW ¼	39.1 ACRES
NE ¼ SW ¼	24.1 ACRES
NW ¼ SW ¼	40.0 ACRES
SW ¼ SW ¼	24.4 ACRES
SE ¼ SW ¼	17.4 ACRES
NE ¼ SE ¼	18.8 ACRES
NW ¼ SE ¼	39.0 ACRES
SW ¼ SE ¼	13.2 ACRES
SE ¼ SE ¼	22.4 ACRES

## SECTION 33

NE ¼ NW ¼	38.6 ACRES
NW ¼ NW ¼	38.5 ACRES
SW ¼ NW ¼	37.0 ACRES
SE ¼ NW ¼	34.0 ACRES
NE ¼ SW ¼	12.8 ACRES
NW ¼ SW ¼	27.9 ACRES
SW ¼ SW ¼	2.8 ACRES

## SECTION 34

TOWNSHIP 4 NORTH, RANGE 30 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

The use allowed herein may be made when water can be put to beneficial use by irrigation, either for immediate crop growth or for forecast requirements to raise the soil moisture to field capacity to be utilized by plant growth in the subsequent growing season.

The use of water for out-of-season irrigation allowed herein shall not establish priority of right against future appropriations for beneficial uses or storage for such beneficial uses, other than those for irrigation during the allowed period of out-of-season use.

The supplemental use allowed herein may, in the interest of conserving ground water supplies, be exercised at times even when water is available in the ground water supply provided the total quantity diverted from all sources of supply does not exceed the limitation allowed herein.

Should this permit be used as the base right for an aquifer storage and recovery project, the limited period of use stipulated herein shall not apply to water withdrawn from storage.

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.

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.

#### **STANDARD CONDITIONS**

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.

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.

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.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2011. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued \_\_\_\_\_, 2007

**DRAFT - THIS IS NOT A PERMIT**

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