

Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number S-88162

DRAFT Proposed Final Order

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

Findings of Fact

1. On December 24, 2015, Westland Irrigation District and Northeast Oregon Water Association submitted an application to the Department for the following water use permit:
 - Amount of Water: 38.75 cubic feet per second (CFS)
 - Use of Water: irrigation of 123,452.0 acres
 - Source of Water: Columbia River, a tributary of Pacific Ocean
 - Area of Proposed Use: Within Morrow and Umatilla Counties. The place of use is described in the attached draft permit.
2. On September 2, 2016, the Department mailed the applicant notice of its Initial Review, determining that "*...because the applicant is proposing full mitigation, the diversion of 38.75 CFS of water from Columbia River, a tributary to Pacific Ocean, for irrigation of 123,452.0 acres is likely allowable March 1 through October 31 of each year.*" The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On September 6, 2016, 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 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:

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

4. The Columbia River Basin Program allows irrigation. (OAR 690-519-0000).
5. Senior water rights exist on Columbia River, a tributary of Pacific Ocean, or on downstream waters.
6. Columbia River, a tributary of Pacific Ocean, is not within or above a State Scenic Waterway.
7. An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that water is available for further appropriation (at an 80 percent exceedance probability) during the full season requested.
8. The Department finds that the amount of water requested, 38.75 CFS, is an acceptable amount.
9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
10. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year. The proposed use is inconsistent with the Columbia River Basin Fish and Wildlife Program. However, if the use of water is inconsistent with the Fish and Wildlife Program, OAR 690-033-0120(4) allows mitigation if the mitigation is consistent with OAR 690-033-0120(2) and (3). The applicant has demonstrated intent to provide bucket-for-bucket mitigation of 39.03 CFS for the period April 15 through September 30 of each year at or above the point of impact for the life of the permit and subsequent certificate, consistent with OAR 690-033-0120. Prior to permit issuance, mitigation shall consist of an instream lease or temporary transfer of water instream at a rate equal to that which is requested under this application. Permanent mitigation is required prior to water right certificate issuance.
11. If the mitigation water has not been provided instream in accordance with the mitigation conditions, numbered 8-18 in the attached draft permit, by the time of issuance of the final order, the final order will include the following condition:

This Final Order is issued approving application S-88161 contingent upon the required mitigation being provided and protected instream prior to permit issuance. A permit consistent with the draft permit shall be issued only upon submission of documentary evidence demonstrating that WRD-approved mitigation has been provided instream. This Final Order shall expire 5 years after issuance unless the required mitigation is provided. Additional time will not be granted to meet this condition.

Conclusions of Law

1. 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

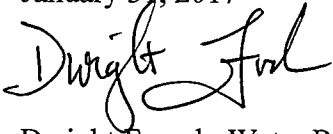
preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

2. As conditioned in the attached draft permit, the proposed use requested in this application is allowed in the Columbia River Basin Program, or a preference for this use is granted under the provisions of ORS 536.310(12).
3. Water is available for the proposed use.
4. The proposed use will not injure other water rights.
5. The application is in compliance with the State Agency Coordination Program regarding land use.
6. As conditioned in the attached draft permit, the proposed use complies with rules of the Water Resources Commission not otherwise described above.
7. For these reasons, the required presumption has been established.
8. 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.
9. As conditioned in the attached draft permit, 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.
10. The Department therefore concludes that the proposed use, as conditioned in the attached draft permit, will not impair or be detrimental to the public interest as provided in ORS 537.170.
11. 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.

January 31, 2017



Dwight French, Water Right Services Division Administrator
for Thomas M. Byler, Director

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 17, 2017**. 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 the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) the specific public interest in ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified public interest in ORS 537.170(8) would be impaired or be detrimentally affected;
- If you are the applicant, the protest fee of \$350 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$700 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.

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 17, 2017**. 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 \$200. If a hearing is scheduled, an additional fee of \$500 must be submitted along with a petition for party status.

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

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

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations,

governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

If you have any questions about any of the statements contained in this document I can be reached at Dwight.W.French@oregon.gov or 503-986-0819.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

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

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

DRAFT

This is not a permit.

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STATE OF OREGON

COUNTIES OF MORROW AND UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WESTLAND IRRIGATION DISTRICT
3750 SW MARSHALL PLACE
PENDLETON OR 97801

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

APPLICATION FILE NUMBER: S-88162

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

PURPOSE OR USE: IRRIGATION OF 123,452.0 ACRES

MAXIMUM RATE: 38.75 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 24, 2015

POINT OF DIVERSION LOCATIONS:

POD A: GOV'T LOT 7 (NENW), SECTION 2, T4N, R25E, W.M.; 150 FEET SOUTH AND 2990 FEET WEST FROM NE CORNER, SECTION 2

POD B: GOV'T LOT 7 (NENW), SECTION 2, T4N, R25E, W.M.; 150 FEET SOUTH AND 2990 FEET WEST FROM NE CORNE, SECTION 2

POD C: GOV'T LOT 3 (SWSE), SECTION 35, T5N, R25E, W.M.; 80 FEET NORTH AND 2480 FEET WEST FROM SE CORNER, SECTION 35

POD D: GOV'T LOT 4 (NWSW), SECTION 13, T5N, R27E, W.M.; 2400 FEET NORTH AND 330 FEET EAST FROM SW CORNER, SECTION 13

Place of Use:

- TOWNSHIP 2 NORTH, RANGE 26 EAST: SECTIONS 1, 12, AND 13
- TOWNSHIP 2 NORTH, RANGE 27 EAST: SECTIONS 1 THROUGH 13
- TOWNSHIP 2 NORTH, RANGE 28 EAST: SECTIONS 1, THROUGH 13
- TOWNSHIP 3 NORTH, RANGE 26 EAST: EAST HALF OF SECTION 14, SECTIONS 13, 24, 25, AND 36
- TOWNSHIP 3 NORTH, RANGE 28 EAST: SECTIONS 1 THROUGH 36
- TOWNSHIP 3 NORTH, RANGE 29 EAST: SECTIONS 6 ,7, 17, 18, 19, 20, 29, 30, 31, AND 32; NORTHWEST QUARTER, SOUTHWEST QUARTER, AND SOUTHEAST QUARTER OF SECTION 5, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF, SOUTHEAST QUARTER OF SECTION 8 , EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 16, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER, WEST HALF OF SECTIONS 21, 28, AND 33
- TOWNSHIP 4 NORTH, RANGE 26 EAST: EAST HALF OF SECTIONS 1, 12, AND 13 AND NORTHEAST QUARTER OF SECTION 24
- TOWNSHIP 4 NORTH, RANGE 27 EAST: SECTIONS 1 THROUGH 36
- TOWNSHIP 4 NORTH, RANGE 28 EAST: SECTIONS 5, 6, 7, 18, 31, 32; WEST HALF AND NORTHEAST QUARTER OF SECTION 4, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF AND EAST HALF OF SECTION 8, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; NORTHWEST QUARTER OF SECTION 9, EXCEPTING THEREFROM ALL LANDS LYING EAST AND SOUTH OF THE CENTERLINE OF THE UMATILLA RIVER; EAST HALF OF SECTION 16, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTION 17, EXCEPTING THEREFROM ALL LANDS LYING SOUTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTION 19, EXCEPTING THEREFROM ALL LANDS LYING SOUTH OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 20, EXCEPTING THEREFROM ALL LANDS LYING SOUTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SOUTHEAST QUARTER OF SECTION 28, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SOUTH HALF AND NORTHWEST QUARTER OF SECTION 29, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE UMATILLA RIVER; SECTION 30, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTIONS 33, 34, 35 AND 36, EXCEPTING THEREFROM ALL LANDS LYING NORTH OF THE CENTERLINE OF THE UMATILLA RIVER
- TOWNSHIP 4 NORTH, RANGE 29 EAST: SOUTHWEST QUARTER, NORTHWEST QUARTER AND SOUTHEAST QUARTER OF SECTION 31, EXCEPTING THEREFROM

ALL LANDS LYING EAST AND NORTH OF THE CENTERLINE OF THE UMATILLA RIVER

- TOWNSHIP 5 NORTH, RANGE 27 EAST: SECTIONS 25, AND 32 THROUGH 36; SOUTHWEST QUARTER, SOUTHEAST QUARTER, SOUTH HALF AND NORTHEAST QUARTER OF NORTHEAST QUARTER OF SECTION 31
- TOWNSHIP 5 NORTH, RANGE 28 EAST: SECTIONS 29, 30, 31, 32; WEST HALF OF SECTION 28, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 33, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER

1. Measurement devices and recording/reporting of annual water use conditions:
 - a. Before water use may begin under this permit, the permittee shall install a totalizing flow meter with telemetry at each point of diversion from the Columbia River and any other location as directed by the Watermaster. In addition, each irrigation district customer is required to install a totalizing flow meter at each re-diversion point from the common delivery system (each turn-out) and other locations as may be required by the Watermaster. The measuring devices need to be approved by the Watermaster prior to installation. The permittee and individual landowners shall maintain the required devices in good working order.
 - b. The permittee 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. The Watermaster shall have real-time access to the measurement devices that are telemetered.
 - c. The permittee shall keep a complete record of the rate of flow and volume of water diverted and shall submit a report, which includes water-use measurements, to the Department annually and no later than February 14 of each year, or more frequently as may be required by the Director. Further, the Director shall require the permittee to report general water-use information, including the place and nature of use of water under the permit and documentary evidence that use of this water in conjunction with existing water rights for said lands did not exceed 3.5 acre feet per acre. The documentary evidence shall include a listing of how many acre-feet each irrigation district customer used along with the associated number of acres irrigated.
2. In the interest of preserving the groundwater supplies, water use described under this permit as supplemental to a groundwater right, may be used as the primary supply when surface water is available for use under this permit. If water under this permit is supplemental to a primary groundwater right, and the water under the permit is used as the primary supply, then the primary groundwater right cannot be transferred separately from the supplemental water under this permit to another place or character of use.
3. If water from this permit is used for supplemental irrigation, the pre-existing primary rights for the same place of use cannot be transferred to another place or character of use.

4. Once water from this permit is used on any lands for irrigation, those lands will be included in the claim of beneficial use. The claim of beneficial use must show all lands that received water under this permit.
5. Before water use begins, the permittee will certify to the Department, the existence of fish screens at each point of diversion on the Columbia River that meet Oregon Department of Fish and Wildlife (ODFW) and National Oceanic and Atmospheric Administration specifications for adequate protection of aquatic life, and to maintain fish screens to the specification of ODFW for the life of the water right.
6. The amount of water used for primary or supplemental irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of not to exceed ONE-SIXTIETH of one cubic foot per second and 3.5 acre-feet for each acre irrigated during the irrigation season of each year.

Notwithstanding the above sentence, in those instances in which water under this permit is effectively being diverted through POD D and utilized for irrigation on lands within the following areas: Sections 32 and 33 of Township 5 North, Range 28 West (all lying west of the Umatilla River); Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 29, and 30 of Township 4 North, Range 28 West (all lying west of the Umatilla River); and Sections 12, 13, 24 and 25 of Township 4 North, Range 27 West, all inside the boundary of Westland Irrigation District (WID); then where such lands have pre-existing appurtenant water rights that provide for a higher cumulative total than ONE-SIXTIETH of one cubic foot per second and/or 3.5 acre feet for each acre irrigated during the irrigation season of each year, then the use of water under this permit on such lands shall instead be limited based on the following:

- For pre-existing primary and/or any supplemental rights on lands within the WID boundary that DO NOT subscribe to water made available from internal WID transfers resulting from this permit, and where such pre-existing primary and/or supplemental rights allow for a cumulative total of up to ONE-FORTIETH of one cubic foot per second and/or up to 4.5 acre feet per acre for each acre irrigated during the irrigation season of each year, then the use of water under this permit on such lands shall be limited to the same pre-existing cumulative total of up to ONE-FORTIETH of one cubic foot per second and/or up to 4.5 acre-feet for each acre irrigated during the irrigation season of each year.
 - For pre-existing primary and/or supplemental rights on lands within the WID boundary that DO subscribe to water made available from internal WID transfers resulting from this permit, such rights shall be limited to a cumulative total of up to ONE-SIXTIETH of one cubic foot per second and 3.5 acre feet for each acre irrigated during the irrigation season of each year.
7. When submitting a claim of beneficial use, the permittee may request that water under this permit that is identified as supplemental in the permit be certificated as primary irrigation, if the underlying primary water rights have been diminished to supplemental, canceled, or are deficient (i.e., where the underlying primary water rights are deficient up to ONE-SIXTIETH of one cubic foot per second and/or deficient up to 3.5 acre feet per acre).

Mitigation Conditions required for the permit and subsequent certificate:

8. Mitigation water must provide full bucket-for-bucket replacement water at or above point of impact for the maximum instantaneous rate approved by the permit, April 15 through September 30 of each year.
9. For this permit, withdrawals will be considered mitigated and at or above the point of impact if:
 - a. Withdrawals within the McNary Dam pool up to River Mile 302 are mitigated with maximum instantaneous rate approved by the permit above their points of withdrawal or anywhere between 2 miles below the McNary Dam at River Mile 290 up to River Mile 302.
 - b. Withdrawals within the upper John Day pool from River Mile 270 to McNary Dam are mitigated with maximum instantaneous rate approved by the permit above their points of withdrawal or within the upper John Day pool between River Mile 270 and the McNary Dam (about River Mile 292).
10. Mitigation water must be legally protected instream for instream use and must be maintained for the life of the permit and subsequent certificate(s).
11. Mitigation shall be in place prior to water use. Water use without mitigation in place is illegal use
12. The Department will review and must approve all temporary and permanent mitigation associated with this permit and subsequent certificate. Mitigation must meet conditions 8, 9, 10, 11, and 15.
13. If the Department approved mitigation lapses for any reason, the permittee must immediately cease water use associated with failed mitigation. The Watermaster will regulate to reduce the diversion by the quantity not mitigated if the permittee fails to voluntarily reduce the diversion. Any reduction in mitigation will result in permanent diminishment of the permit by the amount that is equal to the reduction in mitigation unless the mitigation is replaced by WRD approved mitigation within three years. If the mitigation lapses in whole, the WRD will cancel the permit or subsequent certificate.
14. Replacement mitigation proposals shall be submitted to the Department in writing at least 60 days prior to the irrigation season. Replacement mitigation must meet the standards as laid out in conditions 8, 9, 10, 11, and 15.
15. Mitigation in accordance with condition #8 is required for the period March 1 through April 14. If mitigation is not provided for the periods March 1 through April 14, the permittee will only divert water when the 7-day rolling average of the mean daily gage height, or tailwater elevation, below Bonneville Dam is equal to or greater than the stage height set by the Action Agencies for that year (determined November and December). To monitor mean daily stage at this location the permittee will use the official project tailwater elevation gage - USGS gage station #14128870 Columbia River Below Bonneville Dam, OR. Real-time data from this station is available online at the United States Geological Survey (USGS) website:
http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. The permittee will maintain a spreadsheet of the 7-day rolling average of the mean daily

gage height for the period when the permittee is withdrawing water, which will be available to the Department upon request. Any mitigation provided for the period March 1 through April 14 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146).

16. The permittee or subsequent certificate holder shall provide an annual report to the Department by February 14 of each year. Items “a” and “b” must be submitted for the life of the permit and certificate. The report must be submitted to the Water Right Services Division and the Watermaster and include the following:

- a.** Activity from the previous irrigation season: The permittee or certificate holder must report the total volume of water used in acre-feet for each use allowed under the permit, the total number of acres irrigated by each use and the instantaneous maximum amount (in CFS) pumped at the point(s) of diversion. A map shall be submitted showing the location of the acres irrigated by quarter-quarter and whether the use was primary or supplemental. The Report shall include the total number of primary acres, supplemental acres and deficient water right acres that were served by the permit. The report shall also include documentary evidence¹ of mitigation water in place for the maximum instantaneous rate allowed by the permit for the previous year.
- b.** Planned activity for the next irrigation season: The permittee shall submit a map that indicates the location of acres to be irrigated by quarter-quarter. The map shall show underlying water rights and shall indicate which acres are going to be irrigated as primary and as supplemental irrigation and show the locations of any additional uses authorized by the permit. The report shall also include documentary evidence of mitigation water for the full instantaneous rate of the permit that will be in place for the next year. The irrigation season will be delayed by one day for every day that the annual report is submitted late to the Department.
- c.** Permanent mitigation is required within 30 years of permit issuance. Until permanent mitigation is in place, the permit holder shall include a report indicating the steps taken in the past year and planned for the next year to acquire permanent mitigation credits. This report is due annually on February 14 starting with the February 14 report that is between three and four years from the date of permit issuance.
- d.** In addition to the reporting requirements of a through c above, in those instances in which water under this permit is effectively being diverted through POD D and utilized for irrigation on lands within the following areas: Sections 32 and 33 of Township 5 North, Range 28 West (all lying west of the Umatilla River); Sections 4, 5, 6, 7, 8, 9, 16, 17, 18, 19, 20, 29, and 30 of Township 4 North, Range 28 West (all lying west of the Umatilla River); Sections 12, 13, 24, and 25 of Township 4 North, Range 27 West, all inside the WID

¹ Documentary evidence could include, for example, a copy of the final order approving an instream lease or transfer.

boundary (referred to below as the WID Audit Lands); then the following additional reporting requirements shall apply:

WID shall submit an additional chapter to the annual report for 10 years following permit issuance, which documents:

- 1) That no less than \$20,000 annually has been spent on efficiency and scheduling audits or efficiency projects within the WID Audit Lands;
- 2) The results of such audits, including potential water savings and potential project costs and feasibility of implementation of efficiency projects within the WID Audit Lands;
- 3) The results of any efficiency projects completed within the WID Audit Lands; and
- 4) Documentation that Columbia River water made available under this permit and saved as a result of the implemented efficiency projects has not been spread to areas outside of the WID Audit Lands.

17. In addition to existing enforcement mechanisms, if the Department determines that the permittee or certificate holder has exceeded the maximum authorized rate of diversion, the diversion of water will be reduced by an equal amount of water during the same time period as to when the infraction occurred the next year. Permanent mitigation is required to replace temporary mitigation within 30 years of permit issuance. This water right expires if permanent mitigation is not secured within 30 years of permit issuance.
18. Before proof can be made, permanent mitigation water must be legally protected. When the Department issues a certificate the rate will not exceed the amount of permanent mitigation that has been provided.

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.

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.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.

Complete 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.

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

DRAFT - THIS IS NOT A PERMIT

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director