

interest.

Actual construction work shall begin within one year from permit issuance. The reservoir shall be filled and complete application of the stored water to the use shall be made on or before October 1, 2002. 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 _____, 199_

DRAFT - THIS IS **NOT** A PERMIT

Water Resources Department
Director

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. The permittee shall take a reading from the gage once a month and keep a record of these measurements and shall be responsible for maintaining the gage. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to measure water use more frequently or report 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.

Before water use may begin under this permit, a weir must be installed upstream and downstream of the reservoir(s). A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.

The storage of water allowed herein in Reservoir 2 is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

The storage of water in Reservoir 1 and 3 allowed herein is subject to the installation and maintenance of a fully functional conduit/gate assembly having a minimum diameter of 8 inches.

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.

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

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

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

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public

DRAFT

This is not a permit!!!
STATE OF OREGON

DRAFT

COUNTY OF COOS

DRAFT PERMIT TO CONSTRUCT A RESERVOIR AND STORE THE PUBLIC WATERS
THIS DRAFT PERMIT IS HEREBY ISSUED TO

CARY BOGS
ROUTE 1 BOX 1507
BANDON, OREGON 97411

PHONE: (541) 347-2381

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

APPLICATION FILE NUMBER: R-83543

SOURCE OF WATER: RUNOFF, TRIBUTARY TO CONNER CREEK, WITHIN THE SOUTH COAST BASIN

STORAGE FACILITY: THREE UNNAMED RESERVOIRS (RESERVOIR 1, RESERVOIR 2, AND RESERVOIR 3)

PURPOSE OR USE OF THE STORED WATER: TO BE APPROPRIATED UNDER APPLICATION S-83542 FOR CRANBERRY OPERATIONS

MAXIMUM VOLUME: 56.6 ACRE-FEET (AF) PER YEAR EACH YEAR, BEING 9.0 AF IN RESERVOIR 1, 20.0 AF IN RESERVOIR 2, AND 27.6 AF IN RESERVOIR 3

PERIOD OF ALLOWED USE: WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD DECEMBER 1 THROUGH MARCH 31

DATE OF PRIORITY: AUGUST 29, 1997

The area submerged by the reservoir, when full, will be 1.0 acre for Reservoir 1, 1.2 acres for Reservoir 2, and 2.0 acres for Reservoir 3 and the maximum depth of water will be 10.0 feet for Reservoir 1, 25.0 feet for Reservoir 2, and 23 feet for Reservoir 3. The maximum height of the dams shall not exceed 10.0 feet.

DAM LOCATION: SW 1/4 NW 1/4, SECTION 7, T30S, R14W, W.M.; RESERVOIR 1 - 455 FEET NORTH & 60 FEET EAST, RESERVOIR 2 - 540 FEET NORTH & 360 FEET EAST, AND RESERVOIR 3 390 FEET NORTH & 700 FEET EAST ALL FROM W1/4 CORNER, SECTION 7

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

SW 1/4 NW 1/4
SECTION 7
TOWNSHIP 30 SOUTH, RANGE 14 WEST, W.M.

- 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.

Your protest must be received in the Water Resources Department no later than **April 3, 1998**.

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 if

- 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.

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- (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 of water 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.

Recommendation

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

DATED February 17, 1998


Dwight French
Water Rights Section Manager

Protest Rights

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest 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 \$200 protest fee 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.

Before water use may begin under this permit, a weir must be installed upstream and downstream of the reservoir(s). A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.

Information obtained from the Department of Environmental Quality (DEQ) indicates that the source of water identified in the application is "Water Quality Limited." This designation indicates that water quality concerns exist. DEQ was provided with an opportunity to review this proposed use to determine if any additional conditions or restrictions are needed to protect the water quality.

DEQ did not make any recommendations for additional conditions or restrictions to be imposed on the proposed use for this application.

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 South Coast Basin Plan.

No 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 rules of the Water Resources Commission.

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

The Department finds that no more than 56.6 AF would be necessary for the proposed use. The amount of water requested, 56.6 AF, BEING 9.0 AF IN RESERVOIR 1, 20.0 AF IN RESERVOIR 2 AND 27.6 AF IN RESERVOIR 3, is allowable.

There is no evidence in the record of the presence of game fish at the described point of diversion.

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:

Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level 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. Additionally, before water use may begin under this permit, if the reservoir is located in channel then weirs or other suitable measuring devices must be installed upstream and downstream of the reservoir, and, a gated valve outlet must be installed. A written waiver may be obtained from the local Watermaster if in his judgement the installation of the weir(s) will provide no public benefit.

The period of use has been limited to December 1 through March 31.

The proposed use is within the New River Basin and the application is being processed consistent with the New River Alternative Dispute Resolution Agreement on file with the Department. Based upon the New River Alternative Dispute Resolution agreement the staff gage condition above shall be modified as follows:

Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level 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. The permittee shall take a reading from the gage once a month and keep a record of these measurements and shall be responsible for maintaining the gage. The permittee shall submit a report which includes the recorded water use measurements to the Department at its request. The permittee may be required to measure water use more frequently or report 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.

will be an 3 feet bottom width trapezoidal spillway around right abutment on original ground; Reservoir 2 will be excavated along side of cranberry fields, may have a small dike (less than 10 feet in height) along the southeast side, and will have a 10 inch overflow pipe; and Reservoir 3, to be constructed in a sloping field, will have an earth fill dam with an 8 inch outlet and the spillway will be a 3 feet width trapezoidal spillway around left abutment on original ground.

On 12/9/97, the Department mailed the applicant notice of its Initial Review, determining that "the storage of 56.6 AF, being 9.0 AF in Res. 1, 20.0 AF in Res. 2, and 27.6 AF in Res. 3, from Runoff, a tributary of Conner Creek, to be appropriated under Application S-83542 for Cranberry Use may be allowed from December 1 through March 31 of each year." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 12/23/97, 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:

- comments by or consultation with another state agency
- 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 South Coast Basin Program allows the following uses: CRANBERRY OPERATIONS.

Senior water rights exist on RUNOFF, TRIBUTARY TO CONNER CREEK, or on downstream waters.

RUNOFF, TRIBUTARY TO CONNER CREEK, 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 a 50 percent exceedance probability) for the period DECEMBER 1 THROUGH APRIL 30.

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number R-83543

Proposed Final Order

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

Additional Information Required: Before a permit may be issued, a revised application map needs to be submitted to the Department. The revised map must show the locations of the dams on Reservoirs 1 and 3. The map must also identify the coordinates, from a recognized public land survey corner, to the proposed dam locations on Reservoirs 1 and 3 and to the location of Reservoir 2.

More specific information is necessary regarding the maximum heights of the dams for Reservoirs 1 and 3 and the possible dike for Reservoir 2. Under Oregon law, if a reservoir holds 9.2 acre-feet of water or more and has a dam height of 10 feet or more, the reservoir owner is required to submit plans and specifications to the Department for review and approval. The applicant has identified that Reservoirs 1 and 3 will have dams less than 10 feet in height and that there may be a small dike, less than 10 feet in height, on Reservoir 2. Please identify the maximum height of each dam and dike. If either of the dams and/or dike is 10 feet or more in height the applicant may be required to submit plans and specifications.

Application History

On August 29, 1997, CARY BOGS submitted an application to the Department for the following water use permit:

- Amount of Water: 56.6 ACRE-FEET (AF), BEING 9.0 AF IN RESERVOIR 1, 20.0 AF IN RESERVOIR 2 AND 27.6 AF IN RESERVOIR 3, TO BE APPROPRIATED UNDER APPLICATION S-83542
- Use of Water: CRANBERRY OPERATIONS
- Source of Water: RUNOFF, A TRIBUTARY OF CONNER CREEK
- Area of Proposed Use: COOS County within SECTION 7, TOWNSHIP 30 SOUTH, RANGE 14 WEST, W.M.
- Water Delivery System: Reservoir 1 will be located in a dry draw, will be filled from runoff from adjacent fields and rainfall, and will have an earth fill dam with an 18 inch outlet and the spillway