

Checklist for Claims of Beneficial Use Received at CSG Counter

Application # 5-86808	WRD Reviewer <i>DM</i>
Transfer #	
Date Received 3/29/2007	
CWRE Name Darryl Anderson	

Priority Date: 3/15/2007

Fees Required:

YES NO A fee of \$200 must accompany this form for permits with priority dates of July 9, 1987, or later.

YES NO A fee of \$200 must accompany this form for any transfers including a water right with a priority date of July 9, 1987, or later.

Example – A transfer involves 5 rights and one of the rights has a priority date of July 9, 1987, or later, the fee is required.

Fill in App or Transfer Number

Map Review:

- Map on polyester film (OAR 690-014-0170(1) & 310-0050(1)(b))
- Application & permit #; or transfer # (OAR 690-014-0100(1))
- Disclaimer (OAR 690-014-0170(5))
- North arrow (OAR 690-310-0050(2)(c))
- CWRE stamp and signature (OAR 690-014 & 310-0050)
- Appropriate scale (1" = 1320', 1" = 400', or the original full-size scale of the county assessor map) (014 & 310)
- Township, range, section, and tax lot numbers (OAR 690-310-0050(4))

MONEY SLIP

DATE: _____ RECEIPT #: _____

RECEIVED FROM: _____ APPLICATION PERMIT TRANSFER

CASH CHECK # _____ OTHER (IDENTIFY) _____ TOTAL DUE \$ _____

0101 TREASURY 4170 MISC CASH ACCT.

0407 COPIES _____ OTHER (IDENTIFY) _____ \$ _____

0243 Interm. Leas. _____ 0244 Min. Water Right Fee _____ 0245 Cont. Water _____

0247 TREASURY 4170 WRD OPERATING ACCT.

MISCELLANEOUS

0407 COPY & TAPE FEES *4611* \$ _____

0410 RESEARCH FEES \$ _____

0408 MISC REVENUE (IDENTIFY) \$ _____

0242 DEPOSIT (LAW IDENTIFY) \$ _____

0243 EXTENSION OF TIME \$ _____

WATER RIGHTS

0201 SURFACE WATER \$ _____ RECORD FEE \$ _____

0200 GROUND WATER \$ _____ RECORD FEE \$ _____

0205 TRANSFER \$ _____

WELL CONSTRUCTION

0218 WELL DRILL CONSTRUCTION \$ _____ RECORD FEE \$ _____

LANDOWNER'S PERMIT \$ _____ RECORD FEE \$ _____

0220 OTHER (IDENTIFY) *COBU* \$ *3200.00*

0407 TREASURY 0407 HYDROELECTRIC \$ _____

0233 POWER LICENSE FEE (HYDRO) \$ _____

0231 HYDRO LICENSE FEE (HYDRO) \$ _____

HYDRO APPLICATION \$ _____

SPECIAL INSTRUCTIONS:

Report Review:

- On form provided by the Department (OAR 690-014-0100(1))
- Application & permit #; or transfer # (OAR 690-014)
- Ownership information (OAR 690-014)
- Date of survey (OAR 690-014)
- Person interviewed (OAR 690-014)
- County (OAR 690-014)
- CWRE stamp and signature (OAR 690-014-0100)
- Signature(s) of all permittee of transfer holder (OAR 690-014-0100)

Groundwater File Review: *N/A*

Pump Test Required? YES NO Pump Test Submitted? YES NO*

*If no, include pump test flyer w/acknowledgment letter

RETURN TO APPLICANT - LETTER ATTACHED

**CLAIM OF
BENEFICIAL USE
for Surface Water Permits
claiming more than 0.1 cfs**



Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, Oregon 97301-1266
(503) 986-0900
www.oregon.gov/OWRD

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**A fee of \$200 must accompany this form for permits
with priority dates of July 9, 1987, or later.**

A separate form shall be completed for each permit.

In cases where a permit has been amended through the permit amendment process, a separate claim for the permit amendment is not required. Incorporate the permit amendment into the claim for the permit.

This form is subject to revision. **Begin each new claim** by checking for a new version of this form at:
<https://www.oregon.gov/OWRD/Forms/Pages/default.aspx>

Go to "Resources for Water Right Examiners (CWRE)" Page

<https://www.oregon.gov/OWRD/programs/WaterRights/COBU/Pages/default.aspx>

The completion of this form is required by OAR 690-014-0100(1) and 690-014-0110(4).

Please type or print in dark ink. If this form is found to contain errors or omissions, it may be returned to you. **Every item must have a response.** If any requested information does not apply to the claim, insert "NA." **Do not delete or alter any section of this form unless directed by the form.** The Department may require the submittal of additional information from any water user or authorized agent.

"Section 8" of this form is intended to aid in the completion of this form and should not be submitted.

If you have questions regarding the completion of this form, please call 503-986-0900 and ask for the Certificate Section.

The Department has a program that allows it to enter into a voluntary agreement with an applicant for expedited services. Under such an agreement, the applicant pays the cost to hire additional staff that would not otherwise be available. This program means a certificate may be issued in about a month. For more information on this program see

<https://www.oregon.gov/OWRD/programs/WaterRights/RA/Pages/default.aspx>

SECTION 1

GENERAL INFORMATION

1. File Information:

APPLICATION # S-86808	PERMIT # S-54445	PERMIT AMENDMENT # T-
---------------------------------	----------------------------	---------------------------------

2. Property Owner (current owner information):

APPLICANT/BUSINESS NAME DANIEL & ELIZABETH WITHERS		PHONE NO. 541-219-1022	ADDITIONAL CONTACT NO.
ADDRESS 38438 WITHERS RANCH RD			
CITY PAISLEY	STATE OR	ZIP 97636	E-MAIL drwitherswri@yahoo.com

If the current property owner is not the permit holder of record, it is recommended that an assignment be filed with the Department. ***Each permit holder of record must sign this form.***

3. Permit or holder of record (this may, or may not, be the current property owner):

PERMIT HOLDER OF RECORD DANIEL WITHERS			
ADDRESS 38438 WITHERS RANCH RD			
CITY PAISLEY	STATE OR	ZIP 97636	

ADDITIONAL PERMIT HOLDER OF RECORD ELIZABETH WITHERS			
ADDRESS 38438 WITHERS RANCH RD			
CITY PAISLEY	STATE OR	ZIP 97636	RECEIVED

4. Date of Site Inspection:

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SEPTEMBER 21, 2020

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5. Person(s) interviewed and description of their association with the project:

NAME	DATE	ASSOCIATION WITH THE PROJECT
Daniel Withers	September 21, 2020	Property Owner

6. County:

LAKE

7. If any property described in the place of use of the permit final order is excluded from this report, identify the owner of record for that property (ORS 537.230(5)):

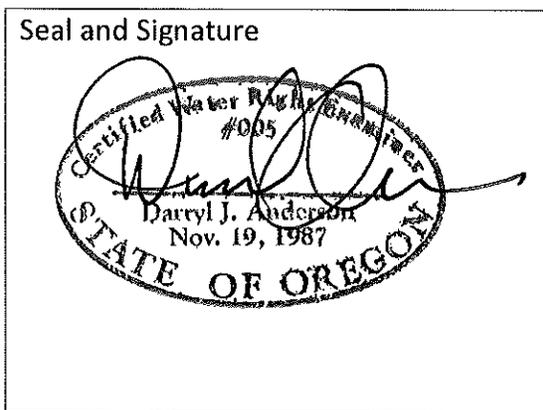
OWNER OF RECORD			
ADDRESS			
CITY	STATE	ZIP	

Add additional tables for owners of record as needed

**SECTION 2
SIGNATURES**

CWRE Statement, Seal and Signature

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge.



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CWRE NAME DARRYL ANDERSON		PHONE NO. 541-947-4407	ADDITIONAL CONTACT NO.
ADDRESS P.O. BOX 28			
CITY LAKEVIEW	STATE OR	ZIP 97630	E-MAIL darryla@andersonengineering.com

Permit Holder of Record Signature or Acknowledgement

Each permit holder of record must sign this form in the space provided below.

The facts contained in this Claim of Beneficial Use are true and correct to the best of my knowledge. I request that the Department issue a water right certificate.

SIGNATURE	PRINT OR TYPE NAME	TITLE	DATE
<i>Daniel R Withers</i>	<i>Daniel R Withers</i>	<i>Owner</i>	<i>3/20/21</i>
<i>Elizabeth A Withers</i>	<i>Elizabeth A Withers</i>	<i>Owner</i>	<i>3/20/21</i>

**SECTION 3
CLAIM DESCRIPTION**

1. Point of diversion name or number:

POINT OF DIVERSION (POD) NAME OR NUMBER (CORRESPOND TO MAP)
1
2
3
4
5
6

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2. Point of diversion source and tributary:

POD NAME OR NUMBER	SOURCE	TRIBUTARY
1	UNNAMED STREAM	SUMMER LAKE
2	UNNAMED STREAM	SUMMER LAKE
3	UNNAMED STREAM	SUMMER LAKE
4	UNNAMED STREAM	SUMMER LAKE
5	UNNAMED STREAM	SUMMER LAKE
6	UNNAMED STREAM	SUMMER LAKE

3. Developed use(s), period of use, and rate for each use:

POD NAME OR NUMBER	USES	IF IRRIGATION, LIST CROP TYPE	SEASON OR MONTHS WHEN WATER WAS USED	ACTUAL RATE OR VOLUME USED (CFS, GPM, OR AF)
1	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] 1 – SEP. 30 March	0.21 C.F.S.
2	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] 1 – SEP. 30 March	0.21 C.F.S.
3	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] 1 – SEP. 30 March	0.21 C.F.S.
4	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] – SEP. 30 March	0.21 C.F.S.
5	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] – SEP. 30 March	0.21 C.F.S.
6	IRRIGATION	PASTURE GRASS	^{DAW} [REDACTED] – SEP. 30 March	0.21 C.F.S.
Total Quantity of Water Used				1.24 C.F.S.

4. Provide a general narrative description of the distribution works. This description must trace the water system from each point of diversion to the place of use:

THE WATER COMES OUT OF THE SUMMER LAKE IRRIGATION DISTRICT CANAL, GOES THROUGH THE MEASUREMENT WEIR, MEETS POD 1 AND GETS DISTRIBUTED BY FLOOD IRRIGATION, MEETS POD 2 GETS DISTRIBUTED BY FLOOD IRRIGATION, MEETS POD 3 GETS DISTRIBUTED BY FLOOD IRRIGATION,

MEETS POD 4 GETS DISTRIBUTED BY FLOOD IRRIGATION, MEETS POD 5 GETS DISTRIBUTED BY FLOOD IRRIGATION, MEETS POD 6 GETS DISTRIBUTED BY FLOOD IRRIGATION

Reminder: The map associated with this claim must identify the location of the point(s) of diversion, Donation Land Claims (DLC), Government Lots (GLOT), and Quarter-Quarters (QQ).

5. Variations:

Was the use developed differently from what was authorized by the permit, or permit amendment final order? If yes, describe below.

YES



(e.g. "The permit allowed three points of diversion. The water user only developed one of the points." or "The permit allowed 40.0 acres of irrigation. The water user only developed 10.0 acres.")

6. Claim Summary:

POD NAME OR #	MAXIMUM RATE AUTHORIZED	CALCULATED THEORETICAL RATE BASED ON SYSTEM	AMOUNT OF WATER MEASURED	USE	# OF ACRES ALLOWED	# OF ACRES DEVELOPED
1	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	9.5	9.5
2	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	8.0	8.0
3	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	8.0	8.0
4	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	8.0	8.0
5	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	8.0	8.0
6	1.24 C.F.S.	0.21 C.F.S.	N/A	IRRIGATION	8.0	8.0

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**SECTION 4
SYSTEM DESCRIPTION**

Are there multiple PODs?

YES NO

If "YES" you will need to copy and complete a separate Section 4 for each POD.

POD Name or Number this section describes (only needed if there is more than one):

1-6

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A. Place of Use

1. Is the right for municipal use?

YES NO

If "YES" the table below may be deleted.

TWP	RNG	MER	SEC	QQ	GLot	DLC	USE	IF IRRIGATION, # PRIMARY ACRES	IF IRRIGATION, # SUPPLEMENTAL ACRES
31S	16E	W.M.	3	NE, SW			IRRIGATION	0	9.5
31S	16E	W.M.	3	NW, SE			IRRIGATION	0	8.0
31S	16E	W.M.	3	NW, SE			IRRIGATION	0	8.0
31S	16E	W.M.	3	NW, SE			IRRIGATION	0	8.0
31S	16E	W.M.	3	NW, SE			IRRIGATION	0	8.0
31S	16E	W.M.	3	NW, SE			IRRIGATION	0	8.0
Total Acres Irrigated									49.5

Reminder: The map associated with this claim must identify Donation Land Claims (DLC), Government Lots (GLot), Quarter Quarters (QQ), and if for irrigation, the number of acres irrigated within each projected DLC, GLot, and QQ.

B. Diversion and Delivery System Information

Provide the following information concerning the diversion and delivery system. Information provided must describe the equipment used to transport and apply the water from the point of diversion to the place of use.

1. Is a pump used?

YES NO

7. Is the distribution system piped?

YES NO

C. Storage

1. Does the distribution system include in-system storage (e.g. storage tank, bulge in system / reservoir)?

YES NO

D. Gravity Flow Pipe

(THE DEPARTMENT TYPICALLY USES THE HAZEN-WILLIAM'S FORMULA FOR A GRAVITY FLOW PIPE SYSTEM)

1. Does the system involve a gravity flow pipe?

YES NO

E. Gravity Flow Canal or Ditch

(THE DEPARTMENT TYPICALLY USES MANNING'S FORMULA FOR CANALS AND DITCHES)

1. Is a gravity flow canal or ditch used to convey the water as part of the distribution system?

YES NO

If "NO", items 2 through 4 relating to this section may be deleted.

2. Complete the table:

CANAL OR DITCH TYPE (MATERIAL)	TOP WIDTH OF CANAL OR DITCH	BOTTOM WIDTH OF CANAL OR DITCH	DEPTH	"N" FACTOR	AMOUNT OF FALL	LENGTH OF CANAL/ DITCH	SLOPE	COMPUTED RATE (IN CFS)
DREDGED	8 FT	5 FT	.75 FT	.035	12.03 FT	2437.59 FT	0.49%	8.26 CFS

3. Provide calculations:

SEE ATTACHED

4. If an actual measurement was taken, provide the following:

DATE OF MEASUREMENT	WHO MADE THE MEASUREMENT	MEASUREMENT METHOD	MEASURED QUANTITY OF WATER (IN CFS)
N/A	N/A	N/A	N/A

Attach measurement notes.

F. Additional notes or comments related to the system:

NONE

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**SECTION 5
CONDITIONS**

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All conditions contained in the permit, permit amendment, or any extension final order shall be addressed. Reports that do not address all performance related conditions will be returned.

1. Time Limits:

Permits and any extension final orders contain any or all of the following dates: the date when the actual construction work was to begin, the date when the construction was to be completed, and the date when the complete application of water to the proposed use was to be completed. These dates may be referred to as ABC dates. Describe how the water user has complied with each of the development timelines established in the permit or permit extension of time:

	DATE FROM PERMIT	DATE ACCOMPLISHED*	DESCRIPTION OF ACTIONS TAKEN BY WATER USER TO COMPLY WITH THE TIME LIMITS
ISSUANCE DATE	3/13/2008		
BEGIN CONSTRUCTION (A)	3/13/2008		
COMPLETE CONSTRUCTION (B)	10/1/2020	2/17/2020	INSTALL MEASUREMENT WEIR
COMPLETE APPLICATION OF WATER (C)	10/1/2020	2/17/2020	USE MEASUREMENT WEIR

* MUST BE WITHIN PERIOD BETWEEN PERMIT OR ANY EXTENSION FINAL ORDER ISSUANCE AND THE DATE TO COMPLETELY APPLY WATER

2. Is there an extension final order(s)?

YES NO

3. Measurement Conditions:

a. Does the permit, permit amendment, or any extension final order require the installation of a meter or approved measuring device?

YES NO

If "NO", items b through f relating to this section may be deleted.

Reminder: If a meter or approved measuring device was required, the COBU map must indicate the location of the device in relation to the point of diversion.

d. If a meter has not been installed, has a suitable measuring device been installed and approved by the Department?

YES NO

e. If "YES", provide a copy of the letter approving the device, if available. If the letter is not available provide the name and title of the Water Resources Department employee approving the measuring device, and the approximate date of the approval:

NAME	TITLE	APPROXIMATE DATE
BRIAN MAYER	WATERMASTER	OCTOBER 28, 2019

f. Measurement Device Description

DEVICE DESCRIPTION	CONDITION (WORKING OR NOT)	DATE INSTALLED
WEIR	WORKING	OCTOBER 28, 2019

4. Recording and reporting conditions:

a. Is the water user required to report the water use to the Department? YES NO

5. Fish Screening:

a. Are any points of diversion required to be screened to prevent fish from entering the point of diversion? YES NO

6. By-pass Devices:

a. Are any points of diversion required to have a by-pass device to prevent fish from entering the point of diversion? YES NO

(Provide a letter from ODFW indicating the device is approved or is unnecessary. If there is no letter from ODFW, explain whether or not a by-pass device is necessary.)

DESCRIPTION (E.G. "ODFW HAS APPROVED THE BY-PASS DEVICE" OR "NO BY-PASS DEVICE IS NECESSARY BECAUSE THERE IS A DIRECT DIVERSION FROM THE STREAM VIA A PUMP ON RIVER LEFT STREAM BANK WITH FOOT VALVE DESCENDING DIRECTLY INTO NATURAL POOL.") IN ADDITION, YOU MAY ATTACH PHOTOS TO THIS CLAIM.	IF INSTALLED (DATE)	IF INSTALLED, BY WHOM
ATTACHED LETTER		

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7. Other conditions required by permit, permit amendment final order, or extension final order:

- a. Was the water user required to restore the riparian area if it was disturbed? YES NO
- b. Was a fishway required? YES NO
- c. Was submittal of a water management and conservation plan required? YES NO
- d. Other conditions? YES NO

If "YES" to any of the above, identify the condition and describe the water user's actions to comply with the condition(s):

**SECTION 6
ATTACHMENTS**

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Provide a list of any additional documents you are attaching to this report:

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ATTACHMENT NAME	DESCRIPTION
ODFW	FISH PASSAGE WAIVER
TRAPEZOIDAL CHANNEL	FLOW RATE OF DITCH
EXTENSION OF TIME	PROPOSED FINAL ORDER
EXTENSION OF TIME	FINAL ORDER

SECTION 7

CLAIM OF BENEFICIAL USE MAP

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The Claim of Beneficial Use Map must be submitted with this claim. Claims submitted without the Claim of Beneficial Use map will be returned. The map shall be submitted on poly film at a scale of 1" = 1320 feet, 1" = 400 feet, or the original full-size scale of the county assessor map for the location.

Provide a general description of the survey method used to prepare the map. Examples of possible methods include, but are not limited to, a traverse survey, GPS, or the use of aerial photos. If the basis of the survey is an aerial photo, provide the source, date, series and the aerial photo identification number.

A GPS SURVEY USING TRIMBLE R10 AND AN RTK BASE.

Map Checklist

Please be sure that the map you submit includes ALL the items listed below.
(Reminder: Incomplete maps and/or claims may be returned.)

- Map on polyester film
- Appropriate scale (1" = 400 feet, 1" = 1320 feet, or the original full-size scale of the county assessor map)
- Township, Range, Section, Donation Land Claims, and Government Lots
- If irrigation, number of acres irrigated within each projected Donation Land Claims, Government Lots, Quarter-Quarters
- Locations of fish screens and/or fish by-pass devices in relationship to point of diversion
- Locations of meters and/or measuring devices in relationship to point of diversion or appropriation
- Conveyance structures illustrated (pumps, reservoirs, pipelines, ditches, etc.)
- Point(s) of diversion or appropriation (illustrated and coordinates)
- Tax lot boundaries and numbers
- Source illustrated if surface water
- Disclaimer ("This map is not intended to provide legal dimensions or locations of property ownership lines")
- Application and permit number or transfer number
- North arrow
- Legend
- CWRE stamp and signature

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**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit S-54445, Water Right Application S-86808) FINAL ORDER
in the name of Daniel and Elizabeth Withers)

Permit Information

Application: S-86808
Permit: S-54445
Basin: Goose and Summer Lakes / Watermaster District 12
Date of Priority: March 15, 2007
Source of Water: an unnamed stream, a tributary of Summer Lake
Purpose or Use: supplemental irrigation use on 49.5 Acres
Maximum Rate: 1.24 cubic feet per second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

Appeal Rights

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.

Application History

Permit S-54445 was issued by the Department on March 13, 2008. The permit specified completion of construction by October 1, 2012, and complete application of water to beneficial use by, October 1, 2012. On April 27, 2020, Daniel and Elizabeth Withers submitted an Application for Extension of Time for Permit S-54445. In accordance with OAR 690-315-0050(2), on June 23, 2020, the Department issued a Proposed Final Order proposing to extend the time to complete construction from October 1, 2012, to October 1, 2020, and the time to apply water to full beneficial use from October 1, 2012, to October 1, 2020. The protest period closed August 7, 2020, in accordance with OAR 690-315-0060(1). No protest was filed.

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FINDINGS OF FACT

The Department adopts and incorporates by reference the findings in the Proposed Final Order dated June 23, 2020.

At time of issuance of the Proposed Final Order the Department concluded that, based on the factors demonstrated by the applicant, the permit may be extended subject to no additional conditions.

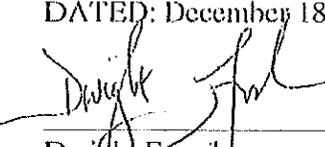
CONCLUSION OF LAW

The applicant has demonstrated good cause for the permit extension pursuant to ORS 537.230, 539.010(5) and OAR 690-315-0040(2).

ORDER

The extension of time for Application S-86808, Permit S-54445, therefore, is approved. The deadline for completing construction is extended from October 1, 2012, to October 1, 2020. The deadline for applying water to full beneficial use within the terms and conditions of the permit is extended from October 1, 2012, to October 1, 2020.

DATED: December 18, 2020



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

-
- If you have any questions about statements contained in this document, please contact Permit Extension Specialist at (503)986-0802.
 - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at (503) 986-0900
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**Oregon Water Resources Department
Water Right Services Division**

Application for Extension of Time

In the Matter of the Application for an Extension of Time) PROPOSED
for Permit S-54445, Water Right Application S-86808) FINAL
in the name of Daniel and Elizabeth Withers) ORDER

Permit Information

Application: S-86808
Permit: S-54445
Basin: Goose and Summer Lakes / Watermaster District 12
Date of Priority: March 15, 2007
Source of Water: an unnamed stream, a tributary of Summer Lake
Purpose or Use: supplemental irrigation use on 49.5 Acres
Maximum Rate: 1.24 cubic feet per second (cfs)

Please read this Proposed Final Order in its entirety.

In summary, the Department proposes to:

- Grant an extension of time to complete construction of the water system from October 1, 2012, to October 1, 2020.
- Grant an extension of time to apply water to full beneficial use from October 1, 2012, to October 1, 2020.¹

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.230 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315

¹ Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permit holder shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permit holder shall submit a map of the survey and the claim of beneficial use.

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ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Water Resources Department
ODFW – Oregon Department of Fish and Wildlife
PFO – Proposed Final Order
FOF – Finding of Fact
cfs - cubic feet per second

AUTHORITY

Generally, see **ORS 537.230** and **OAR Chapter 690 Division 315**.

ORS 537.230(2) provides in pertinent part that the Oregon Water Resources Department (Department) may, for good cause shown, order an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under **ORS 539.010(5)** and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in **OAR 690-315-0040(1)** including a finding that there is “good cause” to approve the extension. **OAR 690-315-0040(2)-(4)** contains the factors that the Department must consider to make findings that support a “good cause” determination.

FINDINGS OF FACT

1. On March 13, 2008, Permit S-54445 was issued by the Department. The permit authorizes the use of up to 1.24 cfs of water from an unnamed stream, a tributary of Summer Lake, for supplemental irrigation use on 49.5 acres. The permit specified construction of the water system was to be completed by October 1, 2012, and complete application of water was to be made on or before October 1, 2012.
2. On April 27, 2020, Daniel and Elizabeth Withers, submitted an “Application for Extension of Time” (Application) to the Department, requesting the time to complete construction of the water system be extended from, October 1, 2012, to October 1, 2020, and the time to apply water to full beneficial use under the terms and conditions of Permit S-54445 be extended from October 1, 2012, to October 1, 2020. This is the first permit extension requested for Permit S-54445.
3. On May 12, 2020, notification of the Application for Permit S-54445 was published in the Department’s Public Notice. No public comments were received.

4. On May 14, 2020, fish passage waiver documentation from Oregon Department of Fish and Wildlife was submitted.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) – (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

5. On April 27, 2020, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

6. Construction of the water system began prior to October 1, 2012, as specified in the permit as being the date to apply water to full beneficial use. The permit holder states, construction of the distribution system began prior to permit issuance, and is utilized under the primary irrigation right. Construction of the points of diversion authorized under this permit began March 1, 2008.

Based on Findings of Fact (FOF) 6, the Department has determined the permit holder began construction prior to October 1, 2012.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is “good cause” to approve the extension. In making a “good cause” finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of “good cause” to approve the extension, the Department shall consider whether the applicant has demonstrated “reasonable diligence” in previous performance under the permit. OAR 690-315-0040(2)(a). In determining “reasonable diligence”, the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

continued on following page

Amount of Construction [OAR 690-315-0040(3)(a)]

The amount of construction completed within the time allowed in the permit or previous extension.²

7. Construction of the points of diversion began prior to the deadline specified in the permit.
8. No other work was accomplished during the original development time frame under Permit S-54445.
9. Since October 1, 2012, a measurement weir was installed.

Based on FOF 6, 7, and 8, the Department has determined that work has been accomplished prior to permit issuance and within the time allowed in the permit, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Compliance with Conditions [OAR 690-315-0040(3)(c)]

The water right permit holder's conformance with the permit or previous extension conditions.

10. The Department has considered the permit holder's compliance with conditions, and has identified the following concerns: (1) the record does not show that a totalizing flow meter or other suitable measuring device has been installed by October 1, 2012.

Based on FOF 10, the Department has determined that the permit holder has not demonstrated compliance with following (or any of the) permit conditions as required by Permit S-54445:

- "Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director."

Beneficial Use of Water [OAR 690-315-0040(3)(b)]

The amount of beneficial use made of the water during the permit time limits or previous extension time limits.

11. A maximum rate of 1.0 cfs of water has been diverted from an unnamed stream, a tributary of Summer Lake for supplemental irrigation of 49.5 acres.

Based on FOF 10, the Department has determined that beneficial use of water has not been demonstrated under Permit S-54445.

² "Actual Construction" is defined in OAR 690-315-0020(3)(d)(A) and (B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

Financial Investments to appropriate and Apply Water to a Beneficial Purpose [OAR 690-315-0040(2)(b),(3)(d),(4)(d)]

12. The permit holder has invested approximately \$5,500, which is the total projected cost for complete development of this project.

Based on FOF 12, the Department has determined that the permit holder had made an investment, which provides evidence of good cause and reasonable diligence towards the complete application of water to a beneficial use.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

The Application provides evidence of progress towards completion of the water system; a financial investment has been made; the permit holder has not demonstrated compliance with all permit conditions, and; beneficial use has not been demonstrated. The Department has determined the applicant has demonstrated the minimum necessary for the Department to find reasonable diligence towards complete application of water to a beneficial use.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- *(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;*
- *(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);*
- *(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;*
- *(d) Economic investment in the project to date;*
- *(e) Other economic interests dependent on completion of the project; and*
- *(f) Other factors relevant to the determination of the market and present demands for water and power.*

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

13. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit S-54445; furthermore, water availability for other affected water rights and scenic waterway flows

after the permit was issued is determined when an application for a new water right is submitted.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

14. The points of diversion are located on an unnamed stream, a tributary of Summer Lake, and are not located within a Withdrawn Area.
15. Summer Lake is not located within or above a state or federal scenic waterway.
16. The points of diversion are not in a location listed by the Department of Environmental Quality as a water quality limited stream.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

17. Summer Lake is located within an area ranked "low" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

18. An approximate total of \$5,500 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

19. Other economic interests dependent on the completion of the project have not been identified.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

20. Other factors relevant to the determination of the market and present demand for water and power have not been identified.

Fair Return Upon Investment [OAR 690-315-0040(2)(f)]

21. The use and income from the permitted water development will likely result in reasonable returns on the investment made to date.

Other Governmental Requirements [OAR 690-315-0042(2)(g)]

22. Delay in the development of this project that was caused by other governmental requirements have not been identified.

Unforeseen Events [OAR 690-315-0040(2)(h)]

23. No unforeseen events were identified that extended the length of time needed to fully develop and perfect Permit S-54445.

Denial of an Extension Would Result in Undue Hardship [OAR 690-315-0040(2)(i)]

24. A denial of the extension would result in the loss of pasture for grazing.

Good Faith of the Appropriator [OAR 690-315-0040(2)(c)]

25. The Application provides evidence of good faith of the appropriator under Permit S-54445.

Based on FOF 6, 7, 8, 9, 11, 12, and 18, the Department has determined that the applicant has shown good faith and reasonable diligence.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

26. As of April 27, 2020, the permit holder states the remaining work to be completed consists of completing construction of the water system and applying water to full beneficial use.

Given the amount of development left to occur, the Department has determined that the permit holder's request to have until October 1, 2020, to complete construction of the water system and to accomplish the application of water to beneficial use under the terms and conditions of Permit S-54445 is both reasonable and necessary.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

1. The Applicant has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
2. The Applicant complied with construction timeline requirements to begin construction as required by ORS 537.230, OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
3. Based on Finding of Facts 6 through 26, completion of construction and full application of water to beneficial use can be accomplished by October 1, 2020³, as required by OAR 690-315-0040(1)(c).
4. The Applicant can complete the project within the time period requested for the extension on the project.
5. The Applicant has demonstrated good cause for the extension.

continued on following page

³Pursuant to ORS 537.230(5), upon the completion of beneficial use of water allowed under the permit, the permittee shall hire a certified water rights examiner to survey the appropriation. Within one year after the complete application of water to a beneficial use (or by the date allowed for the complete application of water to a beneficial use), the permittee shall submit a map of the survey and a new or revised claim of beneficial use as deemed appropriate by the Department.

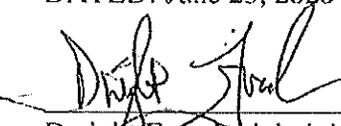
PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Extend the time to complete construction of the water system under Permit S-54445 from October 1, 2012, to October 1, 2020.

Extend the time to apply water to beneficial use under Permit S-54445 from October 1, 2012, to October 1, 2020.

DATED: June 23, 2020


Dwight French, Administrator
Water Right Services Division

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

Proposed Final Order Hearing Rights

1. Under the provisions of OAR 690-315-0100 and 690-315-0060, the applicant or any other person adversely affected or aggrieved by the proposed final order may submit a written protest to the proposed final order. The written protest must be received by the Water Resources Department no later than **August 7, 2020**, being 45 days from the date of publication of the proposed final order in the Department's weekly notice.

IMPORTANT: Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

2. A written protest shall include:
 - a. The name, address and telephone number of the petitioner;
 - b. A description of the petitioner's interest in the proposed final order and if the protestant claims to represent the public interest, a precise statement of the public interest represented;
 - c. A detailed description of how the action proposed in the proposed final order would adversely affect or aggrieve the petitioner's interest;

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- d. A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.
3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
- a. Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - 2) The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

NOTICE TO ACTIVE DUTY SERVICEMEMBERS: Active duty Servicemembers have a right to stay these proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571 or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

-
- If you have any questions about statements contained in this document, please contact Jeffrey D. Pierceall at (503) 986-0802.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
-



Oregon

Kate Brown, Governor

Department of Fish and Wildlife

Lakeview Field Station
Klamath Watershed District
18560 Roberta Road
Lakeview, OR 97630
(541) 947-2950
FAX (541) 947-4632



May 14, 2020

Danial & Elizabeth Withers
38438 Withers Ranch RD
Paisley, OR 97636

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Re: Fish Passage Waiver for S-86808

Daniel and Elizabeth Withers,

The Oregon Department of Fish and Wildlife has determined that the point of diversion associated with Permit S-86808 on an unnamed tributary to Summer Lake in Lake County is situated above current and historical distribution of native migratory fish species. As such, there is no fish passage trigger event and fish passage is not required at this location. This determination is consistent with the state's fish passage policy defined in ORS 509.585. This determination satisfies the state's fish passage rules and regulations.

If you have any further questions please contact Justin Miles at (541-947-2950) or by email at Justin.p.miles@state.or.us.

Sincerely,

A handwritten signature in cursive script that reads "Justin Miles".

Justin Miles
Assistant District Fish Biologist (Lakeview Field Office)

Worksheet for Trapezoidal Channel - 1

Project Description

Friction Method Manning Formula
Solve For Discharge

Input Data

Roughness Coefficient	0.035	
Channel Slope	0.00500	ft/ft
Normal Depth	0.75	ft
Left Side Slope	0.25	ft/ft (H:V)
Right Side Slope	0.25	ft/ft (H:V)
Bottom Width	5.00	ft

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Results

Discharge	8.26	ft ³ /s
Flow Area	3.89	ft ²
Wetted Perimeter	6.55	ft
Hydraulic Radius	0.59	ft
Top Width	5.38	ft
Critical Depth	0.44	ft
Critical Slope	0.02792	ft/ft
Velocity	2.12	ft/s
Velocity Head	0.07	ft
Specific Energy	0.82	ft
Froude Number	0.44	
Flow Type	Subcritical	

GVF Input Data

Downstream Depth	0.00	ft
Length	0.00	ft
Number Of Steps	0	

GVF Output Data

Upstream Depth	0.00	ft
Profile Description		
Profile Headloss	0.00	ft
Downstream Velocity	Infinity	ft/s
Upstream Velocity	Infinity	ft/s
Normal Depth	0.75	ft
Critical Depth	0.44	ft
Channel Slope	0.00500	ft/ft

Worksheet for Trapezoidal Channel - 1

GVF Output Data

Critical Slope

0.02792 ft/ft

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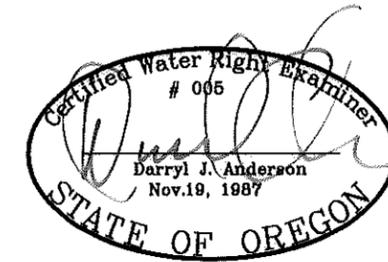
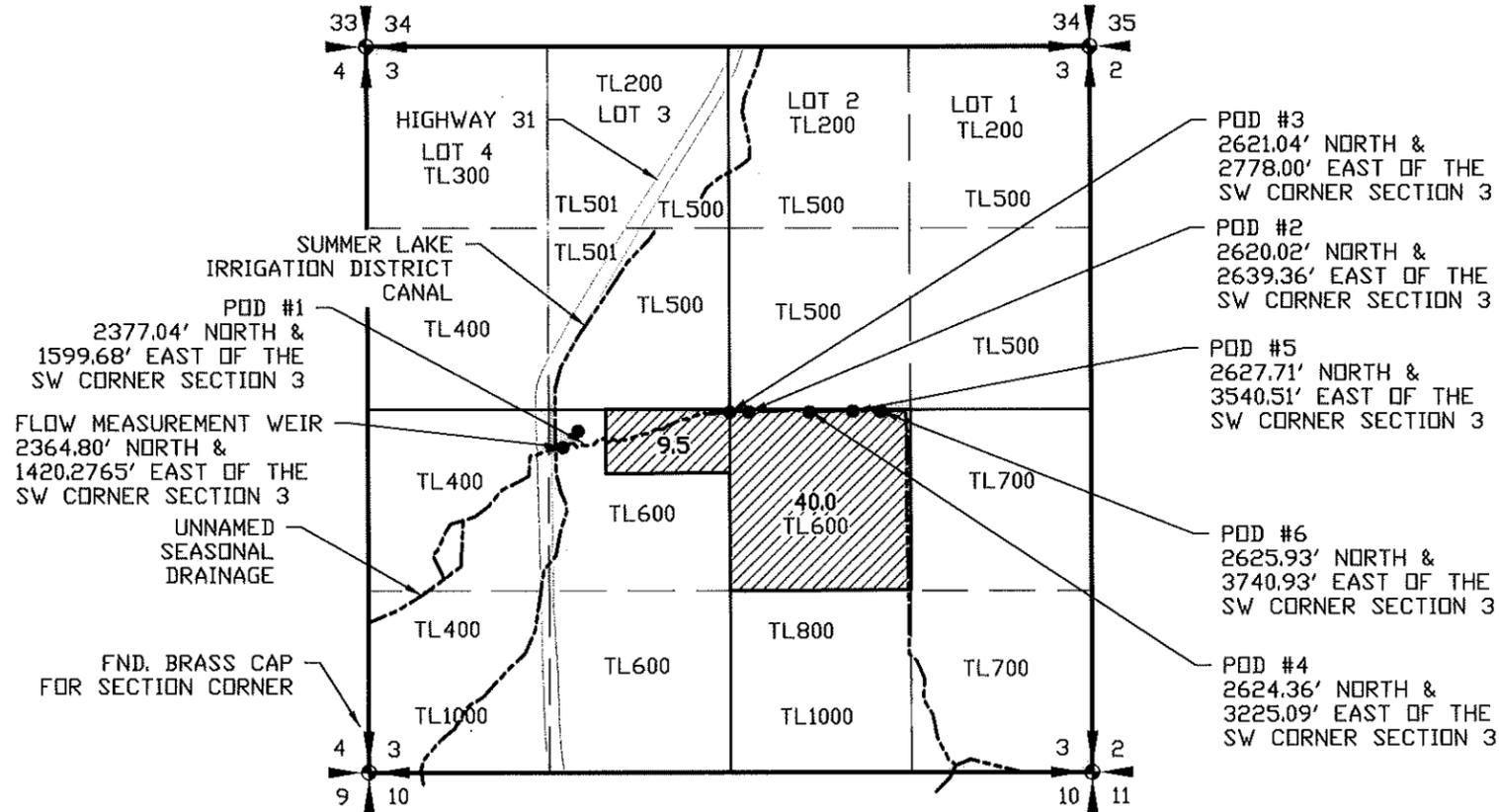
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CLAIM OF BENEFICIAL USE MAP

FOR

DANIEL & ELIZABETH WITHERS

SECTION 3, TOWNSHIP 31S RANGE 16E,
LAKE COUNTY, OREGON



RENEWAL 12/31/21

APPLICATION NO. S-86808

PERMIT NO. S-54445

LEGEND

- SECTION LINE
- 1/4 SECTION LINE
- 1/16 SECTION LINE
- WATERWAY
- PLACE OF USE - SUPPLEMENTAL IRRIGATION 49.5 ACRES



SCALE: 1"=1320'

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NOTE:
PREPARATION OF THIS MAP IS FOR IDENTIFYING PROPOSED WATER RIGHTS ONLY. IT HAS NO INTENT TO PROVIDE LOCATIONS OR DIMENSIONS OF PROPERTY BOUNDARIES.

REVISION	BY

ANDERSON ENGINEERING AND SURVEYING, INC.
 P.O. BOX 28
 LAKEVIEW, OREGON 97630
 (541) 947-4407
 FAX: 947-2321

FOR:
DAN WITHERS
 38498 WITHERS RANCH RD
 PAISLEY, OR 97636

CLAIM OF BENEFICIAL USE
APPLICATION S-86808
PERMIT S-54445

DATE:	02/18/21
SCALE:	1"=1320'
DWG. BY:	R.C.
JOB:	2019-048
FILE:	2019-048
PAGE	1 OF 1