

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

Water Right Application S-88458 in the)
name of CARL ST HILAIRE and ST HILAIRE) PROPOSED FINAL ORDER
BROTHERS HERMISTON FARM LLC)

Summary: The Department proposes to issue an order approving Application S-88458 and a permit consistent with the attached draft permit.

Prior to the issuance of a permit, if one is issued, the Department must receive the following:

- **Remaining permit recording fees in the amount of \$350.00. A check should be made out to the Oregon Water Resources Department or OWRD.**

Please include the application number on any documents submitted.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and the Columbia River Basin Program (OAR 690-519). These statutes and rules can be viewed on the following website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>.

The Department’s main website can be found at: <https://www.oregon.gov/OWRD>.

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) 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);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a Proposed Final Order recommending issuance of the permit subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On September 8, 2017, Carl St Hilaire and St Hilaire Brothers Hermiston Farm LLC filed a complete application for the following water use:

 Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN
 Use: PRIMARY IRRIGATION OF 839.65 ACRES AND SUPPLEMENTAL IRRIGATION OF 3,635.85 ACRES OCTOBER 1 THROUGH APRIL 14
 Rate: 66.44 CUBIC FEET PER SECOND (CFS)
 County: UMATILLA COUNTY
 Place of Use: SECTION 3, TOWNSHIP 4 NORTH, RANGE 30 EAST, W.M., AND SECTIONS 15, 20, 21, 22, 23, 26, 27, 28,32, 33, AND 34, TOWNSHIP 5 NORTH, RANGE 30 EAST, W.M.
2. On October 20, 2017, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 55.94 CFS of water from the Columbia River, a tributary of Pacific Ocean for primary irrigation 839.65 acres, October 1 to April 14, and 3,635.85 acres November 1 to February 28; and supplemental irrigation of 521.29 acres October 1 through October 31, and March 1 through April 14 (is approved). The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On October 24, 2017, 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.
4. The Department determined that the Initial Review erroneously identified the incorrect basin program. The Initial Review should be corrected to reflect the Columbia River Basin Program (OAR 690-519-0000(1)).

Presumption Criteria (a) Consistency with Basin Program

5. The proposed use is allowed under the Columbia River Basin Program (OAR 690-519-0000(1)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

6. An assessment of surface-water availability has been completed utilizing discharge data produced by the U.S. Geological Survey, a copy of which is in the file. The assessment established that surface water is available for further appropriation. ORS 537.153(2); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

7. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)

9. The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140 applies. These rules establish definitions, additional procedures, and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0115 Upper Columbia Rules (Above Bonneville Dam)

- A. The proposed use is **not** consistent with the Fish and Wildlife Program (Program).
- B. The proposed use can be conditioned to be consistent with the Program.
- C. As conditioned, the application is presumed to not impair or be detrimental to the public interest. OAR 690-033-0120(1)
- D. The applicant has provided information to show compliance with the following standards: OAR 690-033-0120(1)
 - a. The proposed use does not involve appropriation of direct streamflow during the time period of April 15 to September 30, except as provided in OAR 690-033-0140;

OAR 690-033-0310 Statewide Rules

- A. The proposed use occurs occur in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
- B. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
- C. The interagency review team has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
- D. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). Permit Specific Conditions #3 and #4 have been included in the draft permit as a result of this review.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

10. No comments were received by the close of the comment period. OAR 690-310-0120(3)

11. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

12. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.
13. The amount requested, 66.44 CFS, is excessive for the proposed use. The rate has been limited to 55.94 CFS for primary irrigation of for primary irrigation of 4475.5 acres, further limited to 6.5 cfs for supplemental irrigation of 521.29 acres.
14. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream, or to prevent damage to public uses of any affected surface waters. These measures are adequate at this time. OAR 690-310-0150(2)(j)

CONCLUSION OF LAW

1. The proposed use would not impair or be detrimental to the public interest as described in ORS 537.153(2).

NOTE: When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project.

PROPOSED ORDER

The Department recommends approval of Application S-88458 and issuance of a permit consistent with the attached draft permit.

DATED August 31, 2021

Alyssa Mucken
Water Rights Section Manager, for
Thomas M. Byler, Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received by the Water Resources Department no later than **October 15, 2021**.

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.

Protests must be in writing and 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(6) 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 aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) would be impaired or be adversely affected;
- If you are the applicant, a protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, a protest fee of \$950 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.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), 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 **October 15, 2021**. 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 \$270. If a hearing is scheduled, an additional fee of \$680 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 Servicemembers: Active duty servicemembers have a right to stay 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.

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- If you have any questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-979-3168.
 - 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 503-979-9160.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to : Water Right Services Division
 725 Summer St NE, Suite A
 Salem, OR 97301-1266
Fax: 503-986-0901
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CARL ST HILAIRE
ST HILAIRE BROTHERS HERMISTON FARM LLC
84186 HIGHWAY 37
HERMISTON OR 97838

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

APPLICATION FILE NUMBER: S-88458

SOURCE OF WATER: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

RATE AND PURPOSE OR USE: 55.94 CUBIC FEET PER SECOND (CFS) FOR PRIMARY IRRIGATION OF 4475.5 ACRES, FURTHER LIMITED TO 6.5 CFS FOR SUPPLEMENTAL IRRIGATION OF 521.29 ACRES

DATE OF PRIORITY: SEPTEMBER 8, 2017

POINT OF DIVERSION:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-----|------|-----|-----|-------|---|
| 5 N | 30 E | WM | 8 | SW NW | 2920 FEET NORTH AND 150 FEET EAST FROM SW CORNER, SECTION 8 |

THE PLACE OF USE AND PERIOD OF USE IS AS FOLLOWS:

| Twp | Rng | Sec | Q-Q | Primary Irrigation Acres | | Supplemental Irrigation Acres |
|-----|------|-----|-------|--------------------------|----------------|-------------------------------|
| | | | | 10/1 – 4/14 | 11/1 – 2/28-29 | 3/31 – 4/14 & 10/1- 10/31 |
| 4 N | 30 E | 3 | NE NE | | 27.68 | 27.68 |
| 4 N | 30 E | 3 | NW NE | | 23.03 | 23.03 |
| 4 N | 30 E | 3 | SW NE | | 28.56 | 28.56 |
| 4 N | 30 E | 3 | SE NE | | 33.32 | 33.32 |
| 4 N | 30 E | 3 | NE NW | | 29.00 | 29.00 |
| 4 N | 30 E | 3 | NW NW | | 29.48 | 29.48 |
| 4 N | 30 E | 3 | SW NW | | 26.56 | 26.56 |
| 4 N | 30 E | 3 | SE NW | | 21.89 | 21.89 |
| 4 N | 30 E | 3 | NE SW | | 31.50 | 31.50 |
| 4 N | 30 E | 3 | NW SW | | 40.65 | 40.65 |
| 4 N | 30 E | 3 | SW SW | | 39.97 | 39.97 |
| 4 N | 30 E | 3 | SE SW | | 39.56 | 39.56 |
| 4 N | 30 E | 3 | NE SE | | 38.27 | 38.27 |
| 4 N | 30 E | 3 | NW SE | | 33.39 | 33.39 |

| Twp | Rng | Sec | Q-Q | Primary Irrigation Acres | | Supplemental Irrigation Acres |
|-----|------|-----|-------|--------------------------|----------------|-------------------------------|
| | | | | 10/1 – 4/14 | 11/1 – 2/28-29 | 3/31 – 4/14 & 10/1- 10/31 |
| 4 N | 30 E | 3 | SW SE | | 39.46 | 39.46 |
| 4 N | 30 E | 3 | SE SE | | 38.97 | 38.97 |
| 5 N | 30 E | 15 | NE SW | | 33.70 | |
| 5 N | 30 E | 15 | NW SW | | 31.60 | |
| 5 N | 30 E | 15 | SW SW | | 34.50 | |
| 5 N | 30 E | 15 | SE SW | | 32.40 | |
| 5 N | 30 E | 20 | SW NE | | 2.40 | |
| 5 N | 30 E | 20 | NE NW | | 0.30 | |
| 5 N | 30 E | 20 | NW NW | | 1.20 | |
| 5 N | 30 E | 20 | SW NW | | 37.60 | |
| 5 N | 30 E | 20 | SE NW | | 24.10 | |
| 5 N | 30 E | 20 | NE SW | | 35.00 | |
| 5 N | 30 E | 20 | NW SW | | 32.40 | |
| 5 N | 30 E | 20 | SW SW | | 38.40 | |
| 5 N | 30 E | 20 | SE SW | | 30.40 | |
| 5 N | 30 E | 20 | NE SE | | 16.00 | |
| 5 N | 30 E | 20 | NW SE | | 40.40 | |
| 5 N | 30 E | 20 | SW SE | | 39.60 | |
| 5 N | 30 E | 20 | SE SE | | 33.60 | |
| 5 N | 30 E | 21 | NE NE | | 31.60 | |
| 5 N | 30 E | 21 | NW NE | | 33.80 | |
| 5 N | 30 E | 21 | SW NE | | 39.20 | |
| 5 N | 30 E | 21 | SE NE | | 30.80 | |
| 5 N | 30 E | 21 | NE NW | | 31.60 | |
| 5 N | 30 E | 21 | NW NW | | 33.60 | |
| 5 N | 30 E | 21 | SW NW | | 34.40 | |
| 5 N | 30 E | 21 | SE NW | | 37.80 | |
| 5 N | 30 E | 21 | NE SW | | 39.40 | |
| 5 N | 30 E | 21 | NW SW | | 34.20 | |
| 5 N | 30 E | 21 | SW SW | | 30.20 | |
| 5 N | 30 E | 21 | SE SW | | 26.40 | |
| 5 N | 30 E | 21 | NE SE | | 38.80 | |
| 5 N | 30 E | 21 | NW SE | | 35.60 | |
| 5 N | 30 E | 21 | SW SE | | 37.60 | |
| 5 N | 30 E | 21 | SE SE | | 33.20 | |
| 5 N | 30 E | 22 | NE NE | 4.90 | | |
| 5 N | 30 E | 22 | NW NE | 16.28 | | |
| 5 N | 30 E | 22 | SE NE | 28.00 | | |
| 5 N | 30 E | 22 | SE SW | 3.67 | | |
| 5 N | 30 E | 22 | NE SE | 40.35 | | |
| 5 N | 30 E | 22 | NW SE | 32.56 | | |
| 5 N | 30 E | 22 | SW SE | 33.78 | | |
| 5 N | 30 E | 22 | SE SE | 21.87 | | |
| 5 N | 30 E | 22 | NE NW | | 33.20 | |
| 5 N | 30 E | 22 | NW NW | | 32.50 | |
| 5 N | 30 E | 22 | SW NW | | 34.40 | |
| 5 N | 30 E | 22 | SE NW | | 30.80 | |

| Twp | Rng | Sec | Q-Q | Primary Irrigation Acres | | Supplemental Irrigation Acres |
|-----|------|-----|-------|--------------------------|----------------|-------------------------------|
| | | | | 10/1 – 4/14 | 11/1 – 2/28-29 | 3/31 – 4/14 & 10/1- 10/31 |
| 5 N | 30 E | 22 | NE SW | | 33.30 | |
| 5 N | 30 E | 22 | NW SW | | 34.50 | |
| 5 N | 30 E | 22 | SW SW | | 34.10 | |
| 5 N | 30 E | 22 | SE SW | | 30.90 | |
| 5 N | 30 E | 23 | NE NE | 17.16 | | |
| 5 N | 30 E | 23 | NW NE | 13.05 | | |
| 5 N | 30 E | 23 | SW NE | 30.09 | | |
| 5 N | 30 E | 23 | SE NE | 36.95 | | |
| 5 N | 30 E | 23 | NE NW | 20.13 | | |
| 5 N | 30 E | 23 | NW NW | 36.55 | | |
| 5 N | 30 E | 23 | SW NW | 37.63 | | |
| 5 N | 30 E | 23 | SE NW | 20.91 | | |
| 5 N | 30 E | 23 | NE SW | 12.05 | | |
| 5 N | 30 E | 23 | NW SW | 22.15 | | |
| 5 N | 30 E | 23 | SW SW | 40.12 | | |
| 5 N | 30 E | 23 | SE SW | 33.52 | | |
| 5 N | 30 E | 23 | NE SE | 21.32 | | |
| 5 N | 30 E | 23 | NW SE | 31.45 | | |
| 5 N | 30 E | 23 | SW SE | 38.66 | | |
| 5 N | 30 E | 23 | SE SE | 27.34 | | |
| 5 N | 30 E | 26 | NE NE | 1.17 | | |
| 5 N | 30 E | 26 | NW NE | 33.95 | | |
| 5 N | 30 E | 26 | SW NE | 20.98 | | |
| 5 N | 30 E | 26 | NE NW | 27.72 | | |
| 5 N | 30 E | 26 | NW NW | 30.91 | | |
| 5 N | 30 E | 26 | SW NW | 15.66 | | |
| 5 N | 30 E | 26 | SE NW | 14.55 | | |
| 5 N | 30 E | 26 | NW SW | 1.96 | | |
| 5 N | 30 E | 27 | NE NE | 10.14 | | |
| 5 N | 30 E | 27 | NW NE | 8.57 | | |
| 5 N | 30 E | 27 | SW NE | 0.39 | | |
| 5 N | 30 E | 27 | SE NE | 27.97 | | |
| 5 N | 30 E | 27 | NE NW | 4.34 | | |
| 5 N | 30 E | 27 | NE SE | 20.55 | | |
| 5 N | 30 E | 27 | NW SE | 0.30 | | |
| 5 N | 30 E | 27 | NE NE | | 8.35 | |
| 5 N | 30 E | 27 | NW NE | | 24.10 | |
| 5 N | 30 E | 27 | NE NW | | 34.30 | |
| 5 N | 30 E | 27 | NW NW | | 32.30 | |
| 5 N | 30 E | 27 | SW NW | | 37.50 | |
| 5 N | 30 E | 27 | SE NW | | 31.70 | |
| 5 N | 30 E | 27 | NE SW | | 0.10 | |
| 5 N | 30 E | 27 | NW SW | | 19.30 | |
| 5 N | 30 E | 27 | SW SW | | 6.90 | |
| 5 N | 30 E | 27 | SE SW | | 26.00 | |
| 5 N | 30 E | 27 | SW SE | | 10.70 | |
| 5 N | 30 E | 27 | SE SE | | 2.80 | |

| Twp | Rng | Sec | Q-Q | Primary Irrigation Acres | | Supplemental Irrigation Acres |
|-----|------|-----|-------|--------------------------|----------------|-------------------------------|
| | | | | 10/1 – 4/14 | 11/1 – 2/28-29 | 3/31 – 4/14 & 10/1- 10/31 |
| 5 N | 30 E | 28 | NE NE | | 36.00 | |
| 5 N | 30 E | 28 | NW NE | | 32.80 | |
| 5 N | 30 E | 28 | SW NE | | 25.70 | |
| 5 N | 30 E | 28 | SE NE | | 38.00 | |
| 5 N | 30 E | 28 | NE NW | | 39.20 | |
| 5 N | 30 E | 28 | NW NW | | 39.20 | |
| 5 N | 30 E | 28 | SW NW | | 25.00 | |
| 5 N | 30 E | 28 | SE NW | | 33.60 | |
| 5 N | 30 E | 28 | NE SW | | 41.20 | |
| 5 N | 30 E | 28 | NW SW | | 39.20 | |
| 5 N | 30 E | 28 | SW SW | | 19.60 | |
| 5 N | 30 E | 28 | SE SW | | 24.00 | |
| 5 N | 30 E | 28 | NE SE | | 31.00 | |
| 5 N | 30 E | 28 | NW SE | | 22.80 | |
| 5 N | 30 E | 28 | SW SE | | 4.70 | |
| 5 N | 30 E | 28 | SE SE | | 11.40 | |
| 5 N | 30 E | 32 | NE NE | | 0.80 | |
| 5 N | 30 E | 32 | SE NE | | 26.00 | |
| 5 N | 30 E | 32 | SE SW | | 33.20 | |
| 5 N | 30 E | 32 | NE SE | | 36.00 | |
| 5 N | 30 E | 32 | NW SE | | 31.20 | |
| 5 N | 30 E | 32 | SW SE | | 31.10 | |
| 5 N | 30 E | 32 | SE SE | | 32.80 | |
| 5 N | 30 E | 33 | NE NE | | 39.80 | |
| 5 N | 30 E | 33 | NW NE | | 18.80 | |
| 5 N | 30 E | 33 | SW NE | | 31.50 | |
| 5 N | 30 E | 33 | SE NE | | 34.30 | |
| 5 N | 30 E | 33 | NE NW | | 21.20 | |
| 5 N | 30 E | 33 | NW NW | | 1.70 | |
| 5 N | 30 E | 33 | SW NW | | 31.00 | |
| 5 N | 30 E | 33 | SE NW | | 39.30 | |
| 5 N | 30 E | 33 | NE SW | | 35.20 | |
| 5 N | 30 E | 33 | NW SW | | 36.80 | |
| 5 N | 30 E | 33 | SW SW | | 30.00 | |
| 5 N | 30 E | 33 | SE SW | | 32.80 | |
| 5 N | 30 E | 33 | NE SE | | 38.90 | |
| 5 N | 30 E | 33 | NW SE | | 38.20 | |
| 5 N | 30 E | 33 | SW SE | | 16.90 | |
| 5 N | 30 E | 33 | SE SE | | 16.30 | |
| 5 N | 30 E | 34 | NE NE | | 30.00 | |
| 5 N | 30 E | 34 | NW NE | | 36.40 | |
| 5 N | 30 E | 34 | SW NE | | 33.00 | |
| 5 N | 30 E | 34 | SE NE | | 28.50 | |
| 5 N | 30 E | 34 | NE NW | | 40.00 | |
| 5 N | 30 E | 34 | NW NW | | 35.80 | |
| 5 N | 30 E | 34 | SW NW | | 35.90 | |
| 5 N | 30 E | 34 | SE NW | | 30.00 | |

| Twp | Rng | Sec | Q-Q | Primary Irrigation Acres | | Supplemental Irrigation Acres |
|--------------------|------|-----|-------|--------------------------|----------------|-------------------------------|
| | | | | 10/1 – 4/14 | 11/1 – 2/28-29 | 3/31 – 4/14 & 10/1- 10/31 |
| 5 N | 30 E | 34 | NE SW | | 35.30 | |
| 5 N | 30 E | 34 | NW SW | | 37.80 | |
| 5 N | 30 E | 34 | SW SW | | 24.78 | |
| 5 N | 30 E | 34 | SE SW | | 22.39 | |
| 5 N | 30 E | 34 | NE SE | | 32.00 | |
| 5 N | 30 E | 34 | NW SE | | 32.40 | |
| 5 N | 30 E | 34 | SW SE | | 20.42 | |
| 5 N | 30 E | 34 | SE SE | | 13.12 | |
| Total Acres | | | | 839.65 | 3635.85 | 521.29 |

PERMIT SPECIFIC CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

2. **Water Use Measurement, Recording, and Reporting:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the device in good working order.

 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.

 - C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.

 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

3. Fish Screen/By-pass:

The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state’s criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

4. **Water Use During October and November:**

The permittee shall cease pumping for any days during October and November when the U.S. Army Corps of Engineers is managing the Columbia River to meet chum targets AND the 7-day rolling average of the mean daily gage height below Bonneville Dam (USGS gage station #14128870) is less than the stage target set that year by the Technical Management Team for protection of chum salmon. The permittee shall discontinue pumping for the duration of time the 7-day rolling average remains below the stage target. The permittee may re-commence pumping when the 7-day rolling average is at or above the target set for that year.

The permittee may pump water during times when the stage target is not met during October and November each year, provided that real-time mitigation that meets the goals and standards of OAR 635-415-0025 (ODFW Habitat Mitigation Recommendations) has been secured during the pumping period, and proof of mitigation has been provided to the Water Resources Department. The permittee is not required to track the 7-day rolling average or cease pumping during periods when mitigation has been secured.

Any mitigation provided for the period October 1 - November 30 shall be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146.

STANDARD CONDITIONS

1. 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.
2. 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.
3. 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.
4. 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.

DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. 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.
2. 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.

3. 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.

Issued

DRAFT - THIS IS NOT A PERMIT

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

Mailing List for PFO Copies

Application S-88458

PFO Date August 31, 2021

Original mailed via CERTIFIED MAIL to applicant:

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on: _____
(DATE)

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3. WRD - Greg Silbernagel - # 5

Copies sent to:

3. WRD – File # S-88458
4. WRD – SW Section
5. U.S. Army Corps of Engineers, 201 North Third Avenue, Walla Walla WA 99362-1876
6. Oregon Department of Transportation, 1327 SE 3rd, Pendleton OR 97801
7. Union Pacific Railroad, 1400 Douglas Street Stop 1690, Omaha, NE 1690
8. Bonneville Power Administration, 1520 Kelly Place Suite 100, Walla Walla WA 99362

Application Specialist: Kim French