

# Oregon Water Resources Department



## **Final Order Limited License Application LL-1189**

### ***Appeal Rights***

This is a final order in other than a contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60-day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either 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.

### ***Requested Water Use***

On January 30, 2009, the Water Resources Department received completed application **LL-1189** from Hudson Bay District Improvement Company for the use of 50 cubic feet per second from the Walla Walla River, located in the SE  $\frac{1}{4}$ , NE  $\frac{1}{4}$ , Section 2, and the SW  $\frac{1}{4}$ , NE  $\frac{1}{4}$ , Section 12, Township 6 North, Range 35 East, W.M., for ground water recharge use, for the period of February 19, 2009, through February 18, 2014.

### ***Authorities***

The Department may approve a limited license pursuant to its authority under ORS 537.143, 537.144 and OAR 690-340-0030.

ORS 537.143(2) authorizes the Director to revoke the right to use water under a limited license if it causes injury to any water right or a minimum perennial streamflow.

A limited license will not be issued for more than five consecutive years for the same use, as directed by ORS 537.143(8).

### ***Findings of Fact***

1. The forms, fees, and map have been submitted, as required by OAR 690-340-0030(1).
2. The Department provided public notice of the application, on February 3, 2009, as required by OAR 690-340-0030(2).
3. This limited license request is limited to an area within a single drainage basin as required by OAR 690-340-0030(3).
4. The Department has determined that there is water available for the requested use.
5. The Department has determined that the proposed source has not been withdrawn from further appropriation.

6. Because this use is from surface water and has the potential to impact fish, the Department finds that fish screening is required to protect the public interest.
7. Because the use requested is longer than 120 days and because the use is in an area that has sensitive, threatened or endangered fish species, the use is subject to the Department's rules under OAR 690-33. These rules 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.
8. The Department has received comments related to the possible issuance of the limited license from the Confederated Tribes of the Umatilla Indian Reservation (CTUIR) in support of the project and requesting measured and reported data and results from the previous 5 years and annual reporting of results to CTUIR and basin water managers. Oregon Department of Environmental Quality (ODEQ) notified the Department that it had no comments, since the water quality monitoring plan for the previous Limited License was acceptable, and did not change for this application. The comments did cause the Department to add additional conditions or limitations. The licensee shall work with CTUIR to provide data as requested. The authorization of limited license **LL-1189**, as conditioned below, will satisfactorily address the issues raised in those comments.
9. Pursuant to OAR 690-340-0030(4)(5), conditions have been added with regard to notice and water-use measurement.

### *Conclusions of Law*

The proposed water use will not impair or be detrimental to the public interest pursuant to OAR 690-340-0030(2), as limited in the order below.

### *Order*

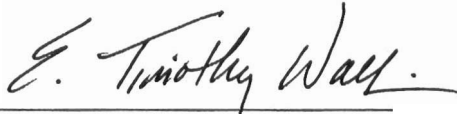
Therefore, pursuant to ORS 537.143, ORS 537.144, and OAR 690-340-0030, application **LL-1189** is approved as conditioned below.

1. The period and rate of use for **LL-1189** shall be from February 23, 2009, through February 18, 2014, for the use of 50 cfs of water from the Walla Walla River, for the purpose of groundwater recharge testing during the period November 1 through May 15 each year.
2. The licensee shall give notice to the Watermaster in the district where use is to occur not less than 15 days or more than 60 days in advance of using the water under the limited license. The notice shall include the location of the diversion, the quantity of water to be diverted and the intended use and place of use. In the case of this application, this order serves as the notice described above.

3. When water is diverted under this Limited License, the use is limited to times when the following minimum streamflows are met in the Tum A Lum reach of the Walla Walla River, between the Little Walla Walla River diversion and Nursery Bridge Dam and flowing past Nursery Bridge Dam: November – 64 cfs, December and January – 95 cfs, February to May 15 – 150 cfs. Nursery Bridge Dam is located just downstream of Nursery Bridge and is downstream of the Little Walla Walla diversion. The District 5 Watermaster, based on gage and/or streamflow measurements, shall make the determination that the above described streamflows are flowing past Nursery Bridge Dam. Diversion under this Limited License shall cease when said streamflows are unmet.
4. The Licensee shall follow the same operations, monitoring and reporting plan that was developed with ODEQ for the water quality plan followed in LL-758.
5. Based on a review of water quality information generated during the term of this Limited License, or from other sources, ODEQ may require the licensee to terminate the diversion of water into the recharge area. In addition, if monitoring data or other information result in identification of potential water quality concerns, ODEQ may require modifications to the existing Limited License and/or require a permit to address the water quality concerns prior to resumption of artificial groundwater recharge.
6. Before water use may begin under this license, the licensee shall install a totalizing flow meter at each point of diversion. The totalizing flow meter must be installed and maintained in good working order. In addition the licensee shall maintain a record of all water use, including the total number of hours of pumping, the total quantity pumped, and the categories of beneficial use to which the water is applied. During the period of the limited license, the record of use shall be submitted to the Department annually, and shall be submitted to the Watermaster upon request.
7. The Director may revoke the right to use water for any reason described in ORS 537.143(2), and OAR 690-340-0030(6). Such revocation may be prompted by field regulatory activities or by any other information.
8. Use of water under a limited license shall not have priority over any water right exercised according to a permit or certificate, and shall be subordinate to all other authorized uses, including Limited Licenses issued prior to this one, that rely upon the same source.
9. The licensee shall install, maintain and operate fish screening and by-pass devices as required by the Oregon Department of Fish and Wildlife to prevent fish from entering the proposed diversion. See copy of enclosed fish screening criteria for information.
10. The licensee shall provide the Confederated Tribes of the Umatilla Indian Reservation the data, results, and analysis that were sought by letter dated February 17, 2009.
11. A copy of this limited license shall be kept at the place of use, and be available for inspection by the Watermaster or other state authority.

NOTE: This water-use authorization is temporary. Applicants are advised that issuance of this final order does not guarantee that any permit for the authorized use will be issued in the future; any investments should be made with that in mind.

Issued March 5, 2009



E. Timothy Wallin, Water Rights Program Manager, *for*  
Phillip C. Ward, Director  
Water Resources Department

Enclosures - limited license, fish screen criteria

cc: Tony Justus, District 5 Watermaster  
Bill Duke, ODFW  
Phil Richerson, DEQ  
Eric Quaempts, CTUIR  
Hydrographics  
File

If you need further assistance, please contact the Water Rights Section at the address, phone number, or fax number below. When contacting the Department, be sure to reference your limited license number for fastest service.

Remember, this limited license does not provide a secure source of water. Water use can be revoked at any time. Such revocation may be prompted by field regulatory activities or many other reasons.

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