



Water Right Application Initial Review

April 14, 2023

AVIAN LAKE RANCH, LLC
STANLEY V. SHEPHARD
80601 DRIVER RD
TYGH VALLEY OR 97063

Reference: Application R-89347

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Water Resources Department (Department) must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Department has made the following preliminary determinations:

Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. The application proposes the diversion of 118.5 acre-feet (AF) of water from Rock Creek, Threemile Creek, and runoff, tributaries to White River; and North Fork Gate Creek, tributary to Rock Creek for storage in three reservoirs (described below) Reservoir #1 for livestock, recreation, wildlife, and irrigation, and Reservoirs #2 and #3 for livestock, recreation, and wildlife from January 1 through December 31 of each year.

Storage Facility Name	Acre-feet (AF)	Dam Height (Feet)	Use of Stored Water			
			Livestock	Wildlife	Recreation	Irrigation
Reservoir #1	105.6	13.0	X	X	X	X
Reservoir #2	7.8	7.0	X	X	X	
Reservoir #3	5.1	10.0	X	X	X	
Total	118.5					

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Livestock, recreation, irrigation, and wildlife is allowable under the Deschutes Basin Program (OAR 690-505-0020(1)(a)).

4. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established surface water is available during the period January 1 through June 30 of each year.
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute 390.826.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. See the **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
The diversion of 118.5 AF of water from Rock Creek, Threemile Creek, and runoff, tributaries to White River; and North Fork Gate Creek, tributary to Rock Creek for storage in three reservoirs; Reservoir #1 for livestock, recreation, wildlife, and irrigation, and Reservoirs #2 and #3 for livestock, recreation, and wildlife, is allowable January 1 through April 14 of each year, contingent upon the submittal of additional information.

Additional Information Required

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend permit approval. Please provide the following item(s):

1. Evidence of a right of way permit, easement, or written authorization permitting access to all lands not owned by the applicant and associated with the project from which water is to be diverted, conveyed and used.

Please submit the requested information listed above no later than **May 18, 2023**. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed. If we do not receive the items listed above or a request for an administrative hold by **May 18, 2023**, the Department may reject the application and may refund fees.

Public Comment & Further Review:

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

Division 33 Review – The Department’s Division 33 administrative rules (OAR 690-033) establish 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 (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$790 required with any mitigation proposal submitted.

At this time, you must decide whether to proceed or to withdraw the application.

- To Proceed - If you choose to proceed with the application you do not have to notify the Department. The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period the Department will complete a public interest review and issue a Proposed Final Order.
- To Withdraw - You may withdraw the application and receive a refund (minus a \$310 processing fee per application). You must notify the Department **in writing by April 28, 2023**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If a permit is issued, it will likely include the following conditions:

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. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Water Use Measurement, Recording, and Reporting:**
 - 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 shall be installed in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. 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 stored each month, and shall submit a report which includes water-storage 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.

DAM CONDITIONS

1. Routine maintenance or repair of the dam, its spillway, and all appurtenant structures shall be performed to include, but not be limited to, removal of woody or high vegetation from the embankment, abutments and spillway; removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.
2. Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe.
3. If the dam is enlarged, modified, or otherwise altered, this work must be based on design plans and specifications prepared by a Registered Professional Engineer licensed in Oregon. These plans must be submitted to and approved by the State Engineer prior to such alterations of the dam, its spillway, or any appurtenant structure(s). No water shall be stored until the Department receives written certification from the engineer of record that construction has been completed in accordance with the approved plans and specifications.
4. No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized operation by the design engineer. There must be an operations manual for the dam that describes pressurized operation, and necessary inspections of pressurized conduits for the dam.
5. If used, flashboards shall be maintained in good condition, replaced as needed, and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.
6. Failure to comply with any portion of Oregon Revised Statute 540.443 through 540.491 and Oregon Administrative Rules Chapter 690 Division 20 may result in action including, but not limited to, restrictions on use, civil penalties, or cancellation of the permit.

RESERVOIR CONDITIONS

1. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.

2. The permittee shall pass all live flow outside the storage season described above.
3. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
4. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
5. The permittee may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
6. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at <http://www.oregon.gov/ODA> to learn more about the plans and how they may affect the proposed water use.

For Further Information:

Feel free to contact me at Adam.M.Frederick@water.oregon.gov or 971-707-8400 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Adam Frederick, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Adam Frederick

Adam Frederick
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
R-89347
WAB: 70088
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: R-89347

Applicant: AVIAN LAKE RANCH, LLC AND STANLEY V. SHEPHARD

County: WASCO

Watermaster: ROBERT WOOD, 3, NCR

Priority Date: MARCH 7, 2023

Source: ROCK CREEK, THREEMILE CREEK, AND RUNOFF, TRIBUTARIES TO WHITE RIVER; AND NORTH FORK GATE CREEK, TRIBUTARY TO ROCK CREEK

Purpose or Use of the stored water: RESERVOIR #1 FOR LIVESTOCK, RECREATION, WILDLIFE, AND IRRIGATION, AND RESERVOIRS #2 AND #3 FOR LIVESTOCK, RECREATION, AND WILDLIFE

Storage Facility Name: RESERVOIR #1, RESERVOIR #2, AND RESERVOIR #3

Maximum Dam Height: RESERVOIR #1 13.0 FEET, RESERVOIR #2 7.0 FEET, AND RESERVOIR #3 10.0 FEET

Volume: 118.5 ACRE-FEET (AF); BEING 105.6 AF IN RESERVOIR #1, 7.8 AF IN RESERVOIR #2, AND 5.1 AF IN RESERVOIR #3

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: DESCHUTES, #5

WAB: WHITE R > DESCHUTES R - AT MOUTH

Points of Diversion:

POD	POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
1	Rock Creek	4 S	11 E	WM	14	SW SE	1000 FEET NORTH AND 1200 FEET EAST FROM S1/4 CORNER, SECTION 14
2	Threemile Creek	4 S	11 E	WM	10	NE NE	726 FEET SOUTH AND 528 FEET WEST FROM NE CORNER, SECTION 10
3	North Fork Gate Creek	4 S	11 E	WM	21	SE NE	1280 FEET NORTH AND 1500 FEET EAST FROM C1/4 CORNER, SECTION 21

Dam Locations:

Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height (ft)
Reservoir #1	4 S	12 E	WM	24	NE NW	370 FEET SOUTH AND 430 FEET WEST FROM N1/4 CORNER, SECTION 24	13
Reservoir #2	4 S	12 E	WM	23	NE NE	60 FEET SOUTH AND 520 FEET WEST FROM NE CORNER, SECTION 23	7
Reservoir #3	4 S	12 E	WM	13	SW SE	1160 FEET NORTH AND 330 FEET EAST FROM S1/4 CORNER, SECTION 13	10

The Area to be submerged by the Reservoirs:

Twp	Rng	Mer	Sec	Q-Q
4 S	12 E	WM	13	SW SE
4 S	12 E	WM	13	SE SW
4 S	12 E	WM	23	NE NE
4 S	12 E	WM	24	NE NW
4 S	12 E	WM	24	SW NW
4 S	12 E	WM	24	SE NW

PUBLIC NOTICE DATE: April 18, 2023

14 DAY STOP PROCESSING DEADLINE DATE: April 28, 2023

30 DAY COMMENT DEADLINE DATE: May 18, 2023

**APPLICATION PROCESS DESCRIPTION FOR
GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our web site at: www.oregon.gov/owrd

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0900.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

3. Initial Review (IR)

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.

4. Proposed Final Order (PFO)

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is issued.

Permit holder responsibilities

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

STOP PROCESSING REQUEST FORM

FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **R-89347**.

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$310 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application.

Signature _____ Date _____

Signature _____ Date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$310 processing fee) be returned.

- This notice must be received at Water Resources Department by:

April 28, 2023

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1271
