



Water Right Application Initial Review

May 3, 2024

WINDY RIVER
C/O ROBERT LEVY
1000 HWY 395 S #423
HERMISTON OR 97838

Reference: Application S-89450

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 under Oregon Administrative Rule (OAR) 690-310-0080:

1. The application proposes the diversion of 10.0 cubic feet per second (CFS), further limited to 4,927.5 acre-feet (AF) annually, of water from the Columbia River, tributary to the Pacific Ocean, for primary irrigation of 3284.95 acres from November 1 through February 28/29, and supplemental irrigation of 3284.95 acres from October 1 through October 31 and March 1 through April 15 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation, as defined in OAR 690-300-0010(26), is a classified use and allowable under the Columbia River Basin Program (OAR 690-519-0000(1)).
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey is in the application file. This assessment is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that surface water is available.
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 not located within or above any state scenic waterway.

7. This application proposes the diversion of water from the same source, for irrigation of the same lands, during the periods of March 1 through April 15 and October 1 through October 31 as Permits S-55061, S-54633, S-55401, and S-55192, and Applications S-89258 and S-89259. Primary irrigation and supplemental irrigation from the same source on the same lands is not allowable. Therefore, the proposed supplemental irrigation in Application S-89450 is not allowable.
8. A portion of the area proposed for primary irrigation under this application is currently covered by an existing primary irrigation water right evidenced by Certificate 83083, which conflicts with this application. Please see the **Conflict Resolution Information** section below for more details. Should this application be approved, any permit issued under this application will exclude the 568.7 acres with existing primary irrigation rights unless the conflict is resolved by another means.
9. The amount of water used for irrigation under this application, should it be permitted, will contribute towards the annual irrigation diversion limit secured under any other right existing for the same lands.
10. The application indicated the irrigation of 3,285.0 acres of irrigation but the map indicated 3,284.95 acres. The Department will proceed with 3,284.95 acres unless we receive additional clarification from the applicant.
11. Documentation has been submitted from the relevant land-use planning jurisdictions that indicate the proposed use is allowed outright.
12. See the **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
<p>The diversion of 10.0 CFS, further limited to 4,927.5 AF annually, of water from the Columbia River, tributary to the Pacific Ocean, for primary irrigation of 3284.95 acres from November 1 through February 28/29 of each year is not allowable, although the applicant may provide additional information for the Department’s consideration. Please see the <u>Additional Information Requested</u> section below for more details.</p> <p>The diversion of 10.0 CFS of water from the Columbia River, tributary to the Pacific Ocean, for supplemental irrigation of 3284.95 acres from October 1 through October 31 and March 1 through April 15 of each year is not allowable.</p>

Additional Information Requested:

The application proposes irrigation during the non-irrigation season, and it is unclear if the beneficial use of water can be made during the period of use requested. Additional information is required prior to issuance of any Proposed Final Order that may recommend permit approval. Please provide the following item(s):

1. Please provide information regarding how the intended use during the requested period of use is consistent with the definition of irrigation in OAR 690-300-0010(26).

2. Please provide information describing how the requested water would be put to beneficial use during each of the months of November, December, January, and February.

Please submit this information no later than June 6, 2024. 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 requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

Conflict Resolution Information:

Although it is unlikely that a permit will be issued, if the Department's findings change, the place of use conflict will need to be resolved. A portion of the area proposed for primary irrigation under this application is currently covered by an existing irrigation water right evidenced by Certificate 83083, which conflicts with the application. (See attached map of Certificate 83083)

If you would like this application to be the primary right, the Department must receive:

- a. A completed form authorizing cancellation of the conflicting portions of the existing right, along with a map describing those portions; or
- b. A completed affidavit of diminution of the conflicting portions of the existing right to reduce them to supplemental use, along with a map describing those portions; or
- c. A transfer application addressing the conflicting portions of the existing right; or
- d. Another means of dealing with the conflict between the existing right and the use proposed under this application.

If you would like this application to be supplemental to the existing certificate, the Department must receive a revised map showing the place of use of both the primary and supplemental lands. Please note the supplemental lands will be limited and/or jeopardized as follows:

- a. If the existing right is found to have been forfeited, the use which is supplemental to such certificate may also be canceled.
- b. You may only use the supplemental right after the primary right becomes unavailable. Water from the primary source must be exhausted first.
- c. The season of use for the supplemental irrigation will be limited to that of the primary right.

Please submit this information no later than June 6, 2024. If you are unable to submit the information listed above by this date, 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 is needed 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.

Additional Information Required:

Although it is unlikely that a permit will be issued, if you choose not to withdraw your application, additional information is required in order for the Department to continue processing your application. Please provide the following:

- A. The Department must receive evidence that you have written authorization or an easement permitting access to lands not owned by you that are crossed by the proposed ditch, canal or other work.
- B. The Department must receive a copy of the legal description of the property from which the water is to be diverted, any property crossed by the proposed ditch, canal or other work, and any property on which the water is to be used as depicted on the map, as required by OAR 690-310-0040(1)(a)(I). The legal description is often found on a deed, land sales contract, or title insurance policy.
- C. The names and mailing addresses of the owners of any lands not owned by the applicant that are crossed by the proposed ditch, canal or other work, even if the applicant has obtained written authorization or an easement from the owner, as required by OAR 690-310-0040(1)(a)(F).

Please submit this information no later than June 6, 2024. If you are unable to submit the information listed above by this date, 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 is needed 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 information requested above or a request for an administrative hold by the above date, the Department may reject the application.

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). You must notify the Department **in writing** by **May 17, 2024**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Although it is unlikely that a permit will be issued, if the Department's findings change and 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, the permittee shall install a totalizing flow meter, or other suitable measuring device as determined by the watermaster, 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.

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 website at 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
Stop Processing Request Form

S-89450
WAB: Columbia R.
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: S-89450

Applicant: WINDY RIVER

County: MORROW, UMATILLA

Watermaster: GREG SILBERNAGEL, #5, NCR

Priority Date: MARCH 22, 2024

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: PRIMARY IRRIGATION AND SUPPLEMENTAL IRRIGATION OF 3284.95 ACRES

Volume/Rate: 10.0 CUBIC FEET PER SECOND, FURTHER LIMITED TO 4,927.5 ACRE-FEET ANNUALLY

Period of Use: PRIMARY IRRIGATION FROM NOVEMBER 1 THROUGH FEBRUARY 28/29
 SUPPLEMENTAL IRRIGATION FROM OCTOBER 1 THROUGH OCTOBER 31 AND MARCH 1 THROUGH APRIL 15

Basin Name & Number: UMATILLA, #7

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
4 N	25 E	WM	2	NE NW	150 FEET SOUTH AND 2990 FEET WEST FROM NE CORNER, SECTION 2

Places of Use for Primary and Supplemental Irrigation:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 N	28 E	WM	4	NE NE	34.0
2 N	28 E	WM	4	NW NE	33.9
2 N	28 E	WM	4	SW NE	29.2
2 N	28 E	WM	4	SE NE	29.2
2 N	28 E	WM	4	NE NW	34.2
2 N	28 E	WM	4	NW NW	34.3
2 N	28 E	WM	4	SW NW	28.9
2 N	28 E	WM	4	SE NW	28.9
2 N	28 E	WM	4	NE SW	33.7
2 N	28 E	WM	4	NW SW	33.7
2 N	28 E	WM	4	SW SW	31.3
2 N	28 E	WM	4	SE SW	27.9
2 N	28 E	WM	4	NE SE	33.5
2 N	28 E	WM	4	NW SE	33.0
2 N	28 E	WM	4	SW SE	28.5
2 N	28 E	WM	4	SE SE	28.7
3 N	28 E	WM	14	SW SE	1.2
3 N	28 E	WM	14	SE SE	1.2

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	23	NE NE	33.6
3 N	28 E	WM	23	NW NE	34.2
3 N	28 E	WM	23	SW NE	27.7
3 N	28 E	WM	23	SE NE	27.1
3 N	28 E	WM	23	NE NW	30.2
3 N	28 E	WM	23	NW NW	29.0
3 N	28 E	WM	23	SW NW	36.5
3 N	28 E	WM	23	SE NW	36.95
3 N	28 E	WM	23	NE SW	37.6
3 N	28 E	WM	23	NW SW	35.7
3 N	28 E	WM	23	SW SW	40.2
3 N	28 E	WM	23	SE SW	35.6
3 N	28 E	WM	23	NE SE	30.3
3 N	28 E	WM	23	NW SE	31.3
3 N	28 E	WM	23	SW SE	23.7
3 N	28 E	WM	23	SE SE	21.7
3 N	28 E	WM	26	NE NE	30.2
3 N	28 E	WM	26	NW NE	35.7

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	26	SW NE	35.2
3 N	28 E	WM	26	SE NE	28.1
3 N	28 E	WM	26	NE NW	17.5
3 N	28 E	WM	26	NW NW	22.7
3 N	28 E	WM	26	SW NW	38.8
3 N	28 E	WM	26	SE NW	36.6
3 N	28 E	WM	27	NE NE	36.4
3 N	28 E	WM	27	NW NE	26.8
3 N	28 E	WM	27	SW NE	37.9
3 N	28 E	WM	27	SE NE	21.1
3 N	28 E	WM	27	NE NW	28.4
3 N	28 E	WM	27	NW NW	30.4
3 N	28 E	WM	27	SW NW	30.4
3 N	28 E	WM	27	SE NW	31.8
3 N	28 E	WM	27	NE SW	30.1
3 N	28 E	WM	27	NW SW	27.6
3 N	28 E	WM	27	SW SW	32.0
3 N	28 E	WM	27	SE SW	28.9
3 N	28 E	WM	27	NE SE	38.8
3 N	28 E	WM	27	NW SE	40.0
3 N	28 E	WM	27	SW SE	16.0
3 N	28 E	WM	27	SE SE	13.6
3 N	28 E	WM	28	NE NE	33.0
3 N	28 E	WM	28	NW NE	33.0
3 N	28 E	WM	28	SW NE	29.4
3 N	28 E	WM	28	SE NE	29.4
3 N	28 E	WM	28	NE NW	31.3
3 N	28 E	WM	28	NW NW	31.2
3 N	28 E	WM	28	SW NW	31.0
3 N	28 E	WM	28	SE NW	30.8
3 N	28 E	WM	28	NE SW	30.5
3 N	28 E	WM	28	NW SW	30.2
3 N	28 E	WM	28	SW SW	39.0
3 N	28 E	WM	28	SE SW	39.0
3 N	28 E	WM	28	NE SE	27.2

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	28 E	WM	28	NW SE	28.0
3 N	28 E	WM	28	SW SE	35.9
3 N	28 E	WM	28	SE SE	30.9
3 N	28 E	WM	29	NE SW	28.3
3 N	28 E	WM	29	NW SW	29.7
3 N	28 E	WM	29	SW SW	33.7
3 N	28 E	WM	29	SE SW	36.5
3 N	28 E	WM	29	NE SE	30.0
3 N	28 E	WM	29	NW SE	26.2
3 N	28 E	WM	29	SW SE	34.9
3 N	28 E	WM	29	SE SE	36.9
3 N	28 E	WM	32	NE NE	36.7
3 N	28 E	WM	32	NW NE	36.9
3 N	28 E	WM	32	SW NE	32.2
3 N	28 E	WM	32	SE NE	32.0
3 N	28 E	WM	32	NE NW	36.4
3 N	28 E	WM	32	NW NW	31.7
3 N	28 E	WM	32	SW NW	31.9
3 N	28 E	WM	32	SE NW	31.5
3 N	28 E	WM	33	NE NE	31.3
3 N	28 E	WM	33	NW NE	36.5
3 N	28 E	WM	33	SW NE	31.0
3 N	28 E	WM	33	SE NE	31.0
3 N	28 E	WM	33	NE NW	36.9
3 N	28 E	WM	33	NW NW	36.3
3 N	28 E	WM	33	SW NW	32.0
3 N	28 E	WM	33	SE NW	32.4
3 N	28 E	WM	33	NE SW	29.2
3 N	28 E	WM	33	NW SW	30.9
3 N	28 E	WM	33	SW SW	32.7
3 N	28 E	WM	33	SE SW	30.5
3 N	28 E	WM	33	NE SE	31.1
3 N	28 E	WM	33	NW SE	31.2
3 N	28 E	WM	33	SW SE	32.7
3 N	28 E	WM	33	SE SE	32.3

PUBLIC NOTICE DATE: May 7, 2024

14 DAY STOP PROCESSING DEADLINE DATE: May 17, 2024

30 DAY COMMENT DEADLINE DATE: June 6, 2024

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 website 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 **S-89450**.

After reviewing the Initial Review for my application, I request that processing be stopped, and the fees be refunded (minus a \$310 processing 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:

May 17, 2024

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1266
