Oregon Water Resources Department
Water Right Services Division

Water Right Application S-89389 in the name of JOHN H. O'CONNOR and RAQUEL M. O'CONNOR	)))	PROPOSED FINAL ORDER

Summary: The Department proposes to issue an order approving Application S-89389, as amended, and a permit consistent with the attached draft permit.

This Proposed Final Order shall become a final order on the date that is 33 days after the close of the time period for submitting a protest with no further action required by the Department unless a timely protest is received or the Proposed Final Order is withdrawn by the Department. ORS 536.077(4) and (5).

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 Umpqua Basin Program (OAR 690-516). These statutes and rules can be viewed on the following website: www.oregon.gov/OWRD/programs/policylawandrules/

The Department's main website can be found at: 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 July 26, 2023, John H. O'Connor and Raquel M. O'Connor filed a complete application for the following water use:

Source:	NORTH UMPQUA RIVER, TRIBUTARY TO UMPQUA RIVER
Use:	DOMESTIC USE EXPANDED FOR ONE HOUSEHOLD
Rate/Volume:	0.01 CUBIC FOOT PER SECOND (CFS)
Period of Use:	JANUARY 1 THROUGH DECEMBER 31
County:	DOUGLAS COUNTY
Place of Use:	SECTION 17, TOWNSHIP 26 SOUTH, RANGE 2 WEST, W.M.

2. On August 25, 2023, the Department mailed the applicant notice of its Initial Review, determining that the diversion of 0.01 CFS of water from the North Umpqua River, tributary to the Umpqua River, for domestic use expanded for one household from January 1 through December 31 of each year is not allowable. However, by providing additional information you may request a limited permit for human consumption use (indoor use only: cooking, drinking and sanitation) at 0.005 CFS, further limited to 500 gallons per day, per household. The applicant did not notify the Department to stop processing the application within 14 days of that date.

3. On August 29, 2023, the Department provided notice of the application in its weekly public notice, requesting comments and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

4. On September 15, 2023, the Department received a completed "*Application Supplement for Human Consumption & Livestock Uses*" from the applicant.

5. On January 8, 2024, the applicant submitted an amended map addressing map deficiencies.

Presumption Criterion (a) Consistency with Basin Program

6. Domestic use (including human consumption) is allowed under the Umpqua Basin Program (OAR 690-516-0005(1)). ORS 537.153(3)(b); OAR 690-310-0110(1)(a).

Presumption Criterion (b) Water Availability

7. An assessment of water availability at 80% 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)(a). During the period of use requested, the assessment established that surface water is not available due to instream flow requirements. ORS 537.153(3)(c); OAR 690-310-0150(2)(a)(C).

8. The proposed use is located within or above the Umpqua Scenic Waterway, as designated under ORS 390.826. Pursuant to the provisions of ORS 390.835 and OAR 690-310-0260, the Director is authorized to issue water rights for limited human consumption and livestock consumption uses within or above a designated reach of a scenic waterway when flows are less than quantities necessary for recreation, fish and wildlife. OAR 690-310-0260(1)(b).

9. The Director shall limit the total water use authorized under OAR 690-310-0260(1)(b) within or above each scenic waterway to no more than a combined cumulative total of one percent of the average daily flow or one CFS, whichever is less. OAR 690-310-0260(5). For the Umpqua Scenic Waterway, 1.0 CFS is less than one percent of the average daily flow; therefore, the combined cumulative total limitation is 1.0 CFS. OAR 690-310-0260(8)(c).

10. The total amount of water for human consumption and livestock consumption uses already allocated from the Umpqua Scenic Waterway is 0.041 CFS; therefore, the residual amount of water available from the source for human consumption or livestock consumption use is 0.959 CFS. OAR 690-310-0260(8)(d).

11. The proposed use is for 0.005 CFS, which is less than the residual amount of water available from the source for human consumption or livestock consumption use. Therefore, water is available for the proposed use.

Presumption Criterion (c) Injury Determination

12. The proposed use, if authorized, will not injure other water rights. ORS 537.153(3)(d); OAR 690-310-0150(2)(a)(E).

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

13. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(3)(b); OAR 690-310-0150(2)(a)(B).

14. The proposed use is in an area of the state in which OAR 690-033-0310 through -0340 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 690-033-0310 Statewide Rules

A. The proposed use occurs 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 OAR 690-033-0330(2)(a) and (b). As a result of this review, Permit Specific Conditions #2 through #7 have been included in the draft permit.

15. The proposed use is located within or above the Umpqua Scenic Waterway. OAR 690-310-0260 establishes rules the Department uses in determining whether a proposed use will significantly

impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife as designated under ORS 390.826.

OAR 690-310-0260 Scenic Waterway Findings

A. The proposed diversion and use of water will not significantly impair the free-flowing character of these waters in quantities necessary for recreation, fish and wildlife. OAR 690-310-0260(8)(a); OAR 690-310-0260(2)(a).

B. The proposed diversion and use of water is consistent with the provisions of ORS Chapters 536 and 537, and OAR 690. OAR 690-310-0260(8)(a); OAR 690-310-0260(2)(b).

C. Construction, operation, and maintenance of the diversion system will be carried out in a manner consistent with the purposes set forth in ORS 390.805 to 390.925. OAR 690-310-0260(8)(a); OAR 690-310-0260(2)(c).

D. The amount of water requested for human consumption use does not exceed 0.005 CFS per household. Human consumption is a use which is given preference under ORS 536.310(12) when available supplies of water are insufficient to meet all uses. OAR 690-310-0260(8)(a); OAR 690-310-0260(2)(d); OAR 690-310-0260(4)(a).

E. The applicant has submitted information identifying all potential alternate sources of water and has described why water cannot reasonably be obtained from such sources, and denial of this application will result in loss of reasonable expectations for use of the property. OAR 690-310-0260(8); OAR 690-310-0260(4)(b) and (c); OAR 690-310-0260(3)(a) and (b).

16. As described in this order in the analysis under Presumption Criterion (b) – Water Availability, water is available within the combined cumulative total limitations of 1.0 CFS. OAR 690-310-0260(8)(a); OAR 690-310-0260(4)(e).

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

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

18. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the presumption is overcome. ORS 537.153(2); OAR 690-310-0120(3)(a); OAR 690-310-0150(2)(a)(I).

Other Criteria and Requirements

19. The amount of water requested, 0.005 CFS, further limited to 500 gallons per day, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(a)(D).

20. The applicant proposed measures to prevent waste, measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a

surface stream and to prevent damage to public uses of any affected surface waters. These measures are included in Sections 6 and 7 of the application. OAR 690-310-0150(2)(a)(J).

21. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSIONS 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(3) 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-89389, as amended, and issuance of a permit consistent with the attached draft permit.

Pursuant to ORS 536.077(4) and (5), if no protest of this Proposed Final Order is received by the Department on or before December 4, 2026, and the Department does not withdraw this Proposed Final Order on or before January 6, 2027, this Proposed Final Order is a final order without any further action by the Department on January 6, 2027.

DATED October 20, 2026



Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department

Protests and Requests for Party Status

The following sections explain how to: (1) file a protest in opposition to this Proposed Final Order to request a contested case hearing on this Proposed Final Order; and (2) file a request for party status to request to participate in any contested case proceeding in support of this Proposed Final Order.

Protests: Under the provisions of ORS 537.153(6) and ORS 536.077(1) (for surface water) or ORS 537.621(6) and ORS 536.077(1) (for groundwater), any person may protest this Proposed Final Order. Protests may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline. Protests may be emailed to will.d.davidson@water.oregon.gov, but payment of Protest fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Protests and protest fees must be received by the Water Resources Department no later than **December 4, 2026.**

Protests must meet the following requirements:

- Be in writing;
- Include the protestant's name, address, telephone number, and email address, if the protestant has an email address;
- Include the name, address, telephone number, and email address of the protestant's attorney, if the protestant is represented by an attorney;
- Include a description of the protestant'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;
- Include a detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to the protestant's interest and/or the claimed public interest;
- Identify which of the Proposed Final Order's recommended findings of fact, conclusions of law or conditions of approval the protestant objects to;
- Raise all reasonably ascertainable issues and include all reasonable available arguments that support the protestant's position, which may include arguments related to the public interest presumption factors under ORS 537.153(2) and the public interest factors under ORS 537.170(7);
- Include any citation of legal authority to support the protest, if known;
- Explain how the issues raised in the protest are within the Department's jurisdiction;
- If the protestant is the applicant, include a protest fee of $720 required by ORS 536.050; and
- If the protestant is not the applicant, include a protest fee of $1,425 required by ORS 536.050.

If a timely protest is filed, after the protest period has ended, the Director will: (1) issue a final order if the applicant has not filed a protest and the Director finds that there are no significant issues related to the proposed use of water; (2) schedule a contested case hearing if a protest has been submitted; or (3) provide any person who timely submitted a protest or request for party status with an estimate of the timing of referring the case to the Office of Administrative Hearings for a contested case hearing.

Requests for Party Status: Under the provisions of ORS 537.153(6) and ORS 536.077(2) (for surface water) or ORS 537.621(6) and ORS 536.077(2) (for groundwater), if this Proposed Final Order is protested, any person who supports this Proposed Final Order may file a request for party status to request to participate in any contested case proceeding on the Proposed Final Order or for judicial review of a final order resulting from the Proposed Final Order. There is no need for the applicant to file a request for party status. The applicant will automatically be a party to any contested case proceeding on this Proposed Final Order. Requests for party status may be mailed or hand delivered to the Oregon Water Resources Department at 725 Summer Street NE, Suite A, Salem, OR 97301. If you submit a request for party status by U.S. mail, please consider mailing early to ensure the Department receives the request by the deadline. Requests for party status may be emailed to will.d.davidson@water.oregon.gov, but payment of request for party status fees cannot be accepted electronically and must be received by the Department by mail or hand delivery prior to the deadline. Requests for party status and request for party status fees must be received by the Water Resources Department no later than **January 4, 2027**.

Requests for party status must be in writing and include the following:

- Names, addresses, and email addresses (if any) of the requestor and any organization the requestor represents;
- Name, address, and email address of the requestor's attorney, if any;
- A statement of whether the request is for participation as a party or a limited party, and, if as a limited party, the precise area or areas in which participation is sought;
- If the requestor seeks to protect a personal interest in the outcome of any contested case hearing on the Proposed Final Order, a detailed statement of the requestor's interest, economic or otherwise, and how such interest may be affected by the results of the hearing;
- If the requestor seeks to represent a public interest in the results of any contested case hearing on the Proposed Final Order, a detailed statement of such public interest, the manner in which such public interest will be affected by the results of the hearing, and the requestor's qualifications to represent such public interest;
- A statement of the reasons why existing parties to the proceeding cannot adequately represent the private and/or public interest(s) the requestor seeks to represent; and
- The request for party status fee of $1,425 required by ORS 536.077(2)(b)(C) and ORS 536.050.

After the deadline for requests for party status, the Department will provide copies of any timely requests for party status, accept responses to requests for party status, and consider and rule on timely requests for party status as provided in OAR 690-002-0225.

Additional Notices

Notice of requirement to provide updated contact information: Parties must timely provide the Department with updated contact information, including any change of address or primary means of electronic communication. The contact information provided in the protest or request for party status, as applicable, is presumed to be valid for the purposes of service and notification of upcoming referral to the Office of Administrative Hearings unless timely updated by the party. OAR 609-002-0081.

Notice of the circumstances under which this Proposed Final Order will become a final order: If no protest of this Proposed Final Order is timely received and the Department does not withdraw this Proposed Final Order for reconsideration within 33 days after the close of the period for submitting a

protest, this Proposed Final Order will become a final order on the date that is 33 days after the close of the period for submitting a protest, with no further action required by the Department. If a protest or protests are timely received, but later: (1) all timely-filed protests are withdrawn and the withdrawals are not based on a settlement agreement requiring changes to this Proposed Final Order; (2) all protestants fail to appear at a scheduled hearing; or (3) all protestants notify the Department or the administrative law judge that the protestants will not appear at a scheduled hearing, the protestants will have waived any right to a hearing, and the Department or the administrative law judge will issue an order dismissing the protests and notifying the parties that this Proposed Final Order has become a final order. OAR 690-002-0235; OAR 137-003-0672. The Department designates the relevant portions of its file on this matter, including all materials that you have submitted relating to this matter, as the record for the purpose of proving a prima facie case upon default. OAR 137-003-0672.

Notice of right to be represented by an attorney: You may be represented by an attorney at any contested case hearing on this Proposed Final Order. 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 "authorized representative" as defined at OAR 137-003-0555(1)(b) 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 to active duty servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through http://legalassistance.law.af.mil.

- If you have any questions about statements contained in this document, please contact Lucinda Vranizan at Lucinda.R.Vranizan@water.oregon.gov or 971-375-2256.
- If you have questions about how to file a protest or a request for party status, or if you have previously filed a protest or a request for party status and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
- 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

STATE OF OREGON

COUNTY OF DOUGLAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

JOHN H. O'CONNOR
RAQUEL M. O'CONNOR
28658 N UMPQUA HWY
IDLEYLD PARK OR 97447

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

APPLICATION FILE NUMBER: S-89389

SOURCE OF WATER: NORTH UMPQUA RIVER, TRIBUTARY TO UMPQUA RIVER

PURPOSE OR USE: HUMAN CONSUMPTION USE (INDOOR USE ONLY: COOKING, DRINKING, SANITATION) FOR ONE HOUSEHOLD

MAXIMUM RATE: 0.005 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 500 GALLONS PER DAY

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: JULY 26, 2023

AUTHORIZED POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	2 W	WM	17	NE SE	500 FEET SOUTH AND 1600 FEET EAST FROM C1/4 CORNER, SECTION 17

AUTHORIZED PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q
26 S	2 W	WM	17	NE SE

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, 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.

3. **Maintain Passage:**

   The permittee shall maintain adequate passage of native migratory fish at all times (ORS 509.610) and shall not construct, operate, or maintain any dam or artificial obstruction to fish passage across any waters of the state that are inhabited, or were historically inhabited, by native migratory fish (ORS 509.585).

4. **Fish Screen:**

   The permittee shall install, maintain, and operate fish screening consistent with current Oregon Department of Fish and Wildlife (ODFW) standards or submit documentation that ODFW has determined fish screening is not necessary or is exempted. Fish screening is to prevent fish from entering the proposed diversion. The required screen is to be in place and functional, and approved in writing by ODFW **prior to diversion of any water**. The permittee shall operate and maintain the fish screen consistent with ODFW's operation and maintenance standards. The permittee is hereby directed to schedule a consultation with an ODFW Fish Screen Coordinator.

5. **Riparian Area Restoration:**

   If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

6. **In-Water Work:**

   Any in-water work related to construction, development, or maintenance of the proposed use shall be conducted during the preferred work period of July 1 through September 15, unless an alternate time period is approved by Oregon Department of Fish and Wildlife.

7. **Water Quality:**

   All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards. Permittee is responsible for obtaining any necessary state and federal permits.

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 and application of the water shall be completed within seven years of the date of permit issuance. This permit is subject to cancellation proceedings if this deadline is missed. The deadline to begin construction may not be extended.

2. Within one year after making complete application of water, 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

Raymond Eliot Crafton
Water Rights Section Manager, for
Ivan Gall, Director
Oregon Water Resources Department