



# Oregon

Theodore R. Kulongoski, Governor

**Water Resources Department**

North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

**CERTIFIED MAIL  
Return Receipt Requested**

JAMES BAYER  
PHEASANTBROOK LLC  
12155 AGATE RD  
EAGLE POINT, OR 97524

August 22, 2008

Reference: File S-87244

Dear Mr. Bayer:

**THIS IS NOT A PERMIT AND IS  
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit application may be approved, the 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 you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application requested the use of 341.1 acre feet (AF) of water from Lost Creek Reservoir under Permits R-8141 and R-8142, a tributary of Rogue River, for primary irrigation use on 72.2 acres and supplemental irrigation use on 3.6 acres from March 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Lost Creek Reservoir under Permits R-8141 and R-8142, a tributary of Rogue River, for irrigation use is allowable under the Rogue Basin Program.
4. Stored water is available for further appropriation from Lost Creek Reservoir under Permits R-8141 and R-8142, contingent upon the submission of an executed and valid contract with the Bureau of Reclamation authorizing the appropriation of stored water.
5. Prior to the issuance of a permit, the Department must receive a copy of an executed and valid contract between you and the Bureau of Reclamation to appropriate stored water from Lost Creek Reservoir.

6. The proposed supplemental use shall be limited to match that of the primary water right. Certificate 26706 allows the use of water for irrigation from April 2 through October 31. If the application is approved, the season allowed for supplemental irrigation will be April 2 through October 31.
7. The proposed use is located above the Rogue River Scenic Waterway, as designated under ORS 390.826.
8. The Department has determined there are deficiencies with the application. Please refer to the **Additional Information Required** section below for specific information.

### **Summary of Initial Determinations**

**The use of 341.1 AF from Lost Creek Reservoir under Permits R-8141 and R-8142, a tributary of Rogue River, for primary irrigation use on 72.2 acres from March 1 through October 31, and for supplemental irrigation use on 3.6 acres from April 2 through October 31, is allowable contingent upon the submission of a contract to appropriate stored water.**

Because of these favorable determinations, the Department can now move your application to the next phase of the water rights application review process where public interest factors will be evaluated.

### **Additional Information Required:**

Additional exam fees are required to process your application as the Department considers primary irrigation and supplemental irrigation separate uses. The total exam fee is \$932, and the Department has received a total of \$732; please provide the additional fee of \$200.

<b>Category</b>	<b>Fee</b>
Base	\$250
10 acre feet @ \$15 each	\$150
332 additional acre feet @ \$1 each	\$332
One additional use at \$200	\$200
<b>TOTAL EXAM FEES:</b>	<b>\$932</b>

**Please submit this information no later than Thursday, September 25, 2008.** 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.

Please reference the application number when sending any correspondence regarding the conclusions of this Initial Review. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically 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.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$150 processing charge per application.) To accomplish this you must notify the Department in writing by **Friday, September 5, 2008**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of re-diversion. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a report which includes the recorded 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

- 2. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

3. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

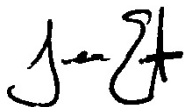
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a proposed final order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

The water source identified in your 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/NRD/water\\_agplans.shtml](http://www.oregon.gov/ODA/NRD/water_agplans.shtml) to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0859 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Jeana Eastman, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Jeana Eastman  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-87244  
WAB 15-stored water (270)  
POU 15-270  
GW

# APPLICATION FACT SHEET

Application File Number: S-87244

Applicant: JAMES BAYER and PHEASANTBROOK LLC

County: Jackson

Watermaster: 13

Priority Date: July 25, 2008

Source: LOST CREEK RESERVOIR UNDER PERMITS R-8141 AND R-8142, A  
TRIBUTARY OF ROGUE RIVER

Use: IRRIGATION USE ON 72.2 ACRES, AND SUPPLEMENTAL IRRIGATION USE ON  
3.6 ACRES

Quantity: 341.1 ACRE FEET

Basin Name & Number: Rogue, #15

Stream Index Reference: Volume 1A ROGUE R MISC

Point of Re-Diversion: SWNW, SECTION 32, T35S, R1W, W.M.;670 FEET NORTH AND 60  
FEET EAST FROM W1/4 CORNER, SECTION 32

Place of Use:

	<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NW ¼ NW ¼	30.9 ACRES	
SW ¼ NW ¼	34.9 ACRES	3.6 ACRES
	SECTION 5	
NE ¼ NE ¼	0.3 ACRE	
SE ¼ NE ¼	6.1 ACRES	
	SECTION 6	
	TOWNSHIP 36 SOUTH, RANGE 1 WEST, W.M.	

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 5, 2008**

**PUBLIC NOTICE DATE: Tuesday, August 26, 2008**

**30 DAY COMMENT DEADLINE DATE: Thursday, September 25, 2008**

# Mailing List for IR Copies

Application #S-87244

IR Date: August 22, 2008

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## Original mailed to applicant:

JAMES BAYER PHEASANTBROOK LLC, 12155 AGATE RD, EAGLE POINT, OR 97524

### Copies sent to:

1. WRD - File # S-87244
2. WRD - Water Availability: Ken Stahr

### IR, Map, and Fact Sheet Copies sent VIA EMAIL:

3. WRD - Regional Manager (not SCR): SW
4. WRD - Watermaster # 13 (include Division 33 form)
5. ODFW: Jay Doino (include Division 33 form)
6. DEQ: Heather Tugaw (include Division 33 form)

### IR, Map, and Fact Sheet Copies sent to:

7. Department of Agriculture
8. State Parks

### Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

9. Kaiser, Gary, CWRE #073

19440 Hwy 62, Eagle Point, OR 97524

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>
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Caseworker: Jeana Eastman

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