



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

THOMAS SWANSON
11545 WHISKEY CREEK RD
TILLAMOOK, OR 97141

September 12, 2008

Reference: File S-87252

Dear Mr. Swanson:

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 0.03 cubic foot per second (CFS) from Hathaway Creek, tributary to Netarts Bay for year-round domestic use expanded for three households.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Hathaway Creek, tributary to Netarts Bay for domestic use expanded for three households is not allowable under the North Coast Basin Program. Under 690-501-0005(1)(g)(ii), all streams tributary to Netarts Bay are classified only for the utilization of water for human consumption, livestock consumption, and instream uses for recreation, wildlife and fish life purposes. Human consumption use is (indoor use only: cooking, drinking, and sanitation) limited to 0.01 cubic foot per second (CFS) (further limited to 500 gallons per day per household). Please see the **Additional Information Opportunity** below.
4. Surface water is available in the amount and for the full period requested.
5. A portion of the area proposed for domestic use under this application is currently covered by an existing domestic water right evidenced by Certificate of Water Right 84263, which conflicts with your application. Please see the **Conflict Resolution Information** section below for more information.

Summary of Initial Determinations

Because not all items above are favorable, the use of 0.03 CFS from Hathaway Creek, tributary to Netarts Bay for domestic use expanded for three households is not allowable, and it appears unlikely that you will be issued a permit. However, the use of 0.01 CFS further limited to 500 gallons per day per household for human consumption use (indoor use only: cooking, drinking, and sanitation) for three households is allowable. Please inform the Department if you would like to pursue a permit for human consumption.

At this time, you must decide whether to proceed or to withdraw your application as described below.

Additional Information Opportunity:

If you would like to pursue a limited permit for human consumption use, please amend your application by requesting the change in writing.

Conflict Resolution Information:

According to Department records, there is an existing domestic water right evidenced by Certificate of Water Right 84263 covering a portion of the land proposed under this application. The local watermaster has informed the Department of your intention to cancel Water Right 84263 upon issuance of a new permit. The Department must receive a completed affidavit of diminution of the existing right to reduce it to supplemental use, a completed form authorizing cancellation of the existing right, a transfer of the existing right, or other means of dealing with the conflict between the existing right and the use proposed under this application.

If the Department issues a permit and you *have not* resolved the conflict, the new permit will be supplemental to the existing right, which will limit and/or jeopardize the water rights on the land as follows:

- If the existing right is found to have been forfeited, the use which is supplemental to such certificate may also be canceled.
- You may only use the supplemental right after the primary right becomes unavailable. The primary right must be exhausted first.

Please submit this information no later than Thursday, October 16, 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.

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.

At this time, you must decide whether to proceed or to withdraw your application as described below.

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 26, 2008**. For your convenience you may use the enclosed "STOP PROCESSING" form.

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.

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

1. Measurement, recording and reporting conditions:
 - A. The Director may require the permittee to install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion. If the Director notifies the permittee to install a totalizing flow meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or measuring device in good working order and shall allow the watermaster access to the meter or measuring device. The Director may provide an opportunity for the permittee to submit alternative measuring procedures for review and approval.
 - B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

2. 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 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 503-986-0815 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: Joel Plahn, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Joel Plahn
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-87252
WAB 1-completed by WM
POU 1-completed by WM
GW

APPLICATION FACT SHEET

Application File Number: S-87252

Applicant: THOMAS SWANSON

County: TILLAMOOK

Watermaster: 1

Priority Date: AUGUST 6, 2008

Source: HATHAWAY CREEK, TRIBUTARY TO NETARTS BAY

Use: DOMESTIC USE EXPANDED FOR THREE HOUSEHOLDS

Quantity: 0.03 CUBIC FOOT PER SECOND

Basin Name & Number: North Coast, #1

Stream Index Reference: Volume 3 NETARTS BAY & MISC

Point of Diversion Location(s): SENE, SECTION 30, T2S, R10W, W.M.; 545 FEET NORTH
AND 925 FEET WEST FROM E1/4 CORNER, SECTION 30

Place of Use:

SW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 30
TOWNSHIP 2 SOUTH, RANGE 10 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 26, 2008

PUBLIC NOTICE DATE: Tuesday, September 16, 2008

30 DAY COMMENT DEADLINE DATE: Thursday, October 16, 2008

Mailing List for IR Copies

Application #S-87252

IR Date : September 12, 2008

Original mailed to applicant:

THOMAS SWANSON , 11545 WHISKEY CREEK RD, TILLAMOOK, OR 97141

Copies sent to:

1. WRD - File # S-87252
2. WRD - Water Availability: Ken Stahr

Copies Mailed

By: _____
(SUPPORT STAFF)
on: _____
(DATE)

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

3. WRD - Watermaster # 1 (include Division 33 form)
4. ODFW: Ron Rehn (include Division 33 form)
5. DEQ: Sally Puent (include Division 33 form)

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture

Affected Landowners (include "Notice of Initial Review--Affected Landowner"):

7. Stimson Lumber Co. Tillamook Operations ATTN: Jon Wehage, 5900 Moffett Road Tillamook, OR 97141
8. Tomas Swanson and Erica Rubin 11545 Whiskey Creek Road Tillamook, OR 97141
9. Theodore and Kay Schacher 14208 Schacher Lane Mt. Angel, OR 97362
10. John and Dora Ellen Reynolds 5217 Springcrest DR. South Salem, OR 97306

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

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Caseworker: Joel Plahn