



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

September 26, 2008

MARILYN MCIVER
1000 SW VISTA AVENUE, SUITE 114
PORTLAND, OR 97205

USDA FOREST SERVICE
PHIL CRUZ, DISTRICT MANAGER
1230 NW 3RD STREET, SUITE A- 262
BEND, OR 97701

Reference: File S-86882

Dear Applicants:

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 0.005 cubic foot per second (CFS) of water from Elk Lake, a tributary of Lava Lake, for human consumption for one household from May 20 through October 15 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 Elk Lake, a tributary of Lava Lake, for human consumption is allowable under the Deschutes Basin Program.
4. Surface water is not available in the amount requested during the entire period requested. However, you have provided documentation indicating that no alternate water source is available, and that denial of the application would cause loss of reasonable expectation for use of your property. Under certain circumstances, the Department may find that a proposed use is in the public interest even when the source of water is over-appropriated. At the next stage of processing, the Department may find that the proposed use is in the public interest despite water availability limitations.

5. The standard allowable rate of water necessary for human consumption use for one household is 0.005 CFS, further limited to 500 gallons per day. If the application is approved, the rate allowed will be limited to these amounts.

Summary of Allowable Water Use

Because not all items above are favorable, the use of 0.005 CFS of water from Elk Lake, a tributary of Lava Lake, for human consumption for one household (indoor use only: cooking, drinking, sanitation), limited to 500 gallons per day, is not allowable. However, the Department may find that the proposed use is in the public interest.

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.

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, October 10, 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. 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 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. 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.
- 3. 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.

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 503-986-0816 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: Kerry Kavanagh, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in cursive script, appearing to read "K Kavanagh".

Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-86882
WAB 5-199
POU 5-199
GW n/a

APPLICATION FACT SHEET

Application File Number: S-86882

Applicant: MARILYN MCIVER AND USDA FOREST SERVICE

County: Deschutes

Watermaster: 11

Priority Date: May 29, 2007

Source: ELK LAKE, A TRIBUTARY OF LAVA LAKE

Use: HUMAN CONSUMPTION USE FOR ONE HOUSEHOLD

Quantity: 0.005 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Stream Index Reference: Volume 1 DESCHUTES R MISC

Point of Diversion Location: SWNW, SECTION 32, T18S, R8E, W.M.; 2440 FEET SOUTH
AND 490 FEET EAST FROM NW CORNER, SECTION 32

Place of Use:

SW $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 32
TOWNSHIP 18 SOUTH, RANGE 8 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, October 10, 2008

PUBLIC NOTICE DATE: Tuesday, September 30, 2008

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

Mailing List for IR Copies

Application #S-86882

IR Date: September 26, 2008

Original mailed to applicant:

MARILYN MCIVER
1000 SW VISTA AVENUE, SUITE 114
PORTLAND, OR 97205

USDA FOREST SERVICE
PHIL CRUZ, DISTRICT MANAGER
1230 NW 3RD STREET, SUITE A- 262
BEND, OR 97701

Copies sent to:

1. WRD - File # S-86882
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 # 11
4. ODFW: Brett Hodgson
5. DEQ: Eric Nigg

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture
7. Columbia River Intertribal Fish Commission, Julie Carter,
729 NE Oregon St, Ste 200, Portland OR 97232
8. US Fish & Wildlife Service, Gary Miller, 3502 Hwy 30, La Grande, OR 97850
9. NW Power Planning Council, Fish & Wildlife Division, Karl Weist
851 SW Sixth Ave, Ste 1020, Portland OR 97204
10. Confederated Tribes of the Umatilla Indian Reservation, Carl Merkle or Jennifer Hudson
PO Box 638, 73239 Confederated Way, Pendleton, OR 97801
11. National Marine Fisheries Service, Spencer Hovekamp
3502 Hwy 30, La Grande, OR 97850

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

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

VCOPYSH.T.IR

Caseworker: Kerry Kavanagh

REMINDER: Copy **all** IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)