



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

JOEL RUE
1316 VICTOR POINT RD SE
SILVERTON, OR 97381

May 13, 2011

Reference: File R-87705

Dear Applicant:

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 proposed the storage of 9.2 acre feet (AF) of water in an in-channel reservoir from an unnamed stream and runoff, tributaries of Pudding River, for all beneficial uses classified in the Willamette Basin Plan. The reservoir will inundate 1.0 acre and have a dam height of 9.0 feet.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The storage of water from an unnamed stream and runoff, tributaries of Pudding River, is allowable November 1 through June 30 under the Willamette Basin Program.

The Department requires that you specify a beneficial use(s) for the stored water, and cannot process an application for "all beneficial use authorized by the basin program". Examples of beneficial uses in the Willamette Basin may include, but are not limited to, domestic, livestock, irrigation, fish life, wildlife, recreation, aesthetics, fire protection, agricultural, commercial, industrial, mining, pollution abatement, and wetland enhancement.

If you would like to amend the application to specify any of the beneficial use(s), you must submit a written request specifying them by Thursday, June 16, 2011. If you are unable to meet this time line, you may send a written request for an administrative hold for up to an additional 180 days. If we do not receive clarification regarding the specific beneficial uses you would like to pursue or a request for a hold from you by this date, the Department will likely prepare a proposed final order to deny the application.

4. Please keep in mind that if a permit to store water is issued for this application, you would need to obtain a secondary permit to use the stored water for out-of-reservoir uses, such as irrigation, etc.
5. Any use not customary to exclusive farm use (EFU) requires additional land-use approval from Marion County Planning.
6. Surface water is available during the period November 1 through June 30.
7. The application is subject to Section 4(d) of the Endangered Species Act.
8. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Determinations

Because not all items above are favorable, the appropriation of 9.2 AF of water from an unnamed stream and runoff, tributaries of Pudding River, for storage for “all beneficial uses classified in the Willamette Basin Plan”, is not allowable, and it appears unlikely that you will be issued a permit.

However, if the application is amended to specify one or more beneficial uses, the Department will likely proceed with a Proposed Final Order recommending approval with a storage season of November 1 through June 30.

Additional Information Required:

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following:

- The Project Schedule (Item 8) portion of the application form is incomplete. Please provide the proposed date water use will be completed. Please see a copy of page 3 from the application form submitted March 9, 2011.
- The land-use compatibility form submitted with your application indicates that your property is zoned exclusive farm use (EFU). Depending on the specific beneficial use(s) you select (as described in Item 3 above), you may need to obtain additional land-use approval from Marion County documenting that the beneficial use(s) will be allowed under the EFU zoning for the subject property.

Please submit this information no later than Thursday, June 16, 2011. 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 \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, May 27, 2011**. 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. 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.
 - B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water stored, and may require the permittee to report water storage 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.
2. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
3. The permittee shall pass all live flow outside the storage season.
4. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
5. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any

water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

6. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
7. 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 503-986-0816 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,



Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

R-87705
WAB 2-152
POU 2-152

APPLICATION FACT SHEET

Application File Number: R-87705

Applicant: JOEL RUE

County: Marion

Watermaster: 16

Priority Date: March 9, 2011

Source: AN UNNAMED STREAM AND RUNOFF, TRIBUTARIES TO PUDDING RIVER

Use: STORAGE FOR ALL BENEFICIAL USES AS CLASSIFIED IN THE WILLAMETTE BASIN PLAN

Quantity: 9.2 ACRE FEET

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 13 PUDDING R MISC

Point of Diversion/Dam Location: NWSE, SECTION 33, T7S, R1W, W.M.; 730 FEET SOUTH AND 1058 FEET EAST FROM C1/4 CORNER, SECTION 33

Place of Use:

NW $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 33
TOWNSHIP 7 SOUTH, RANGE 1 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, May 27, 2011

PUBLIC NOTICE DATE: Tuesday, May 17, 2011

30 DAY COMMENT DEADLINE DATE: Thursday, June 16, 2011

Mailing List for IR Copies

Application #R-87705

IR Date: May 13, 2011

Original mailed to applicant:

JOEL RUE
1316 VICTOR POINT RD SE
SILVERTON, OR 97381

Copies sent to:

1. WRD - File # R-87705
2. WRD - Water Availability: Ken Stahr

VIA EMAIL

3. WRD - Watermaster # 16
4. ODFW:
5. DEQ:

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture

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

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

7. Kim Kratz, Northwest Fisheries Science Center,
NOAA Fisheries, 2725 Montlake Blvd E, Seattle, WA 98112
8. Paul Henson, US Fish & Wildlife Service,
Oregon Fish & Wildlife Office, 2600 SE 98th Avenue, Suite 100, Portland, OR 97266
9. Brandon Reich, Associate Planner,
Marion County Planning, 5155 Silverton Rd NE, Salem, OR 97305

Caseworker: Kerry Kavanagh

COPYSHT.IR

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)