



# Oregon

John A. Kitzhaber, MD, 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**

December 16, 2011

IRL DAVIS  
PO BOX 188  
TYGH VALLEY, OR 97063

Reference: File R-87763

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 to store 10.0 acre feet (AF) of water, being 0.5 AF in Reservoir 1 from Spring 1, tributary of Butler Canyon, 9.0 AF in Reservoir 2 from Spring 2, tributary to White River, and 0.5 AF in Reservoir 3 from Spring 3, tributary to White River, for multiple purpose use.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The storage of water from Spring 1, tributary to Butler Canyon, Spring 2, tributary to White River, and Spring 3, tributary to White River, for "multiple purpose" is not allowable under the Deschutes Basin Program.

However, under Oregon Administrative Rules (OAR) 690-505-0020(1)(a), Deschutes Basin Program, the storage of water for domestic, livestock, municipal, irrigation, power development, industrial, mining, recreation, wildlife, and fish life uses are allowed.

In addition, the Department must also consider whether the applicant has given "cognizance to the multi-purpose concept" regarding the proposed appropriation of water for storage (OAR 690-505-0020(1)(c)). Therefore, the storage of water for a single use is not allowable under the Deschutes Basin Program. Please refer to the **Additional Information Required/Opportunity** section below.

4. Surface water is not available during the period July 1 through December 31.
5. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year.
6. The proposed use is located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute 390.826.
7. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
8. The application is subject to Section 4(d) of the Endangered Species Act.
9. Please refer to the **Additional Information Required/Opportunity** section below for specific information regarding deficiencies with the application.

#### **Summary of Initial Determinations**

**Because not all items above are favorable, the appropriation of 10.0 AF of water for storage for multiple purpose, being 0.5 AF in Reservoir 1 from Spring 1, tributary of Butler Canyon, 9.0 AF in Reservoir 2 from Spring 2, tributary to White River, and 0.5 AF in Reservoir 3, tributary to White River, is not allowable, and it appears unlikely that you will be issued a permit unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order.**

#### **Additional Information Required/Opportunity:**

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

- Preliminary plans, specifications and supporting information for the dam and impoundment area including width and crest width.

In addition to the required information described above, the Department's findings may change if you provide the following information prior to issuance of the Proposed Final Order. Please provide the following:

- Documentation that you have given "cognizance to the multi-purpose concept" in regard to the proposed use. Please submit a list of at least two of the allowable beneficial uses listed in Item 3 above.

**Please submit this information to the Department in writing no later than January 19, 2012.** 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.

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 \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, December 30, 2011**. 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.
  - 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.
  - C. 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.
  - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

2. Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at USGS gage 14103000, Deschutes River at Moody, near Biggs, OR, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows is subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

Deschutes River Scenic Waterway	
<i>Month</i>	<i>Minimum Flow (cfs)</i>
January	4500
February	4500
March 1-15	4500
March 16-31	4000
April 1-14	4000

3. 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.
4. The permittee shall pass all live flow outside the storage season described above.
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. 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.
8. 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 503-986-0816 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-87763  
WAB 5-70088  
POU 5-70088  
GW

# APPLICATION FACT SHEET

Application File Number: R-87763

Applicant: IRL DAVIS

County: Wasco

Watermaster: 3

Priority Date: November 3, 2011

Source: SPRING 1, TRIBUTARY TO BUTLER CANYON; SPRING 2, TRIBUTARY TO WHITE RIVER; AND SPRING 3, TRIBUTARY TO WHITE RIVER

Use: MULTIPLE PURPOSE

Quantity: 10.00 ACRE FEET (AF), BEING 0.5 AF IN RESERVOIR 1, 9.0 AF IN RESERVOIR 2, AND 0.5 AF IN RESERVOIR 3

Basin Name & Number: Deschutes, #5

Stream Index Reference: Volume 3 TYGH CR & MISC

Point of Diversion Locations:

SPRING 1 - SWNE, SECTION 33, T3S, R13E, W.M.; 2320 FEET SOUTH AND 2240 FEET WEST FROM NE CORNER, SECTION 33

SPRING 2 - SESE, SECTION 26, T3S, R13E, W.M.; 351 FEET NORTH AND 1104 FEET WEST FROM SE CORNER, SECTION 26

SPRING 3 - SWSE, SECTION 35, T3S, R13E, W.M.; 652 FEET NORTH AND 2226 FEET WEST FROM SE CORNER, SECTION 35

Reservoir Locations:

RESERVOIR 1 - SWNE, SECTION 33, T3S, R13E, W.M.; 2504 FEET SOUTH AND 2443 FEET WEST FROM NE CORNER, SECTION 33

RESERVOIR 2 - NENE, SECTION 35, T3S, R13E, W.M.; 1221 FEET SOUTH AND 937 FEET WEST FROM SE CORNER, SECTION 35

RESERVOIR 3 - SWSE, SECTION 35, T3S, R13E, W.M.; 436 FEET NORTH AND 2174 FEET WEST FROM SE CORNER, SECTION 35

Place of Use:

SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  RESERVOIR 1  
SECTION 33  
TOWNSHIP 3 SOUTH, RANGE 13 EAST, W.M.

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  RESERVOIR 2  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  RESERVOIR 3  
SECTION 35  
TOWNSHIP 3 SOUTH, RANGE 13 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, December 30, 2011**

**PUBLIC NOTICE DATE: Tuesday, December 20, 2011**

**30 DAY COMMENT DEADLINE DATE: Thursday, January 19, 2012**

# Mailing List for IR Copies

Application #R-87763

IR Date : December 16, 2011

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## Original mailed to applicant:

IRL DAVIS  
PO BOX 188  
TYGH VALLEY, OR 97063

### Copies sent to:

1. WRD - File # R-87763
2. WRD - Water Availability: Ken Stahr

### sent via email

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

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

6. WRD - Regional Manager: NC
7. Department of Agriculture
7. Kim Kratz, Director, Oregon State Habitat Office  
National Marine Fisheries Service, 1201 NE Lloyd Blvd, Portland OR 97232
8. U.S. Fish and Wildlife Service, Bend Field Office, Attn: Nancy Gilbert, 63095 Deschutes Market Road, Bend, OR 97701
9. Columbia River Intertribal Fish Commission, Julie Carter,  
729 NE Oregon St, Ste 200, Portland OR 97232
10. US Fish & Wildlife Service, Gary Miller, 3502 Hwy 30, La Grande, OR 97850
11. NW Power Planning Council, Fish & Wildlife Division, Karl Weist  
851 SW Sixth Ave, Ste 1020, Portland OR 97204
12. Confederated Tribes of the Umatilla Indian Reservation, Carl Merkle or Jennifer Hudson  
PO Box 638, 73239 Confederated Way, Pendleton, OR 97801
13. National Marine Fisheries Service, Spencer Hovekamp  
3502 Hwy 30, La Grande, OR 97850

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

14. Rick Harvey, 84033 Hwy 216, Tygh Valley, OR 97063

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

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

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