

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number S-87207

Prior to the issuance of a permit, the Department must receive permit recording fees in the amount of \$400.00. Please include your application number on your check made out to the Oregon Water Resources Department.

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On June 25, 2008, Grand Ronde Community Water Association submitted an application to the Department for the following water use permit:

- Amount of Water: 0.36 cubic foot per second (CFS)
- Use of Water: quasi-municipal uses
- Source of Water: three unnamed springs, tributaries to Rock Creek
- Area of Proposed Use: Yamhill County within Sections 31 - 32, Township 5 South, Range 6 West, W.M.; Sections 27 - 28, 30 - 36, Township 5 South, Range 7 West, W.M.; Sections 25, 29 - 30, 32 - 36, Township 5 South, Range 8 West, W.M.; Sections 5 - 8, 15 - 22, 27 - 29, 32 - 34, Township 6 South, Range 6 West, W.M.; Sections 1 - 18, 21 - 24, 26 - 28; Township 6 South, Range 7 West, W.M.; Sections 1 - 6, 10 - 15, 23 - 24, 26, 32 - 35, Township 6 South, Range 8 West, W.M.; Sections 4 - 5, Township 7 South, Range 8 West, W.M.

On September 19, 2008, the Department mailed the applicant notice of its Initial Review, determining that *"the use of 0.36 CFS of water from three unnamed springs, tributaries to Rock Creek, for quasi-municipal use is not allowable, and it appears unlikely that you will be issued a permit."* The applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 23, 2008, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

On September 29, 2008, the applicant revised the season to November 1 through September 30.

In reviewing applications, the Department may consider any relevant sources of information, including the

following:

- any applicable basin program
- applicable statutes, administrative rules, and case law
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- any applicable comprehensive plan or zoning ordinance
- recommendations by other state agencies
- the Scenic Waterway requirements of ORS 390.835
- any comments received

Findings of Fact

Rock Creek and tributaries are classified only for domestic, commercial use for customarily domestic purposes not to exceed 0.01 CFS, livestock and public instream uses under OAR 690-502-0100(4)(b)(D).

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that water is not available for further appropriation (at an 80 percent exceedance probability) June 1 through October 31.

Because the proposed use is not allowed in the basin and water is not available during the full season requested, the applicant submitted a mitigation proposal. On January 28, 2013, the Department issued a Preliminary Determination proposing to approve Transfer T-10247 for 0.29 CFS for instream use June 1 through September 30. The Department finds Transfer T-10247 will provide satisfactory mitigation if the rate is limited to 0.29 CFS, the season is limited to June 1 through September 30 and the total volume of water pumped in any pumping season does not exceed 69 acre-feet for Application S-87207. No protest to the transfer preliminary determination was filed.

In accordance with OAR 690-033-0330, an interagency team reviewed this proposed use, including the mitigation proposal, for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality (DEQ), Fish and Wildlife (ODFW), and Agriculture. WRD and ODFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as indicated below.

The local watermaster (WRD) recommended the following:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the meter in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.

- C. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

ODFW recommended the following:

Water may be diverted only when Department of Environmental Quality sediment standards are being met.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

On April 17, 2013, ODFW confirmed that ODFW has an interest in protecting the instream water right on the South Yamhill River. It is ODFW's understanding that the draft permit will not injure the instream water right because the amount of water being withdrawn is equal to the amount of water being put instream with the tributary system and is during the same season. ODFW is in support of the Grand Ronde Community Water Association using surface water from three springs, tributary to Rock Creek, in conjunction with the imminent approval of T-10247 as mitigation. T-10247 puts an amount of water instream in Cow Creek, a tributary to Rock Creek, that is equal to that being withdrawn from springs above an anadromous fish barrier in Rock Creek. This is acceptable mitigation because not only is the fish habitat in Rock Creek and Cow Creek similar, but increased flow in Cow Creek also provides an additional benefit to ESA-listed winter steelhead rearing in the lower portions of the creek.

Senior water rights exist on three unnamed springs, tributaries to Rock Creek, and on downstream waters.

Three unnamed springs, tributaries to Rock Creek, are not within or above a State Scenic Waterway.

Conclusions of Law

Under the provisions of ORS 537.153, the Department must presume that a proposed use will not impair or be detrimental to the public interest if the proposed use is allowed in the applicable basin program established

pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is not allowed in the Willamette Basin Program.

Without mitigation, water is not available June 1 through October 31.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The application is in compliance with the State Agency Coordination Program regarding land use.

Because two of the four presumption criteria are negative, that the use is not allowed in the Willamette Basin Program and that without mitigation there is not water available, the required presumption has not been established.

OAR 690-310-0120(2)(b) states that when the presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors in ORS 537.170(8), and may make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest, and propose approval of the application with appropriate modifications or conditions.

To determine whether the proposed use will impair or be detrimental to the public interest, the factors in ORS 537.170(8), shown in bold below, have been considered as follows:

(a) Conserving the highest use of the water for all purposes, including irrigation, domestic use, municipal water supply, power development, public recreation, protection of commercial and game fishing and wildlife, fire protection, mining, industrial purposes, navigation, scenic attraction or any other beneficial use to which the water may be applied for which it may have a special value to the public.

There is a growing need for quasi-municipal water in this area. The service area for this application included tribal lands and development for the Grande Ronde Tribe. The tribe can develop land without going through county land use processes causing the need for additional water supply permits. Further, a permit, if issued, would be junior to existing water rights, including instream uses. As a result, the proposed use of water would conserve water for other uses, and allow the highest use of the water when it is available based on the relative priority of the water rights.

(b) The maximum economic development of the waters involved.

Quasi-municipal use facilitates economic development. The Grand Ronde Community Water

Association supplies water to the community which includes many businesses. These businesses contribute to the economic development of the area.

(c) The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control.

The applicant will control the water for quasi-municipal use, which is an umbrella use that allows several beneficial uses including, domestic, industrial, commercial, and irrigation purposes.

(d) The amount of waters available for appropriation for beneficial use.

Water is not available for the proposed use during the full period requested. However, Transfer T-10247 will provide satisfactory mitigation if the rate is limited to 0.29 CFS, the season is limited to June 1 through September 30 and the annual volume is limited to 69 acre-feet. Ground water is not available as an alternative option due to limited ground water availability in the area and problems with ground water quality in the area.

(e) The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved.

The draft permit contains the following condition: "This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end." In addition, the draft permit requires the applicant to measure and report their water use. Furthermore, the district has reported that they do not have enough water to waste water.

(f) All vested and inchoate rights to the waters of this state or to the use of the waters of this state, and the means necessary to protect such rights.

All vested water rights are protected by their respective priority dates, the prior appropriation system, and the Department's regulatory procedures. The surface waters of the Yamhill basin have been adjudicated.

(g) The state water resources policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534.

The proposed use is consistent with state water resources policy formulated under ORS 536.295 to 536.350, which govern classification of the waters in the state's basins. ORS 537.505 to 537.534 govern the appropriation of ground water and are not applicable to this application.

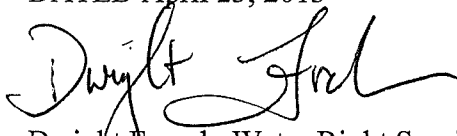
In addition to the factors in ORS 537.170(8), the Department has also considered the applicant's mitigation proposal, and concludes that Transfer T-10247 will provide satisfactory mitigation as long as the permit is limited as has been described above. These limitations have been incorporated into the draft permit.

The Department therefore concludes that, in accordance with OAR 690-310-0120(2)(b), although the presumption is not established, with mitigation and conditions in the attached draft permit, the proposed use will not impair or be detrimental to the public interest as provided in ORS 537.170.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED April 23, 2013



Dwight French, Water Right Services Division Administrator
for Phillip C. Ward, Director

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **June 7, 2013**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the Department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) the specific public interest in ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified public interest in ORS 537.170(8) would be impaired or be detrimentally affected;
- If you are the applicant, the protest fee of \$300 required by ORS 536.050; and

- If you are not the applicant, the protest fee of \$600 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.*

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **June 7, 2013**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$150. If a hearing is scheduled, an additional fee of \$350 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order

by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

This document was prepared by Dwight French. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0819.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF YAMHILL

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

GRAND RONDE COMMUNITY WATER ASSOCIATION
PO BOX 253
GRAND RONDE, OR 97347

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: S-87207

SOURCE OF WATER: THREE UNNAMED SPRINGS, TRIBUTARIES TO ROCK CREEK

PURPOSE OR USE: QUASI-MUNICIPAL USES

MAXIMUM RATE: 0.29 CUBIC FOOT PER SECOND. FURTHER LIMITED TO NO MORE THAN 69 ACRE-FEET IN ANY ONE PERIOD OF USE.

PERIOD OF USE: JUNE 1 THROUGH SEPTEMBER 30

DATE OF PRIORITY: JUNE 25, 2008

POINT OF DIVERSION (POD) LOCATIONS:

POD A: SW ¼ SW ¼, SECTION 33, T6S, R8W, W.M.; 960 FEET NORTH AND 945 FEET EAST FROM SW CORNER, SECTION 33

POD B: SE ¼ SW ¼, SECTION 33, T6S, R8W, W.M.; 1030 FEET NORTH AND 1420 FEET EAST FROM SW CORNER, SECTION 33

POD C: NW ¼ SW ¼, SECTION 33, T6S, R8W, W.M.; 1375 FEET NORTH AND 1115 FEET EAST FROM SW CORNER, SECTION 33

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Section 31
Section 32
T5S, R6W, WM

Section 27

Section 28
Section 30
Section 31
Section 32
Section 33

Section 34
Section 35
Section 36
T5S, R7W, WM

Section 25	NE ¼ NW ¼	Section 28
Section 29	NW ¼ NW ¼	T6S, R7W, WM
Section 30	SW ¼ NW ¼	
Section 32	NE ¼ SW ¼	Section 1
Section 33	NW ¼ SW ¼	Section 2
Section 34	SW ¼ SW ¼	Section 3
Section 35	Section 1	Section 4
Section 36	Section 2	Section 5
T5S, R8W, WM	Section 3	Section 6
	Section 4	Section 10
Section 5	Section 5	Section 11
Section 6	Section 6	Section 12
Section 7	Section 7	Section 13
Section 8	Section 8	Section 14
Section 15	Section 9	Section 15
Section 16	Section 10	Section 23
Section 17	Section 11	Section 24
Section 18	Section 12	Section 26
Section 19	Section 13	Section 32
Section 20	Section 14	Section 33
Section 21	Section 15	Section 34
Section 22	Section 16	Section 35
Section 27	Section 17	T6S, R8W, WM
Section 28	Section 18	
Section 29	Section 21	Section 4
Section 32	Section 22	T7S, R8W, WM
Section 33	Section 23	
Section 34	Section 24	
T6S, R6W, WM	Section 26	
NE ¼ NE ¼	Section 27	
NW ¼ NE ¼		

Note: Place of Use does not include area within the City of Willamina UGB.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. The permittee shall maintain the meter in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.
- C. The permittee shall allow the watermaster access to the meter; provided however, where any

meter is located within a private structure, the watermaster shall request access upon reasonable notice.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Mitigation water from Transfer T-10247, or a satisfactory replacement, must be legally protected instream for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

Water may be diverted only when Department of Environmental Quality sediment standards are being met.

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.

Notwithstanding that Oregon Department of Fish and Wildlife has made a determination that fish screens and/or by-pass devices are not necessary at the time of permit issuance, the permittee may be required in the future to install, maintain, and operate fish screening and/or by-pass devices to prevent fish from entering the proposed diversion, and to provide adequate upstream and downstream passage for fish.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and

any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

Dwight French, Water Right Services Division Administrator
for Phillip C. Ward, Director