



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

DAVID A ROGERS
RIVER REFUGE SEED LLC
26366 GAP RD
BROWNSVILLE, OR 97327-9720

December 13, 2013

Reference: File G-17734

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 an 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 appropriation of 0.59 cubic foot per second (CFS) of water from a well (LINN 60530 / L110988) in Courtney Creek Basin for irrigation of 47.5 acres and pond maintenance of five reservoirs under Application R-87865 March 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from a well (LINN 60530 / L110988) in Courtney Creek Basin for irrigation is allowable under the Willamette Basin Program. In addition, the appropriation of water for pond maintenance is allowable contingent upon the approval of Application R-87865.
4. Ground water will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights.

The Department has determined, based upon OAR 690-009, that the proposed ground water use will have the potential for substantial interference with Courtney Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available during the period August 1 through September 30. However, by providing additional information you may be able to pursue a limited permit. Please refer to the **Additional Information Opportunity** section below for details.

5. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.

Summary of Allowable Water Use

Because not all items above are favorable, the appropriation of 0.59 CFS of water from a well (LINN 60530 / L110988) in Courtney Creek Basin for irrigation of 47.5 acres and pond maintenance of five reservoirs under Application R-87865 March 1 through October 31 of each year is not allowable, and it appears unlikely that you will be issued a permit. However, by providing additional information you may be able to pursue a limited permit.

Additional Information Opportunity

If you would like to use water during the full season you have requested, you must amend your application to reduce the proposed rate to 0.21 CFS for irrigation and pond maintenance to avoid the potential for substantial interference with surface water.

If you would like to use water when it is available, you must submit information showing the proposed use requires water only during the limited period, and that you can make beneficial use of the water from March 1 through July 31.

Please submit the information no later than Thursday, January 16, 2014. 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.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, December 27, 2013**. 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 appropriation. The permittee shall maintain the meter or measuring device 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 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 or measuring device; provided however, where any meter or measuring device 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.
2. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
3. To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water level measurements reveal an average water level decline of three or more feet per year for five consecutive years; or
- B. Annual water level measurements reveal a water level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water level measurements reveal a water level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or senior water rights. The water user shall in no instance allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

- 2. Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

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: Kim French-Gorski, 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 "Kim French-Gorski".

Kim French-Gorski
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17734
WAB 2-76
POU 2-76
GW

APPLICATION FACT SHEET

Application File Number: G-17734

Applicant: DAVID ROGERS; RIVER REFUGE SEED LLC

County: Linn

Watermaster: 2

Priority Date: November 8, 2013

Source: A WELL (LINN 60530 L110988) IN COURTNEY CREEK BASIN

Use: IRRIGATION OF 47.5 ACRES AND POND MAINTENANCE OF FIVE RESERVOIRS UNDER APPLICATION R-87865

Quantity: 0.59 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 5 CALAPOOYA R MISC

Point of Diversion or Well Location(s): DLC 38 (NWNW), SECTION 7, T14S, R2W, W.M.;100 FEET SOUTH AND 55 FEET WEST FROM NE CORNER, DLC 38

Place of Use:

DLC 38, NW $\frac{1}{4}$ NW $\frac{1}{4}$ 4.7 ACRES
DLC 38, SW $\frac{1}{4}$ NW $\frac{1}{4}$ 8.2 ACRES
SECTION 7
TOWNSHIP 14 SOUTH, RANGE 2 WEST, W.M.

DLC 52, NE $\frac{1}{4}$ NE $\frac{1}{4}$ 13.5 ACRES AND POND MAINTENANCE
DLC 52, NW $\frac{1}{4}$ NE $\frac{1}{4}$ 4.6 ACRES AND POND MAINTENANCE
DLC 52, SW $\frac{1}{4}$ NE $\frac{1}{4}$ 8.6 ACRES AND POND MAINTENANCE
DLC 52, SE $\frac{1}{4}$ NE $\frac{1}{4}$ 7.9 ACRES AND POND MAINTENANCE
SECTION 12
TOWNSHIP 14 SOUTH, RANGE 3 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, December 27, 2013

PUBLIC NOTICE DATE: Tuesday, December 17, 2013

30 DAY COMMENT DEADLINE DATE: Thursday, January 16, 2014

Mailing List for IR Copies

Application #G-17734

IR Date: December 13, 2013

Original mailed to applicant:

DAVID A ROGERS RIVER REFUGE SEED LLC, 26366 GAP RD, BROWNSVILLE, OR 97327-9720

SENT VIA EMAIL:

1. WRD - Watermaster # 2
2. ODFW:
3. DEQ:

Copies sent to:

1. WRD - File # G-17734
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

3. Department of Agriculture

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
--

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

Agent - Don Knauer, PO Box 5416, Salem, OR 97304

Caseworker: Kim French-Gorski

VCOPYSHT.IR

**APPLICATION PROCESS DESCRIPTION FOR
GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR
APPLICATIONS**

In order to take and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for beneficial purpose - without waste. To become well-informed about water right topics, weekly public notice, forms and fees please visit our web site at www.wrd.state.or.us

1. Pre-application considerations

- follow instructions in the application packet
- if you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Information Group (WRIG) at 503-986-0801

2. Application filing

- application with fee is received by the Department
- Department determines completeness of application
- if use is not allowed by statute (ORS 538), the application and fees are returned to the applicant
- incomplete application and fees are returned to the applicant
- only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing

3. Initial Review (IR)

- caseworker reviews application by considering basin plans, water availability, statutory restrictions and all other appropriate factors
- caseworker sends IR report to applicant
- contact the caseworker if you have questions about the IR
- seven days after date of the IR, it is included in Department's weekly Public Notice
- public comments must be submitted within 30 days after the Public Notice
- **administrative hold** may be requested in writing by applicant

4. Proposed Final Order (PFO)

- caseworker evaluates application against required criteria and develops draft permit, if appropriate
- PFO includes instructions for filing of protests
- caseworker considers public comments and mails PFO to applicant
- the PFO is included in Department's weekly Public Notice
- public protests to the PFO must be submitted within 45 days after the Public Notice

Stop Processing deadline is within 14 days of Initial Review - use the form below

- applicant may request no further action and fee refund of all but \$225

**STOP PROCESSING REQUEST FOR
GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

Applicant notification to withdraw Water Right Application # _____

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$225 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application

Signature _____ date _____

Signature _____ date _____

Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$225 examination fee) be returned.

This notice must be received at Water Resources Department by _____

Return the notice to: OWRD, Water Rights Division

STOP PROCESSING

725 Summer Street, NE - Suite A

Salem OR 97301-1271

5. *Final Order (FO)*

- if no protest is filed, Final Order is issued

The protest process

If one or more protests are filed, permit process consists of:

- settlement discussion
- contested case hearing
- proposed order
- period of time to file exceptions
- possible hearing by Water Resources Commission
- final order issued

Permit holder responsibilities

- comply with all water use conditions of the permit
- advise Department of address change or assignment to new permit holder
- if need arises, request extension of time or authorize cancellation of permit
- submit timely claim of beneficial use (COBU) to Department
- most permits require COBU to be prepared by a Certified Water Right Examiner
- permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions