



May 8, 2015

FISCHER LIVING TRUST
WILMER FISCHER, TRUSTEE
13681 SW MORGAN RD
SHERWOOD, OR 97140

Reference: File S-88070

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 use of 0.01 cubic foot per second (CFS) of water from a spring, a tributary of Spring Creek, for year-round domestic use for one household.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from a spring, a tributary of Spring Creek, for domestic use is allowable under the Grande Ronde Basin Program (OAR 690-508-0040).
4. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
5. The application is subject to Section 4(d) of the Endangered Species Act.
6. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year.
7. The proposed use is located above the Wallowa-Grande Ronde Scenic Waterway, as designated under Oregon Revised Statute 390.826.
8. Due to requirements for existing water rights and/or minimum flows in a scenic waterway, surface water is not available in sufficient quantities to support the proposed use during the entire period requested. However, the use of water for human consumption from the proposed source may be considered a high public-interest use if there is no reasonable alternative.

By providing additional information you may request a limited permit for human consumption use (indoor use only: cooking, drinking, and sanitation) at 0.005 CFS,

further limited to 500 gallons per day. Please refer to the **Additional Information Opportunity** section below for details.

Summary of Allowable Water Use

Because not all items above are favorable, the use of 0.01 CFS of water from a spring, a tributary of Spring Creek, for year-round domestic use for one household is not allowable, and it appears unlikely that you will be issued a permit. However, by providing additional information you may request a limited permit for human consumption use (indoor use only: cooking, drinking, and sanitation) at 0.005 CFS, further limited to 500 gallons per day. At this time, you must decide whether to proceed or to withdraw your application as described below.

Additional Information Opportunity

Due to requirements for existing water rights and/or minimum flows in a scenic waterway, water is not available in sufficient quantities to support the proposed use. However, human consumption of water (indoor use only: cooking, drinking and sanitation) from the proposed source may be considered a high public-interest use if there is no reasonable alternative. If you can provide evidence that this is the case, we will work with the Oregon Department of Fish and Wildlife to attempt to determine conditions which will protect instream values during the months when instream flow requirements are not met. These conditions may include mitigation measures to offset the impact of the requested use.

Please complete and return the attached "Application Supplement for Human Consumption & Livestock Uses" form. **Please submit the information no later than Thursday, June 11, 2015.** 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 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 the application and receive a refund (minus a \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, May 22, 2015**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With Your Application:

If you choose to proceed with the 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 devices, and recording/reporting of annual water use 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 device in good working order.
 - B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes 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.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
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.

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/programs/NaturalResources/Pages/AgWaterQuality.aspx> to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to contact me at Barbara.J.Park@wrd.state.or.us or 503-986-0859 if you have any questions regarding the contents of this letter or your application. Please include your application number in all correspondence. 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: Barbara Park, 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 black ink, appearing to read "Barbara Park". The signature is fluid and cursive, with the first name "Barbara" and last name "Park" clearly distinguishable.

Barbara Park
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form
 Application Supplement for Human Consumption & Livestock Uses

S-88070
WAB 8-72034
POU 8-72034
GW

APPLICATION FACT SHEET

Application File Number: S-88070

Applicant: FISCHER LIVING TRUST/WILMER FISCHER, TRUSTEE

County: Wallowa

Watermaster: 7

Priority Date: April 7, 2015

Source: A SPRING, A TRIBUTARY OF SPRING CREEK

Use: DOMESTIC USE FOR ONE HOUSEHOLD

Quantity: 0.01 CUBIC FOOT PER SECOND

Basin Name & Number: Grande Ronde, #8

Stream Index Reference: Volume 2 SPRING CR & MISC

Point of Diversion: NESW SECTION 17, T2S, R44E, W.M.; NORTH 75 DEGREES, 23 MINUTES, 56 SECONDS WEST, 27.51 FEET FROM NE 1/16 CORNER, SECTION 17

Place of Use:

SW $\frac{1}{4}$ NE $\frac{1}{4}$
SECTION 17
TOWNSHIP 2 SOUTH, RANGE 44 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, May 22, 2015

PUBLIC NOTICE DATE: Tuesday, May 12, 2015

30 DAY COMMENT DEADLINE DATE: Thursday, June 11, 2015

Mailing List for IR Copies

Application #S-88070

IR Date: May 8, 2015

Original and map mailed to applicant:

FISCHER LIVING TRUST/WILMER FISCHER, TRUSTEE, 13681 SW MORGAN RD,
SHERWOOD, OR 97140

SENT VIA EMAIL:

1. WRD - Watermaster # 7
2. Applicant - BANDJFISCHER@GMAIL.COM
2. ODFW
3. DEQ

Copies sent to:

1. WRD - Water Availability: Shawn Ortiz-Turner

IR, Map, and Fact Sheet Copies sent to:

2. WRD - File # S-88070
3. Department of Agriculture

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

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

1. S. Keith & Janet L. Graham, 61138 Lime Quarry Rd, Enterprise, OR 97828
2. Patrick Gaston Simar et al, PO Box 297, Round Top, TX 78954
3. Fischer Revoc Liv Trust et al, 13681 SW Morgan Rd., Sherwood, OR 97140

Caseworker: Barbara Park

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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



File #: _____

Oregon Water Resources Department

Application Supplement for
Human Consumption & Livestock Uses

For water use permit applications within or above scenic waterways, or from streams for which water is not available due to required instream flows, the Department may issue limited permits for human consumption and livestock uses. Human consumption use is limited to 500 gallons per day for indoor use only for drinking, cooking, and sanitation, and does not include other uses such as lawn or garden watering or other related water uses.

In order to issue a permit to you for human consumption or livestock use, the Department must find that you cannot reasonably obtain water from any other source. For human consumption, an additional finding must be made that denial of the water right would result in loss of reasonable expectations for use of your property. For livestock use, additional findings must be made that issuance of a permit is necessary to prevent the livestock from watering in or along the stream bed and that you have excluded livestock from the stream and the adjacent riparian zone.

Please answer the following questions, and sign and return this form to Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266.

1. Can you reasonably obtain water from any other source? YES NO

If not, please describe why each of the following options are not reasonable:

- a. Groundwater, such as a well on yours or a neighbor's property. (If expense is the reason groundwater is not reasonable, please provide two estimates of the cost.)
- b. Securing stored water from upstream reservoirs.
- c. Trucking water. (If expense is the reason this option is not reasonable, please provide a copy of an estimate of the cost of trucking water.)

d. Community or municipal water suppliers.

e. Tying in to a neighboring property's spring.

g. Transferring existing water rights to your proposed use(s).

Please identify any other alternate water sources you have considered, and why they are not feasible:

2. If you are seeking a permit for **human consumption use**, would denial of your application result in loss of reasonable expectations for use of your property?
YES NO NOT APPLICABLE

If so, please describe how:

3. If you are seeking a permit for **livestock use**, is the proposed use necessary to prevent the livestock from watering in or along the stream bed?
YES NO NOT APPLICABLE

4. If you are seeking a permit for **livestock use**, have you excluded livestock from the stream and the adjacent riparian zone?
YES NO NOT APPLICABLE

Applicant Signature: _____

Date: _____

Applicant Signature: _____

Date: _____