Oregon Water Resources Department
Water Right Services Division

Water Rights Application
Number G-17861

Prior to the issuance of a permit, the Department must receive evidence demonstrating compliance with well construction standards for Well 1 (HARN 1704), which must be approved by the Department's Well Construction and Compliance Section. Please include your application number on any documents submitted to the Department.

Proposed Final Order

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

Findings of Fact

1. On May 15, 2014, Roaring Springs Ranch Inc submitted an application to the Department for the following water use permit:

   - Amount of Water: 3.09 cubic feet per second (CFS)
   - Use of Water: irrigation of 246.83 acres
   - Source of Water: Well 1 (HARN 1704) in Dry Creek Basin
   - Area of Proposed Use: Harney County within Section 22, Section 23, Section 26, and Section 27, Township 34 South, Range 31 East, W.M.

2. On October 3, 2014, the Department mailed the applicant notice of its Initial Review, determining that "*The appropriation of 3.09 CFS from Well 1 (HARN 1704) in Dry Creek Basin for irrigation of 246.83 acres is allowable March 1 through October 31, contingent upon the submittal of evidence demonstrating compliance with current minimum well construction standards for Well 1 (HARN 1704).*" The applicant did not notify the Department to stop processing the application within 14 days of that date.

3. On October 7, 2014, 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.

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
- any general basin-wide standard for flow rate and duty of water allowed

- the need for a flow rate and duty higher than the general standard
- 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
- designations of any critical ground water areas
- any comments received

4. The Department has determined that Well 1 (HARN 1704) does not meet current minimum well construction standards as described in Oregon Revised Statutes (ORS) 537.535 and Oregon Administrative Rules (OAR) 690-210. Prior to the issuance of a permit, evidence demonstrating compliance with well construction standards must be submitted to the Department, and the Department's Well Construction and Compliance Section must review and give written approval of the well construction. The Department's recommendation to approve the application is contingent upon evidence demonstrating compliance with well construction standards.[1]

5. The Malheur Lake Basin Program allows irrigation (OAR 690-510-0000).

6. An assessment of ground water availability has been completed by the Department's Ground Water/Hydrology section. A copy of this assessment is in the file. 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.

7. Ground Water Findings Under OAR 690-009
The Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will not have the potential for substantial interference with surface water.

   In making this determination, the Department considered whether:

   (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
   (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
   (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
   (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable,

[1]In repairing the well, the well owner should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. The well owner is encouraged to contact Joel Jeffery of the Department's Well Construction and Compliance Section at 503-986-0852 to determine how to proceed.

or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;

(e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

8. Well 1 (HARN 1704) in Dry Creek Basin is not within or above a State Scenic Waterway.

9. The Department finds that the amount of water requested, 3.09 CFS, is an acceptable amount.

10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

11. The proposed ground water use is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health 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.

1. The proposed use requested in this application is allowed in the Malheur Lake Basin Program.

2. Water is available for the proposed use.

3. The proposed use will not injure other water rights.

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

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

6. No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

(a) One or more of the criteria for establishing the presumption are not satisfied; or

(b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:

(A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and

(B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

7. In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

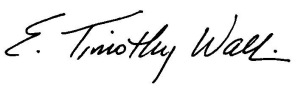
8. The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

9. When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

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

DATED July 21, 2015



E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, 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 **September 4, 2015**. 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, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(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 aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of $350 required by ORS 536.050; and
- If you are not the applicant, the protest fee of $700 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.

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 **September 4, 2015.** 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 $200. If a hearing is scheduled, an additional fee of $500 must be submitted along with a petition for party status.

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.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: http://legalassistance.law.af.mil

This document was prepared by Barbara Park. 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 Barbara.J.Park@wrd.state.or.us or 503-986-0859.

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.

STATE OF OREGON

COUNTY OF HARNEY

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROARING SPRINGS RANCH INC
31437 HWY 205
FRENCHGLEN, OR 97736

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

APPLICATION FILE NUMBER: G-17861

SOURCE OF WATER: WELL 1 (HARN 1704) IN DRY CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 246.83 ACRES

MAXIMUM RATE: 3.09 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: MAY 15, 2014

WELL LOCATION: NW ¼ SE ¼ SECTION 23, T34S, R31E, W.M.; 2553 FEET NORTH AND 10 FEET EAST FROM S1/4 CORNER, SECTION 23

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE ¼ SE ¼	8.36 ACRES
SE ¼ SE ¼	10.55 ACRES
SECTION 22	
SW ¼ NW ¼	7.54 ACRES
SE ¼ NW ¼	8.49 ACRES
NE ¼ SW ¼	39.93 ACRES
NW ¼ SW ¼	39.65 ACRES
SW ¼ SW ¼	40.0 ACRES
SE ¼ SW ¼	40.0 ACRES
NW ¼ SE ¼	10.99 ACRES
SW ¼ SE ¼	13.46 ACRES
SECTION 23	
NW ¼ NE ¼	0.17 ACRE
NE ¼ NW ¼	14.45 ACRES

NW ¼ NW ¼ 13.23 ACRES
SECTION 26

NE ¼ NE ¼ 0.01 ACRE
SECTION 27
TOWNSHIP 34 SOUTH, RANGE 31 EAST, W.M.

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, as approved by the Director, at each point of appropriation. 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.

Static Water Level Conditions

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

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. Measurements shall be submitted on forms provided by,

or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

A. Associate each measurement with an owner's well name or number and a Department well log ID; and
B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
C. Specify the method of measurement; and
D. Certify the accuracy of all measurements and calculations reported to the Department.

The Department may require the discontinuance of groundwater use, 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 restricted use shall continue until the water level rises above the decline level which triggered the action or 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 causing substantial interference with senior water rights. The water user shall not 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.

Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

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.

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.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

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.

The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, 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 downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

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.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

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.

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

E. Timothy Wallin, Water Rights Program Manager
for Thomas M. Byler, Director

Mailing List for PFO Copies

Application #G-17861 PFO Date July 21, 2015

Original mailed to applicant:

ROARING SPRINGS RANCH INC, 31437 HWY 205, FRENCHGLEN, OR 97736

SENT VIA EMAIL:
1. Agent - DARRYLA@ANDERSONENGINEERING.COM
2. WRD - Watermaster #10

Copies sent to:
1. WRD - File # G-17861

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

Protest/ Standing Dates checked _____

CASEWORKER : Barbara Park