

**Oregon Water Resources Department  
Water Rights Division**

Water Rights Application  
Number S-83451

**Proposed Final Order**

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

*Application History*

On June 16, 1997, RONALD G PAULSON submitted an application to the Department for the following water use permit:

- Amount of Water: 0.01 CUBIC FOOT PER SECOND
- Use of Water: DOMESTIC USE EXPANDED
- Source of Water: AN UNNAMED STREAM, A TRIBUTARY OF ALSEA RIVER
- Area of Proposed Use: LINCOLN County within

SECTION 33

TOWNSHIP 13 SOUTH, RANGE 10 WEST, W.M.

- Water Delivery System: GRAVITY FEED SYSTEM WITH FISH SCREENED DIVERSION THROUGH 1" PIPE FOR DOMESTIC USE EXPANDED

On 9/23/97, the Department mailed the applicant notice of its Initial Review, determining that THE USE OF 0.02 CUBIC FOOT PER SECOND FROM AN UNNAMED STREAM FOR DOMESTIC USE INCLUDING THE IRRIGATION OF ½ ACRE LAWN AND NON-COMMERCIAL GARDEN IS NOT AVAILABLE. IN ACCORDANCE WITH PUBLIC INTEREST FINDINGS A LIMITED PERMIT MAY BE ISSUED FOR THE FOLLOWING: THE USE OF 0.01 CUBIC FOOT PER SECOND FOR DOMESTIC USE INCLUDING THE IRRIGATION OF ½ ACRE LAWN AND NON-COMMERCIAL GARDEN IS ALLOWED FROM NOVEMBER 1 THROUGH MAY 31 OF EACH YEAR AND HUMAN CONSUMPTION ONLY IN THE AMOUNT OF 0.005 CFS FROM JUNE 1 THROUGH OCTOBER 31 IS ALLOWED. DURING THE MONTH OF OCTOBER ONLY THE WATER FROM THE POND MAY BE USED FOR HUMAN CONSUMPTION, ANY FLOW TO THE ALSEA RIVER IS NOT ALLOWED. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On 10/7/97, 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 both obtaining future notices and a copy of the proposed final order.

Within 30 days of the Department's public notice, written comments were received from THE OREGON DEPARTMENT OF FISH AND WILDLIFE REQUIRING INSTALLATION OF FISH SCREENS, BYPASS FOR FISH PASSAGE AND LIMIT THE USE TO HUMAN CONSUMPTION ONLY FROM JUNE 1 THROUGH SEPTEMBER 30. COMMENTS WERE RECEIVED FROM RONALD PAULSON STATING THAT AN ALTERNATE SOURCE OF WATER WAS NOT AVAILABLE OR FEASIBLE.

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

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

#### *Findings of Fact*

The Mid Coast Basin Program allows the following uses: DOMESTIC USE EXPANDED

Senior water rights exist on AN UNNAMED STREAM, A TRIBUTARY OF ALSEA RIVER or on downstream waters.

AN UNNAMED STREAM, A TRIBUTARY OF ALSEA RIVER is not within or above a State Scenic Waterway.

An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumption portion of all relevant rights of record. A copy of this assessment is in the file. This assessment determined that water is available for further appropriation (at an 80 percent exceedance probability) for the period NOVEMBER 1 THROUGH SEPTEMBER 30.

The Department finds that no more than 0.01 CUBIC FOOT PER SECOND would be necessary for the proposed use. The amount of water requested, 0.01 CUBIC FOOT PER SECOND, is allowable FROM NOVEMBER 1 THROUGH MAY 31, WITH HUMAN CONSUMPTION ONLY FROM JUNE 1 THROUGH OCTOBER 31, WITH WATER USED FROM THE POND ONLY DURING OCTOBER, WITH NO LIVE FLOW TO THE ALSEA RIVER ALLOWED DURING OCTOBER.

The Oregon Department of Fish and Wildlife has advised that one or more species of game fish are present at the described point of diversion.

Information obtained from the Department of Environmental Quality (DEQ) indicates that the source of water identified in the application is "Water Quality Limited." This designation indicates that water quality concerns exist. DEQ was provided with an opportunity to review this proposed use to determine if any additional conditions or restrictions are needed to protect the water quality.

DEQ did not make any recommendations for additional conditions or restrictions to be imposed on the proposed use for this application.

In accordance with OAR 690-33-330, an interagency team reviewed this proposed use 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, Fish and Wildlife (DFW), and Agriculture. WRD and DFW representatives included both technical and field staff.

The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

*And*

The permittee shall limit the use to Human Consumption from June 1 through September 30 of each year.

#### *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 allowed in the Mid Coast Basin Plan.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with rules of the Water Resources Commission.

The proposed use complies with the State Agency Agreement for land use.

For these reasons, the required presumption has been established.

Once the required presumption has been established, under the provisions of ORS 537.153(2) 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 will impair or be detrimental to the public interest as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
  - (A) The specific public interest under ORS 537.170(8) that would be impaired or detrimentally affected; and
  - (B) Specifically how the identified public interest would be impaired or detrimentally affected.

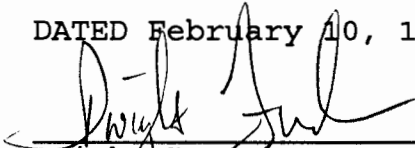
In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use will impair or be detrimental to the public interest.

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and 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 February 10, 1998

  
Dwight French  
Water Rights Section Manager

Protest Rights

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest 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 this 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; and

■ If you are not the applicant, the \$200 protest fee 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.

Your protest must be received in the Water Resources Department no later than March 27, 1998.

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 if

- 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.

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DRAFT

This is not a permit!!!

DRAFT

STATE OF OREGON

COUNTY OF LINCOLN

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

RONALD G PAULSON

PO BOX 633

NEWPORT, OREGON 97365

( 541)265-2739

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

APPLICATION FILE NUMBER: S-83451

SOURCE OF WATER: AN UNNAMED STREAM, A TRIBUTARY OF ALSEA RIVER

PURPOSE OR USE: DOMESTIC USE EXPANDED WITH HUMAN CONSUMPTION ONLY FROM JUNE 1 THROUGH OCTOBER 31

MAXIMUM RATE/VOLUME ALLOWED: 0.01 CUBIC FOOT PER SECOND NOVEMBER 1 THROUGH MAY 31, 0.005 CFS FROM JUNE 1 THROUGH OCTOBER 31

PERIOD OF USE: DOMESTIC USE EXPANDED FROM NOVEMBER 1 THROUGH MAY 31, WITH HUMAN CONSUMPTION ONLY FROM JUNE 1 THROUGH OCTOBER 31. HOWEVER IN OCTOBER USE IS ALLOWED FROM POND ONLY. NO LIVE FLOW IS ALLOWED IN OCTOBER.

DATE OF PRIORITY: June 16, 1997

POINT OF DIVERSION LOCATION: NE 1/4 SE 1/4, SECTION 33, 2000 FEET NORTH & 900 FEET WEST FROM THE SE CORNER, SECTION 33, T13S, R10W, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 SE 1/4

SE 1/4 SE 1/4

SECTION 33

TOWNSHIP 13 SOUTH, RANGE 10 WEST, W.M.

Measurement, recording and reporting conditions:

- A. The Director may require the permittee to install a meter or other suitable measuring device as approved by the Director. If the Director notifies the permittee to install a meter or other measuring device, the permittee shall install such device within the period stated in the notice. Such installation period shall not be less than 90 days unless special circumstances warrant a shorter installation period. Once installed, the permittee shall maintain the meter or measuring device in good working order and shall allow the watermaster access to the meter or measuring device. The

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PERMIT DRAFT

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

- B. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used and may require the permittee to report water use 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. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

Live flow may not be diverted during the month of October if the stream is flowing to the Alsea River.

#### STANDARD CONDITIONS

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

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.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Actual construction work shall begin within one year from permit

issuance. Complete application of the water to the use shall be made on or before October 1, 2002. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued \_\_\_\_\_, 199\_

DRAFT - THIS IS **NOT** A PERMIT

Water Resources Department  
Director

Application S-83451 Water Resources Department  
Basin 18 Volume 1A ALSEA R MISC  
DM WEEK 133 MGMT.CODE

PERMIT DRAFT  
District 16



# FO CHECKLIST

FILE # S 83451

REVIEW DATE: 5/13/98

PFO WEEK # 133

PFO TO FO CONVERSION

INITIALS: LKS

In preparing to create the FO, you should check the following:

1.  Y /  N Were comments or protests received? If so, from whom and when? ODFW 5-12-98
2.  On the PFO CC list, verify names and addresses of ALL commentors (regardless of comment date), affected landowners, and those who paid the \$10 fee.
3. Y / N /  NA Have affected landowners been notified?
4. Y /  N Is the file lacking a signed oath of accuracy for the application?
5. Y /  NA Has ODFW asked for self certification of screening condition? blank on the front of the file. If so, write "ODFW CERT" in the permit
6.  Y /  N Is water use prohibited for one or more months of the normal use period?  
conditional to allow
7.  Y /  N If # 6 = "Y", is short season letter on file? Note: If short season letter is lacking, see Item #10 below. Give applicant 60 days to submit required information.
8.  Verify payment of recording fees (circle the appropriate option)
 

(1)	Issue FO w/permit if fees are paid -- Prepare refund request for excess fees, including standing fees if no protest is filed and no modifications are being made to the PFO	200
(2)	Issue FO w/o permit if fees are lacking	125
		325 - Paid
9. Y /  N Is further processing possible? If not state reason: Map
10.  Notify applicant of additional information or fees required prior to permit issuance. (SEND CERTIFIED LETTER & use standard wording from M:\...\FO\TOOLS if possible)
11.  Assign permit numbers to files with oath, fees, and no protests or other issues
12. Y / N Do the PFO conclusions requires modification? Why? \_\_\_\_\_  
(If YES, circle FOMOD and one other type below)

FO Type: (circle types)	DENIAL	FO w/o PERMIT	FO & PERMIT	<input checked="" type="radio"/> FOMOD
COMMENTS:				MGMT CODES:

Once created, modify FO as needed to:

Initials LKS

13.  Respond to significant comments, issues, or disputes related to the proposed use of water (see notes, if any, listed above)
14.  Include or exclude permit conditions and management codes
15.  Correct PFO errors (such as POD or POU location (verify from map), Permit format)

Once FO document is completed:

16.  Save WordPerfect document in M:\GROUPS\WR\FO\WEEK \_\_\_\_\_ & delete duplicates
17.  Print final draft of document and submit to team leader for review
18.  Y /  N Team leader review completed