



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

September 2, 2016

R WILLIAM LAWSON COSSEBOOM
61 280 KAM HWY
HALEIWA, HI 96712

Reference: File G-18303

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 the water-use permit application and to describe the 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 supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed the appropriation of 0.05 cubic foot per second (CFS) of water from Well 1 (JACK 32815/59013/L98061) and Well 2 in Frog Creek Tributary Basin for year-round nursery use on 19.7 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are fully included in irrigation and agriculture uses, both of which are allowed under the Rogue Basin Program (OAR 690-515). Therefore, the appropriation of water from Well 1 (JACK 32815/59013/L98061) and Well 2 in Frog Creek Tributary Basin for nursery use is allowable.
4. Groundwater will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of groundwater will avoid injury to existing groundwater rights.

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

Surface water is not available at any time of year.

5. The proposed use is located above the Rogue Scenic Waterway, as designated under Oregon Revised Statute 390.826.

6. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
7. Frog Creek Tributary Basin is a tributary to Bear Creek. In accordance with the Order of the State Engineer dated January 22, 1959 (Special Order Vol. 9, Page 489), the waters of Bear Creek and its tributaries are withdrawn from further appropriation except for storage of water from November 1 through March 30 and the appropriation of stored water.
8. Although it is unlikely a permit will be issued, should the Department's findings change, before a permit can be issued, the Department must receive documentation that the proposed use complies with the local acknowledged comprehensive land-use plan. Please submit documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.

Summary of Initial Determination

Because not all items above are favorable, the appropriation of 0.05 CFS of water from Well 1 (JACK 32815/59013/L98061) and Well 2 in Frog Creek Tributary Basin for year-round nursery use on 19.7 acres is not allowable, and it appears unlikely that a permit will be issued unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order. At this time, you must decide whether to proceed or to withdraw the application as described below.

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, September 16, 2016**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With The Application:

If you choose to proceed with the application, you do not have to notify the Department. The 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 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.

2. Scenic Waterway Condition

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

3. Well Identification Tag Condition

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.

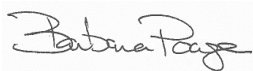
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. Be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of the application.

The water source identified in the 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 the proposed water use.

If you have any questions:

Feel free to contact me at Barbara.J.Poage@wrdd.state.or.us or 503-986-0859 if you have any questions regarding the contents of this letter or the application. Please include the 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 Poage, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Barbara Poage
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-18303
WAB 15-71207
POU 15-71207
GW

APPLICATION FACT SHEET

Application File Number: G-18303

Applicant: R WILLIAM LAWSON COSSEBOOM

County: JACKSON

Watermaster: 13

Priority Date: May 27, 2016

Source: WELL 1 (JACK 32815/59013/L98061) AND WELL 2 IN FROG CREEK TRIBUTARY BASIN

Use: NURSERY USE ON 19.7 ACRES

Quantity: 0.05 CUBIC FOOT PER SECOND

Basin Name & Number: Rogue, #15

Stream Index Reference: Volume 3 WALKER CR & MISC

Well Location(s):

WELL 1: SWNW SECTION 23, T38S, R2E, W.M.; 930 FEET NORTH AND 780 FEET EAST FROM W1/4 CORNER, SECTION 23

WELL 2: SWNW SECTION 23, T38S, R2E, W.M.; 538 FEET NORTH AND 860 FEET EAST FROM W1/4 CORNER, SECTION 23

Place of Use:

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 19.7 ACRES
SECTION 23
TOWNSHIP 38 SOUTH, RANGE 2 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 16, 2016

PUBLIC NOTICE DATE: Tuesday, September 6, 2016

30 DAY COMMENT DEADLINE DATE: Thursday, October 6, 2016

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 Customer Service Group 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
- four 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