



January 27, 2017

XP INVESTMENTS LLC  
ROSS HRNCIR  
PO BOX 966  
HALLETTSVILLE, TX 77964

Reference: File G-18350

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 1.96 cubic feet per second (CFS) of water from Well 1 (JACK 2914), Well 3 (JACK 2916), Well 4 (JACK 2913), Well 5 (JACK 2909), Well 6 (JACK 2908), and Well 7 (JACK 30158) in Hog Creek Basin for year-round nursery use on 78.2 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 six wells in Hog Creek Basin for nursery use is allowable.
4. Groundwater is over-appropriated will not likely be available within the capacity of the resource and/or without injury to existing groundwater rights.
5. The Department has determined, based upon OAR 690-009, that the proposed groundwater use will **not** have the potential for substantial interference with any surface water source.
6. The proposed use is located above the Rogue Scenic Waterway, as designated under Oregon Revised Statute 390.826.

7. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

### **Summary of Initial Determination**

**Because not all items above are favorable, the appropriation of 1.96 CFS of water from Well 1 (JACK 2914); Well 3 (JACK 2916); Well 4 (JACK 2913); Well 5 (JACK 2909); Well 6 (JACK 2908); and Well 7 (JACK 30158) in Hog Creek Basin for year-round nursery use on 78.2 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, February 10 2017**. For your convenience you may use the enclosed "STOP PROCESSING" form.

#### **To Proceed With The Application:**

##### **Additional Information Required**

Although it is unlikely that a permit will be issued, if the Department's findings change, additional information will be required prior to permit issuance. Please provide the following item:

- The land-use compatibility form submitted with your application indicates that the land uses to be served by this proposed use involve discretionary land-use approvals. As of April 24, 2016, those approvals were being pursued, but had not been obtained. Prior to the issuance of a permit, 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 1) the proposed use is allowed outright or 2) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.

**Please submit this information no later than Friday, February 10, 2017.** 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.

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 appropriation 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.

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 call me at 503-986-0808 if you have any questions regarding the contents of this letter or the application. Please have the 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: Lisa Graham, 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 blue ink, appearing to read 'L. Graham', with a long horizontal line extending to the right.

Lisa Graham  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-18350  
WAB 15- NO PSI  
POU 15- NO PSI  
GW

# APPLICATION FACT SHEET

Application File Number: G-18350

Applicant: XP INVESTMENTS LLC/ROSS HRNCIR

County: JACKSON

Watermaster: 13

Priority Date: JULY 22, 2016

Source: WELL 1 (JACK 2914), WELL 3 (JACK 2916), WELL 4 (JACK 2913), WELL 5 (JACK 2909), WELL 6 (JACK 2908), AND WELL 7 (JACK 30158) IN HOG CREEK BASIN

Use: NURSERY USE ON 78.2 ACRES

Quantity: 1.96 CUBIC FEET PER SECOND

Basin Name & Number: Rogue, #15

Stream Index Reference: Volume 1A ROGUE R MISC

Well Locations:

WELL 1 (JACK 2914): NWSW SECTION 27, T35S, R1W, W.M.; 74 FEET SOUTH AND 1080 FEET EAST FROM E1/4 CORNER, SECTION 28

WELL 3 (JACK 2916): NESE SECTION 28, T35S, R1W, W.M.; 944 FEET SOUTH AND 143 FEET WEST FROM E1/4 CORNER, SECTION 28

WELL 4 (JACK 2913): NESE SECTION 28, T35S, R1W, W.M.; 1238 FEET SOUTH AND 898 FEET WEST FROM E1/4 CORNER, SECTION 28

WELL 5 (JACK 2909): NESE SECTION 28, T35S, R1W, W.M.; 707 SOUTH AND 420 WEST FEET FROM E1/4 CORNER, SECTION 28

WELL 6 (JACK 2908): NESE SECTION 28, T35S, R1W, W.M.; 1158 SOUTH AND 470 WEST FEET FROM E1/4 CORNER, SECTION 28

WELL 7 (JACK 30158): NWSW SECTION 27, T35S, R1W, W.M.; 349 SOUTH AND 911 EAST FEET FROM E1/4 CORNER, SECTION 28

Place of Use:

NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  39.3 ACRES  
SECTION 27

NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  38.9 ACRES  
SECTION 28  
TOWNSHIP 35 SOUTH, RANGE 1 WEST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, February 10, 2017**

**PUBLIC NOTICE DATE: Tuesday, January 31, 2017**

**30 DAY COMMENT DEADLINE DATE: Thursday, March 2, 2017**

# 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](http://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