



Oregon

Kate Brown, Governor

Water Resources Department

North Mall Office Building

725 Summer Street NE, Suite A

Salem, OR 97301-1271

503-986-0900

FAX 503-986-0904

March 3, 2017

PORT OF MORROW
TWO MARINE DRIVE, PO BOX 200
BOARDMAN, OR 97818

Reference: File S-88289

Dear Applicant:

INITIAL REVIEW

THIS IS NOT A PERMIT AND IS SUBJECT TO CHANGE DURING 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 proposes diversion of 11.0 cubic feet per second (CFS) of water from Columbia River, a tributary to Pacific Ocean, for irrigation of 123,452.0 acres March 1 through November 1 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The diversion of water from Columbia River, a tributary to Pacific Ocean, for irrigation is allowable under the Columbia Basin Program (OAR 690-519-0000).
4. The Department conducted a water availability analysis and determined that surface water from Columbia River is available during the period requested.¹

¹ Water Availability Analysis means "the investigation of stream flow or groundwater measurement records, watermaster distribution records, flow requirements of existing water rights, stream flow modeling in ungauged basins, minimum perennial streamflows, or scenic waterway flow requirements to determine if water is available to support the proposed water use." OAR 690-300-0010(58). This analysis does not take into consideration flow levels or amounts that might be needed for fish. The Department's OAR 690-033 rules provide an opportunity to protect sensitive, threatened or endangered fish species.

5. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year. The proposed use is inconsistent with the Columbia River Basin Fish and Wildlife Program. However, if the use of water is inconsistent with the Fish and Wildlife Program, OAR 690-033-0120(4) allows mitigation if the mitigation is consistent with OAR 690-033-0120(2) and (3). The applicant has demonstrated intent to provide bucket-for-bucket mitigation of 11.0 CFS for the period April 15 through September 30 of each year at or above the point of impact for the life of the permit and subsequent certificate, consistent with OAR 690-033-0120. Prior to permit issuance, mitigation shall consist of an instream lease or temporary transfer of water instream at a rate equal to that which is requested under this application. Permanent mitigation is required prior to water right certificate issuance.
6. The application indicated irrigation of 96,612.0 acres; however the map indicated 123,452.0 acres. The Department will proceed with the acreage shown on the map.

Summary of Initial Determination

Not all items above are favorable. However, because the applicant is proposing full mitigation, the diversion of 11.0 CFS of water from Columbia River, a tributary to Pacific Ocean, for irrigation of 123,452.0 acres is likely allowable March 1 through October 31 of each year.

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 your application and receive a refund (minus a \$225 processing charge per application). To accomplish this you must notify the Department in writing by **March 17, 2017**. 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. 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.

Note: If the mitigation water has not been provided instream in accordance with the mitigation conditions outlined below by the time of issuance of the final order, the final order will include the following condition:

This Final Order is issued approving application S-88288 contingent upon the required mitigation being provided and protected instream prior to permit issuance. A permit consistent with the draft permit shall be issued only upon submission of documentary evidence demonstrating that WRD-approved mitigation has been provided instream. This

Final Order shall expire five years after issuance unless the required mitigation is provided. Additional time will not be granted to meet this condition.

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 with telemetry at each point of diversion from the Columbia River and any other location as directed by the Watermaster. In addition, each individual user is required to install a totalizing flow meter at each re-diversion point from the common delivery system (each turn-out) and other locations as may be required by the Watermaster. The measuring devices need to be approved by the Watermaster prior to installation. The permittee and individual landowners shall maintain the required devices in good working order.
 - b. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice. The Watermaster shall have real-time access to the measurement devices that are telemetered.
 - c. The permittee shall keep a complete record of the rate of flow and volume of water diverted and shall submit a report, which includes water-use measurements, to the Department annually and no later than February 14 of each year, or more frequently as may be required by the Director. Further, the Director shall require the permittee to report general water-use information, including the place and nature of use of water under the permit and documentary evidence that use of this water in conjunction with existing water rights for said lands did not exceed 3.5 acre feet (AF) per acre. The documentary evidence shall include a listing of how many acre-feet each individual user used along with the associated number of acres irrigated.
2. In the interest of preserving the groundwater supplies, water use described under this permit as supplemental to a groundwater right, may be used as the primary supply when surface water is available for use under this permit. If water under this permit is supplemental to a primary groundwater right, and the water under the permit is used as the primary supply, then the primary groundwater right cannot be transferred separately from the supplemental water under this permit to another place or character of use.
3. If water from this permit is used for supplemental irrigation, the pre-existing primary rights for the same place of use cannot be transferred to another place or character of use.
4. Once water from this permit is used on any lands for irrigation, those lands will be included in the claim of beneficial use. The claim of beneficial use must show all lands that received water under this permit.
5. Before water use begins, the permittee will certify to the Department the existence of fish screens at each point of diversion on the Columbia River that meet Oregon Department of Fish and Wildlife (ODFW) and National Oceanic and Atmospheric Administration

specifications for adequate protection of aquatic life, and will maintain fish screens as specified by ODFW for the life of the water right.

6. The amount of water used for primary or supplemental irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of not to exceed ONE-SIXTIETH of one cubic foot per second and 3.5 AF for each acre irrigated during the irrigation season of each year.
7. When submitting a claim of beneficial use, the permittee may request that water under this permit that is identified as supplemental in the permit be certificated as primary irrigation, if the underlying pre-existing primary water rights have been diminished to supplemental, canceled, or are deficient (i.e., where the underlying pre-existing primary water rights are deficient up to ONE-SIXTIETH of one cubic foot per second and/or deficient up to 3.5 acre feet for each acre irrigated during the irrigation season of each, unless a higher rate and/or duty is allowed per Condition 6 above).
8. As an irrigation right issued to a municipal corporation (defined in OAR-690-300-0010(28)), this permit is not eligible for municipal preferences found in ORS 537.190(2), 537.230(1), 537.410(2), and 540.510(3).

Mitigation Conditions required for the permit and subsequent certificate:

9. Mitigation water must provide full bucket-for-bucket replacement water at or above point of impact for the maximum instantaneous rate approved by the permit, April 15 through September 30 of each year.
10. For this permit, withdrawals will be considered mitigated and at or above the point of impact if:
 - a. Withdrawals within the McNary Dam pool up to River Mile 302 are mitigated with the maximum instantaneous rate approved by the permit above their points of withdrawal or anywhere between 2 miles below the McNary Dam at River Mile 290 up to River Mile 302.
 - b. Withdrawals within the upper John Day pool from River Mile 270 to McNary Dam are mitigated with the maximum instantaneous rate approved by the permit above their points of withdrawal or within the upper John Day pool between River Mile 270 and the McNary Dam (about River Mile 292).
11. Mitigation water must be legally protected instream for instream use, and must be maintained for the life of the permit and subsequent certificate(s).
12. Mitigation shall be in place prior to water use. Water use without mitigation in place is illegal use.
13. The Department will review and must approve all temporary and permanent mitigation associated with this permit and subsequent certificate. Mitigation must meet conditions 9, 10, 11, 12, and 16.

14. If the Department approved mitigation lapses for any reason, the permittee must immediately cease water use associated with failed mitigation. The Watermaster will regulate to reduce the diversion by the quantity **not** mitigated if the permittee fails to voluntarily reduce the diversion. Any reduction in mitigation will result in permanent diminishment of the permit by the amount that is equal to the reduction in mitigation unless the mitigation is replaced by WRD approved mitigation within three years. If the mitigation lapses in whole, the WRD will cancel the permit or subsequent certificate.
15. Replacement mitigation proposals shall be submitted to the Department in writing at least 60 days prior to the irrigation season. Replacement mitigation must meet the standards as laid out in conditions 9, 10, 11, 12, and 16.
16. Mitigation in accordance with condition #8 is required for the period March 1 through April 14. If mitigation is not provided for the periods March 1 through April 14, the permittee will only divert water when the 7-day rolling average of the mean daily gage height, or tailwater elevation, below Bonneville Dam is equal to or greater than the stage height set by the Action Agencies for that year (determined November and December). To monitor mean daily stage at this location the permittee will use the official project tailwater elevation gage - USGS gage station #14128870 Columbia River Below Bonneville Dam, OR. Real-time data from this station is available online at the United States Geological Survey (USGS) website: http://waterdata.usgs.gov/or/nwis/dv/?site_no=14128870&agency_cd=USGS&referred_module=sw. The permittee will maintain a spreadsheet of the 7-day rolling average of the mean daily gage height for the period when the permittee is withdrawing water, which will be available to the Department upon request. Any mitigation provided for the period March 1 through April 14 needs to be protected instream at a point or reach above Bonneville Dam located at approximately River Mile 146).
17. The permittee or subsequent certificate holder shall provide an annual report to the Department by February 14 of each year. Items "a" and "b" must be submitted for the life of the permit and certificate. The report must be submitted to the Water Right Services Division and the Watermaster and include the following:
 - a. Activity from the previous irrigation season: The permittee or certificate holder must report the total volume of water used in acre-feet for each use allowed under the permit, the total number of acres irrigated by each use and the instantaneous maximum amount (in CFS) pumped at the point(s) of diversion. A map shall be submitted showing the location of the acreage irrigated by quarter-quarter and whether the use was primary or supplemental. The Report shall include the total number of primary acres, supplemental acres and deficient water right acres that were served by the permit. The report shall also include documentary evidence² of mitigation water in place for the maximum instantaneous rate allowed by the permit for the previous year.
 - b. Planned activity for the next irrigation season: The permittee shall submit a map that indicates the location of acres to be irrigated by quarter-quarter. The map shall show underlying water rights and shall indicate which acres are going to be irrigated as primary

² Documentary evidence could include, for example, a copy of the final order approving an instream lease or transfer.

and as supplemental irrigation and show the locations of any additional uses authorized by the permit. The report shall also include documentary evidence of mitigation water for the full instantaneous rate of the permit that will be in place for the next year. The irrigation season will be delayed by one day for every day that the annual report is submitted late to the Department.

- c. Permanent mitigation is required within 30 years of permit issuance. Until permanent mitigation is in place, the permit holder shall include a report indicating the steps taken in the past year and planned for the next year to acquire permanent mitigation credits. This report is due annually on February 14 starting with the February 14 report that is between three and four years from the date of permit issuance.
18. In addition to existing enforcement mechanisms, if the Department determines that the permittee or certificate holder has exceeded the maximum authorized rate of diversion, the diversion of water will be reduced by an equal amount of water during the same time period as to when the infraction occurred the next year. Permanent mitigation is required to replace temporary mitigation within 30 years of permit issuance. This water right expires if permanent mitigation is not secured within 30 years of permit issuance.
19. Before proof can be made, permanent mitigation water must be legally protected instream. When the Department issues a certificate the rate will not exceed the amount of permanent mitigation that has been provided.

This initial review has attempted to address various public interest issues such as sensitive, threatened, or endangered fish species. However, the Department will be sharing this application and supporting materials with ODFW, DEQ, NOAA Fisheries, the Confederated Tribes of the Umatilla basin, and others for review and comment. Any new or additional issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. This may result in additional conditions of use or an additional mitigation obligation to protect the public interest. 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.

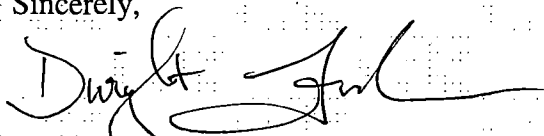
Standard conditions of use will also apply.

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/NRD/water_agplans.shtml 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 DwightW.French@Oregon.gov or 503-986-0819 if you have any questions regarding the contents of this letter or your 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: Dwight French, 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 "Dwight French", written in a cursive style.

Dwight French
Water Right Services Division Administrator

enclosures: Application Process Description and Stop Processing Request Form

S-88289
WAB 7-Columbia River
POU 7- Columbia River
GW

APPLICATION FACT SHEET

Application File Number: S-88289

Applicant: PORT OF MORROW

County: MORROW AND UMATILLA

Watermaster: 5

Priority Date: SEPTEMBER 12, 2016

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Use: IRRIGATION OF 123,452.0 ACRES

Quantity: 11.0 CUBIC FEET PER SECOND

Basin Name & Number: Umatilla, #7

Stream Index Reference: Volume 3A COLUMBIA R & MISC

Point of Diversion Location(s):

POD A: GOV'T LOT 7 (NENW), SECTION 2, T4N, R25E, W.M.; 150 FEET SOUTH AND 2990 FEET WEST FROM NE CORNER, SECTION 2

POD B: GOV'T LOT 7 (NENW), SECTION 2, T4N, R25E, W.M.; 150 FEET SOUTH AND 2990 FEET WEST FROM NE CORNE, SECTION 2

POD C: GOV'T LOT 3 (SWSE), SECTION 35, T5N, R25E, W.M.; 80 FEET NORTH AND 2480 FEET WEST FROM SE CORNER, SECTION 35

POD D: GOV'T LOT 4 (NWSW), SECTION 13, T5N, R27E, W.M.; 2400 FEET NORTH AND 330 FEET EAST FROM SW CORNER, SECTION 13

Place of Use:

- TOWNSHIP 2 NORTH, RANGE 26 EAST: SECTIONS 1, 12, AND 13
- TOWNSHIP 2 NORTH, RANGE 27 EAST: SECTIONS 1 THROUGH 13
- TOWNSHIP 2 NORTH, RANGE 28 EAST: SECTIONS 1, THROUGH 13
- TOWNSHIP 3 NORTH, RANGE 26 EAST: EAST HALF OF SECTION 14, SECTIONS 13, 24, 25, AND 36

- TOWNSHIP 3 NORTH, RANGE 28 EAST: SECTIONS 1 THROUGH 36
- TOWNSHIP 3 NORTH, RANGE 29 EAST: SECTIONS 6, 7, 17, 18, 19, 20, 29, 30, 31, AND 32; NORTHWEST QUARTER, SOUTHWEST QUARTER, AND SOUTHEAST QUARTER OF SECTION 5, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF, SOUTHEAST QUARTER OF SECTION 8, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 16, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER, WEST HALF OF SECTIONS 21, 28, AND 33
- TOWNSHIP 4 NORTH, RANGE 26 EAST: EAST HALF OF SECTIONS 1, 12, AND 13 AND NORTHEAST QUARTER OF SECTION 24
- TOWNSHIP 4 NORTH, RANGE 27 EAST: SECTIONS 1 THROUGH 36
- TOWNSHIP 4 NORTH, RANGE 28 EAST: SECTIONS 5, 6, 7, 18, 31, 32; WEST HALF AND NORTHEAST QUARTER OF SECTION 4, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF AND EAST HALF OF SECTION 8, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; NORTHWEST QUARTER OF SECTION 9, EXCEPTING THEREFROM ALL LANDS LYING EAST AND SOUTH OF THE CENTERLINE OF THE UMATILLA RIVER; EAST HALF OF SECTION 16, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTION 17, EXCEPTING THEREFROM ALL LANDS LYING SOUTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTION 19, EXCEPTING THEREFROM ALL LANDS LYING SOUTH OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 20, EXCEPTING THEREFROM ALL LANDS LYING SOUTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SOUTHEAST QUARTER OF SECTION 28, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SOUTH HALF AND NORTHWEST QUARTER OF SECTION 29, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE UMATILLA RIVER; SECTION 30, EXCEPTING THEREFROM ALL LANDS LYING NORTH AND EAST OF THE CENTERLINE OF THE UMATILLA RIVER; SECTIONS 33, 34, 35 AND 36, EXCEPTING THEREFROM ALL LANDS LYING NORTH OF THE CENTERLINE OF THE UMATILLA RIVER
- TOWNSHIP 4 NORTH, RANGE 29 EAST: SOUTHWEST QUARTER, NORTHWEST QUARTER AND SOUTHEAST QUARTER OF SECTION 31, EXCEPTING THEREFROM ALL LANDS LYING EAST AND NORTH OF THE CENTERLINE OF THE UMATILLA RIVER
- TOWNSHIP 5 NORTH, RANGE 27 EAST: SECTIONS 25, AND 32 THROUGH 36; SOUTHWEST QUARTER, SOUTHEAST QUARTER, SOUTH HALF AND NORTHEAST QUARTER OF NORTHEAST QUARTER OF SECTION 31

- TOWNSHIP 5 NORTH, RANGE 28 EAST: SECTIONS 29, 30, 31, 32; WEST HALF OF SECTION 28, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER; WEST HALF OF SECTION 33, EXCEPTING THEREFROM ALL LANDS LYING EAST OF THE CENTERLINE OF THE UMATILLA RIVER

14 DAY STOP PROCESSING DEADLINE DATE: Friday, March 17, 2017

PUBLIC NOTICE DATE: Tuesday, March 7, 2017

30 DAY COMMENT DEADLINE DATE: Thursday, April 6, 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

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