



May 12, 2017

TRIPLE 7 RANCH LLC  
PO BOX 787  
BAKER CITY, OR 97814

Reference: File R-88319

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 diversion of 129.5 acre feet (AF) of water from Cottonwood Creek, tributary of North Fork John Day River, and three (3) springs, tributary of Cottonwood Creek, for storage in six (6) reservoirs for irrigation, livestock, fire protection, fish life, wildlife, pollution abatement, and recreation.

Res #	Res Name	Dam Height (feet)	Storage Capacity (acre-feet)	Source	Irrigation	Livestock	Fire Protection	Fish Life	Wildlife	Pollution Abatement	Recreation
1	N1	0	12.4	Cottonwood Creek, tributary to North Fork John Day River	X	X	X	X	X	X	X

2	N2	0	14.0	Cottonwood Creek, tributary to North Fork John Day River	X	X	X	X	X	X	X
3	N3	0	9.5	Cottonwood Creek, tributary to North Fork John Day River	X	X	X	X	X	X	X
4	S1	5	56.6	A Spring, tributary to Cottonwood Creek	X	X	X	X	X	X	X
5	S2	0	15.3	A Spring, tributary to Cottonwood Creek	X	X	X	X	X	X	X
6	S3	0	21.7	A Spring, tributary to Cottonwood Creek	X	X	X	X	X	X	X

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The diversion of water from Cottonwood Creek, tributary of North Fork John Day River, and three (3) springs, tributary of Cottonwood Creek, for irrigation, livestock, fire protection, fish life, wildlife, pollution abatement, and recreation uses are allowable under the John Day Basin Program (OAR 690-506-0080).
4. Surface water is **not** available during the period July 1 through December 31.
5. The proposed use is located above the John Day Scenic Waterway (includes N Fk, Middle Fk, & S Fk John Day R), 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. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year.
8. The application is subject to Section 4(d) of the Endangered Species Act and as such, subject to review under OAR 690-033 by the Oregon Departments of Agriculture, Fish and Wildlife, and Environmental Quality.
9. The proposed reservoir site is subject to a wetland determination by the Department of State Lands.

### Summary of Initial Determinations

**The diversion of 129.5 AF of water from Cottonwood Creek, tributary of North Fork John Day River, and three (3) springs, tributary of Cottonwood Creek, for storage in six (6) reservoirs for irrigation, livestock, fire protection, fish life, wildlife, pollution abatement, and recreation is allowable, January 1 through April 14 of each year.**

Because of these favorable determinations, the Department can now move the application to the next phase of the water-rights application review process, where public interest factors will be evaluated.

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.

#### 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.

#### 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, May 26, 2017**. For your convenience you may use the enclosed "STOP PROCESSING" form.

#### If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement devices, and recording/reporting of annual water storage conditions:
  - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. 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 stored each month, and shall submit a report which includes water-storage 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. Diversion of water under this permit is contingent on designated scenic waterway flows being met downstream. The user is required to monitor streamflow at John Day River at McDonald Ferry, Oregon, gage 14048000, and discontinue diversion when the flows specified below are unmet at the gage. At the discretion of the Director, the location and nature of streamflow monitoring required to protect scenic waterway flows are subject to change. In addition, the watermaster may regulate diversion under this right if it is determined by the Department that the flows listed below are unmet at the gage.

John Day Scenic Waterway	
Month	Minimum Flow (cfs)
January	500
February	1000
March	2000
April	2000

3. The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (ODFW) standards. Fish screening is to prevent fish from entering the proposed diversion while by-pass devices provide adequate upstream and downstream passage for fish. The required screen and by-pass devices SHALL be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary. This permit is subject to cancellation proceeding if water use begins before installation of fish screening and/or by-pass devices.
4. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
5. The permittee shall pass all live flow outside the storage season.
6. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.
7. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
8. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

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 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 flourish extending to the right.

Lisa Graham  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

R-88319  
WAB 6-69946  
POU 6-69946  
GW

# APPLICATION FACT SHEET

Application File Number: R-88319

Applicant: TRIPLE 7 RANCH LLC

County: GRANT

Watermaster: 4

Priority Date: NOVEMBER 30, 2016

Source: COTTONWOOD CREEK, A TRIBUTARY OF NORTH FORK JOHN DAY RIVER,  
AND THREE (3) SPRINGS, TRIBUTARY OF COTTONWOOD CREEK

Use: IRRIGATION, LIVESTOCK, FIRE PROTECTION, FISH LIFE, WILDLIFE,  
POLLUTION ABATEMENT, AND RECREATION

Quantity: 129.5 ACRE FEET

Basin Name & Number: John Day, #6

Stream Index Reference: Volume 2 COTTONWOOD CR

Points of Diversion:

POD 2: NESW SECTION 18, T9S, R28E, W.M.; 4810 FEET NORTH AND 3820 FEET  
WEST FROM E1/4 CORNER, SECTION 19

POD 3: NWSW SECTION 19, T9S, R28E, W.M.; 1210 FEET NORTH AND 4270  
FEET WEST FROM E1/4 CORNER, SECTION 19

SPRING 1: NWSW SECTION 19, T9S, R28E, W.M.; 2550 FEET NORTH AND 4170  
FEET WEST FROM SE CORNER, SECTION 19

SPRING 2: NWSW SECTION 19, T9S, R28E, W.M.; 1580 FEET NORTH AND 4050  
FEET WEST FROM SE CORNER, SECTION 19

SPRING 3: SWSW SECTION 19, T9S, R28E, W.M.; 980 FEET NORTH AND 4110  
FEET WEST FROM SE CORNER, SECTION 19

Place of Use:

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$   
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$   
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$   
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$   
SECTION 18

NE  $\frac{1}{4}$  SW  $\frac{1}{4}$

NW  $\frac{1}{4}$  SW  $\frac{1}{4}$

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$

SECTION 19

TOWNSHIP 9 SOUTH, RANGE 28 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, May 26, 2017**

**PUBLIC NOTICE DATE: Tuesday, May 16, 2017**

**30 DAY COMMENT DEADLINE DATE: Thursday, June 15, 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 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