



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 27, 2017

RUSSELL JOHN KO
FINN CREEK FARMS
49536 MCKENZIE HWY
VIDA, OR 97488

Reference: File S-88463

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 0.125 cubic foot per second (CFS) of water from Ennis Creek, a tributary of Mckenzie River, for nursery use on 5.0 acres October 1 through June 1 of each year.
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 Willamette Basin Program (OAR 690-502-0080).
4. Surface water is available in the amount and for the full period requested.
5. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds
6. Because this application will have an impact on surface water flows where the Oregon Department of Fish and Wildlife (ODFW) has identified that sensitive, threatened or endangered fish are present, this application will be reviewed by at least ODFW and the Department of Environmental Quality in accordance with OAR 690-033 rules. This review could have an impact on the eventual outcome of your application. This review could cause your application to be proposed for denial, the season of use to be shortened or impacted in some other way when the Department issues a proposed final order at the next stage of processing.

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

Summary of Initial Determinations

The diversion of 0.125 CFS of water from Ennis Creek, a tributary of Mckenzie River, for nursery use on 5.0 acres is allowable during the full period requested, October 1 through June 1 of each year, contingent upon submittal of an updated map.

Additional Information Required

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following item:

- The map submitted does not meet the requirements of OAR 690-310-0050(4)(c). The number of acres to be used for each use in each quarter-quarter section must be clearly indicated on the map and identified by shading or hatching. The application map shows 22.00 acres and the application requests 5.0 acres. On the enclosed copy of your application map, please show the number of acres to be used in each quarter-quarter section by shading or hatching.

Please submit this information no later than Thursday, November 30, 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 **Thursday, November 30, 2017**, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

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 \$260 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, November 10, 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 Use 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 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. Based on the application materials and subsequent correspondence, the Department understands that groundwater will be pumped into a pond for *temporary storage*, and will ultimately be used for irrigation/nursery use. Temporary storage in a reservoir that does not exceed 10 days between irrigation sets, temperature control applications, or agriculture spray applications is considered a bulge-in-the-system, and does not require a permit for storage.
3. Irrigation allowed under this permit shall be by drip irrigation or by an equally efficient method.
4. 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.

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', followed by a horizontal line.

Lisa Graham
Water Right Application Specialist

enclosures: Application Process Description and Stop Processing Request Form

S-88463
WAB 2-529
POU 2-529

APPLICATION FACT SHEET

Application File Number: S-88463

Applicant: RUSSELL JOHN KO/FINN CREEK FARMS

County: LANE

Watermaster: 2

Priority Date: OCTOBER 4, 2017

Source: ENNIS CREEK, A TRIBUTARY OF MCKENZIE RIVER

Use: NURSERY USE ON 5.0 ACRES

Quantity: 0.125 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, #2

Stream Index Reference: Volume 2 MCKENZIE R

Point of Diversion: SWNE SECTION 11, T17S, R3E, W.M.; 1560 FEET SOUTH AND 30 FEET EAST FROM N1/4 CORNER, SECTION 11

Place of Use:

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 5.0 ACRES
SECTION 11
TOWNSHIP 17 SOUTH, RANGE 3 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, November 10, 2017

PUBLIC NOTICE DATE: Tuesday, October 31, 2017

30 DAY COMMENT DEADLINE DATE: Thursday, November 30, 2017

Mailing List for IR Copies

Application #S-88463

IR Date: October 27, 2017

Original and map mailed to applicant:

RUSSELL JOHN KO
FINN CREEK FARMS
49536 MCKENZIE HWY
VIDA, OR 97488

SENT VIA EMAIL:

1. WRD - Watermaster # 2
2. ODFW
3. DEQ

Copies sent to:

1. WRD - Hydrographics

IR, Map, and Fact Sheet Copies sent to:

2. WRD - File # S-88463
3. Department of Agriculture

Copies Mailed

By: _____

(SUPPORT STAFF)

on: _____

(DATE)

Caseworker: Lisa Graham

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 \$260

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 \$260 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 \$260 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