

Oregon Water Resources Department

Water Right Services Division

Water Right Application R-88160 in the)
name of GWENN IOTT) PROPOSED FINAL ORDER
)

Summary: The Department proposes to issue an order approving Application R-88160 and a permit consistent with the attached draft permit.

Authority

The application is being processed in accordance with Oregon Revised Statute (ORS) 537.153 through 537.175, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 33, 300, 310, 400, 410, and Willamette Basin Program OAR 690-502. These statutes and rules can be viewed on the Oregon Water Resources website: <http://www.oregon.gov/owrd/pages/law/index.aspx>

The Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>

The Department shall presume that a proposed use will not impair or be detrimental to the public interest if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission. ORS 537.153(2); OAR 690-310-0110(1)

All four criteria must be met for a proposed use to be presumed to not impair or be detrimental to the public interest. When the criteria are met and the presumption is established, or if the proposed use can be modified or conditioned to meet the presumption criteria, the Department must further evaluate the proposed use, any comments received, information available in its files or received from other interested agencies and any other available information to determine whether the presumption is overcome. OAR 690-310-0120(3).

If the Department determines that the presumption is established and not overcome, the Department shall issue a proposed final order recommending issuance of the permit subject to any appropriate modifications or conditions.

FINDINGS OF FACT

Application History

1. On December 29, 2015, Gwenn Iott filed a complete application for the following water use:
Amount of Water: 5.80 acre-feet (AF)
Use of Water: storage for multiple purposes

County: Polk County

Location: within Sections 32 and 33, Township 6 South, Range 5 West, W.M.

Source of Water: an unnamed stream, tributary to Salt Creek; and Iott Pond, an enlargement of Permit R-14029

2. On September 15, 2017, the Department mailed the applicant notice of its Initial Review, determining that "The diversion of 5.80 AF of water from an unnamed stream, tributary of Salt Creek, for storage in Iott Pond, an enlargement of Permit R-14029, is allowable November 1 through June 30 of each year." The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On September 19, 2017, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order

Presumption Criteria (a) Consistency with Basin Program

4. The Willamette Basin Program allows for storage November 1 to June 30. OAR 690-502-0040(4)

Presumption Criteria (b) Water Availability

5. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System (WARS). A copy of this assessment is in the application file. For this application, and for most reservoir applications, the Department uses WARS at 50% exceedance for determining water availability to provide a consistent method of avoiding periods of the year when flows are low and seldom exceed the needs of water rights and when additional flows are needed to support public uses. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established that surface water is available at a 50% exceedance in the months of November 1 to through June 30. ORS 537.153(3)(c); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

6. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0110(1)(c)

Presumption Criteria (d) Whether the Use Complies with Rules of the Commission

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b) ORS 537.153(2)(b); OAR 690-310-0110(2)(d)
8. The proposed use is in an area of the state in which OAR 690-033-0115 thru -0140, and OAR 690-033-0310 thru -00340 applies. These rules establish definitions, additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species.

OAR 690-033-0210 Lower Columbia Rules (Below Bonneville Dam)

9. The proposed use is located in the Willamette Basin, therefore the Lower Columbia Rules apply. OAR 690-033-0210(1)
10. The proposed use of water is not detrimental to the protection or recovery of a threatened or endangered species. OAR 690-033-0220(1)

11. The application is not presumed to impair or be detrimental to the public interest. OAR 690-033-0000(1)

OAR 690-033-0310 to -0340 Statewide Rules

12. The proposed use occurs in an area that may affect the habitat of sensitive fish species, and or outside the Columbia Basin, where, threatened or endangered fish species are located. OAR 690-033-0310
13. The applicant has been notified that based on a preliminary determination, the proposed use may affect the habitat of sensitive, threatened or endangered fish species and the application may be conditioned or denied. OAR 690-033-0330(1)(a)
14. The interagency review team (Team) has been notified that an application has been received in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0330(1)(b)
15. The Team reviewed the application and did not recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b).
16. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

Determination of Presumption that a Proposed Surface Water Use will not Impair or be Detrimental to the Public Interest

17. Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

Further Evaluation of the Proposed Use

18. Information available in department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not impair or be detrimental to the public interest under ORS 537.153. OAR 690-310-0120(3)

Other Criteria and Requirements

19. The proposed use is not located within or above a Scenic Waterway, as designated under ORS 390.826.
20. The amount requested, 5.80 AF, is necessary for the proposed use. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)
21. The applicant did not propose any measures to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. Measures addressing these requirements will be conditions on water use in the permit. OAR 690-310-0120(3)(b)(A)

CONCLUSION OF LAW

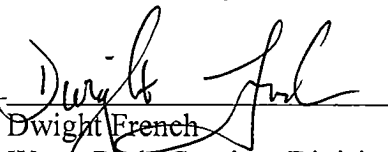
The proposed use would not impair or be detrimental to the public interest.

When issuing permits, ORS 537.170(6) authorizes the Department to include provisions or restrictions concerning the use, control and management of water to be appropriated for the project. The attached draft permit is conditioned accordingly.

PROPOSED ORDER

The Department recommends approval of Application R-88160 and issuance of a permit consistent with the attached draft permit.

DATED February 13, 2018



Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **Friday, March 30, 2018**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, impair or be detrimental to the public interest ORS 537.153(6) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.170(8) that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.170 (8) would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$810 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **Friday, March 30, 2018**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and

STATE OF OREGON

COUNTY OF POLK

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

GWENN IOTT
14060 SUNNYSIDE RD
DALLAS OR 97338

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: R-88160

SOURCE OF WATER: UNNAMED STREAM, TRIBUTARY TO SALT CREEK

STORAGE FACILITY: IOTT POND, ENLARGEMENT OF PERMIT R-14029

PURPOSE OR USE OF THE STORED WATER: ANY BENEFICIAL PURPOSE

MAXIMUM VOLUME: 5.80 ACRE-FEET

WATER MAY BE APPROPRIATED FOR STORAGE DURING THE PERIOD: NOVEMBER 1 THROUGH JUNE 30

DATE OF PRIORITY: DECEMBER 29, 2015

THE MAXIMUM DAM HEIGHT OF THE DAM SHALL NOT EXCEED 21.0 FEET

POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
6 S	5 W	WM	32	NE SE	1485 FEET SOUTH AND 2115 FEET WEST FROM SE CORNER, JOHN M EAST DLC 57

THE AREA TO BE SUBMERGED BY THE RESERVOIR IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q	Acres
6 S	5 W	WM	32	NE SE	7.21
6 S	5 W	WM	32	SE SE	
6 S	5 W	WM	33	NW SW	
6 S	5 W	WM	33	SW SW	

Measurement Devices, and Recording/Reporting of Annual Water Storage Conditions:

- A. The Director may require the permittee to install a measuring device at each point of diversion. If the Director notifies the permittee to install a measuring device, the permittee shall install such device within the period stated in the notice. Once installed, the permittee shall maintain the device in good working order, and shall allow the watermaster access to the device.
- B. The Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.
- C. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

A fishway to ensure adequate upstream and downstream passage for fish is required for any in-channel obstruction, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission.

DAM CONDITIONS

All construction shall be performed under the supervision by the engineer of record. If the engineer of record cannot supervise construction, the Water Resources Department dam safety engineer must be notified in writing, prior to construction activity, with the name of the engineer supervising construction.

No embankment fill shall be placed until preparation of the foundation and the excavation of the core trench has been completed and examined in entirety by the engineer of record, or by the Water Resources Dam Safety Engineer, or both.

The constructed works shall conform to the approved plans and specification on file with the Water Resources Dam Safety program. The engineer of record shall notify the Water Resources Dam Safety program before making any significant change to the approved design prior to or during construction.

No water shall be stored until the Water Resources Department receives written confirmation from the engineer of record that construction has been completed in accordance with the approved plans and specifications. Or, if final construction deviates from the approved design a set re producible as constructed drawings, including a revised reservoir capacity graph or table, must accompany the engineer's letter of completion.

Routine maintenance or repair of the dam, its spillway and all appurtenant structures shall be pre-formed to include, but not limited to, removal of woody or high vegetation from the embankment, abutments and spillway, removal of debris from the reservoir, and annual or more frequent cycling of the valve or gate for the low level conduit.

Repair or replacement of defective or worn out equipment (including but not limited to gates, valves, and conduits) shall be completed as needed to keep the dam safe.

If the dam is enlarged, modified or otherwise altered, this work must be based on design plans and specification prepared by a Registered Professional Engineer licensed in Oregon. These plans must be approved by the Water Resources Dam Safety program prior such alterations of the dam, its spillway or any appurtenant structure(s).

No valve shall be installed at the downstream end of the low level conduit, and the low level conduit shall not be operated in a pressurized condition unless the dam has been designed for pressurized operation by the design engineer. There must be operations manual for the dam that describes pressurized operation, and necessary inspections of pressurized conduits for the dam.

If used, flashboards shall be maintained in good condition, replaced as needed and removed as necessary prior to potential winter storms, or unusual rainfall or snowmelt events at any time of the year.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the riparian area is disturbed in the process of developing a point of diversion, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

The use of water allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the begin construction deadline is missed.

The permitted volume of water shall be stored within ten years of the date of permit issuance. If additional time is needed, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after storage of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

Dwight French
Water Right Services Division Administrator, for
Thomas M. Byler, Director
Oregon Water Resources Department