



Water Right Application Initial Review

February 23, 2018

SEUBERT EXCAVATORS INC.
PO BOX 57
COTTONWOOD ID 83522

Reference: R-88497

Application R-88497 proposes the storage of 2.1 acre-feet (AF) of water in South Reservoir from an unnamed stream, tributary to Malheur River which inundates 1.5 acres with a dam height of 45.0 feet for mining, January 1 through December 31 of each year.

Summary

Surface water may be available for the full period requested.

Because of the favorable determinations described herein, Application R-88497 can move to the next phase of the water-rights application review process, which includes a public interest review. This initial review does not 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. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

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At this time, you must decide whether to proceed or to withdraw the application.

Proceed

If you choose to proceed with the application you do not have to notify the Department. The application will 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.

Withdraw

You may withdraw the application and receive a refund (minus a \$260 processing charge per application). You must notify the Department in writing by **March 9, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Initial Review Preliminary Determinations (OAR 690-310-0080)

1. The application proposed the storage of 2.1 acre-feet (AF) of water in South Reservoir from an unnamed stream, tributary to Malheur River, which inundates 1.5 acres with a dam height of 45.0 feet for mining, January 1 through December 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The storage of water from unnamed stream, tributary to Malheur River, for mining is a use authorized under the Malheur Basin Program (690-510).
4. Based on a preliminary review, an analysis of water availability using the Department's Water Availability Reporting System is not possible for the proposed point(s) of diversion. Therefore, a site-specific determination must be made by the Watermaster. The results of that determination may affect the conclusions of the Proposed Final Order.
5. Surface water may be available for the full period requested, being from January 1 through December 31.
6. The proposed use is not located above a scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

If a Permit is Issued it will Likely Include the Following Conditions:

1. 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. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. You may be required to install, maintain, and operating fish screening and/or by-pass devices consistent with current 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 shall be in place and functional, and approved in writing by ODFW prior to diversion of water. The water user may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary. A permit is subject to cancellation proceeding if water use begins before installation of fish screening and or by-pass devices.

If you have any questions:

Feel free to contact me at scott.a.grew@oregon.gov or 503-986-0899 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. 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: Scott Grew, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Scott Grew
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
 R-88497
 WAB: n/a

APPLICATION FACT SHEET

Application File Number: R-88497

Applicant: SEUBERT EXCAVATORS INC.

County: MALHEUR

Watermaster: Ron Jacobs, District 9

Priority Date: JANUARY 12, 2018

Source: UNNAMED STREAM, TRIBUTARY TO MALHEUR RIVER

Use of the stored water: MINING

Storage Facility Name: SOUTH RESERVOIR

Storage Capacity: 2.1 ACRE-FEET

Basin Name & Number: Malheur, # 10

WAB: NONE

Dam Location:

Dam Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
SOUTH RESERVOIR	17 S	47 E	WM	19	NW SE	NORTH 73 DEGREES 17 MINUTES 28 SECONDS EAST, 830 FEET FROM SW CORNER, NWSE, SECTION 19	45.0	1.5

PUBLIC NOTICE DATE: February 27, 2018

14 DAY STOP PROCESSING DEADLINE DATE: March 9, 2018

30 DAY COMMENT DEADLINE DATE: March 29, 2018

APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information 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 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.
- An 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.
- **An 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.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is 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 the 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

STOP PROCESSING REQUEST FORM
FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR
APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.
- Applicant may request no further action and fee refund of all but \$260.
- Applicant notification to withdraw Water Right Application **R-88497**.
- 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:

March 9, 2018

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A,
Salem OR, 97301-1271
