



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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Water Right Application Initial Review

August 17, 2018

LEAF SARLYA
1585 COLESTIN RD
ASHLAND OR 97520

Reference: Application R-88597

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your 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 Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. The application proposes the diversion of 0.8 acre-foot (AF) of water from an unnamed stream, tributary to East Fork Cottonwood Creek, for storage in four (4) reservoirs described below, for domestic, livestock, recreation, and irrigation, January 1 through December 31 of each year.

Res Name	Dam Height (feet)	Storage Capacity (acre-feet)	Source	IR	LV	DO	RC
Upper Western Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X	X	
West Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X		
East Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X		X
Pond	8.0	0.5	E FK Cottonwood Creek	X	X		X

2. The application proposes dam heights of 5.0 feet each for West Creek Tank and East Creek Tank. The Department understands that this measurement is likely the height of the storage tank (from the ground?). If this is not correct please notify the Department, otherwise the application will move forward with a dam height for West Creek Tank and East Creek Tank of 0.0 feet.
3. The proposed use is not prohibited by law or rule except where otherwise noted below.
4. Under Oregon Revised Statute (ORS) 536.340(1)(a), the Water Resources Commission may establish a basin program to classify sources of water supply as to the highest and best use and quantities of use, and that classification of sources of water supply has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification. The

Commission has not established a basin program for the Klamath River Basin. Therefore, neither the proposed use nor the quantity of water is restricted as a result of this consideration.

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 surface water is available during the period October 1 to through June 30 of each year. ORS 537.153(3)(b); OAR 690-310-0180(1)(b)
6. The proposed use is not located within or above any state scenic waterway.
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)
8. See the **Additional Information Required /Opportunity** section below for deficiencies with the application.

Summary

The diversion of 0.8 AF of water from an unnamed stream, tributary to East Fork Cottonwood Creek, for storage in four (4) reservoirs as described below, for domestic, livestock, recreation, and irrigation, October 1 through June 30 of each year is allowable.

Res Name	Dam Height (feet)	Storage Capacity (acre-feet)	Source	IR	LV	DO	RC
Upper Western Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X	X	
West Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X		
East Creek Tank	0.0	0.1	E FK Cottonwood Creek	X	X		X
Pond	8.0	0.5	E FK Cottonwood Creek	X	X		X

Because of the favorable determinations described herein, Application R-88597 can move to the next phase of the water-rights application review process, which includes a public interest review.

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

The Department has rules (OAR 690-033) that establish 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. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will undergo additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be able to mitigate for potential impacts identified in the review.

Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring another water right. Following the Initial Review, you will be notified if mitigation is required. If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options.

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 fee per application). You must notify the Department in writing by **August 31, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Additional Information Required /Opportunity

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

1. The map submitted does not meet the requirement of OAR 690-310-0050(4)(a). Please provide a map that clearly shows the Dam (Pond) location by reference to a recognized public land survey corner. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).

The location identified on the map places the location for the Pond in the NENW Quarter-Quarter rather than the SWNW Quarter-Quarter 40 South, 2 East of Section 30 as stated on the map.

Please submit the requested information listed above no later than September 20, 2018. If we do not receive the items listed above by September 20, 2018, the Department may reject the application and may refund fees.

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. **Measurement Devices and Recording/Reporting of Annual Water Storage Conditions:**
 - A. The Director may require the permittee to install a staff gage that measures the entire range and stage between full reservoir level and dead-pool level in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. If the Director notifies the permittee to install a staff

gage, 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.

Standard Conditions

1. 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.
2. 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.
3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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.

If you have any questions:

Feel free to contact me at Elisabeth.A.Graham@oregon.gov or 503-986-0808 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: 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 black ink, appearing to be 'LJ', followed by a long horizontal line extending to the right.

Lisa Graham
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
R-88597
WAB: 31420613

APPLICATION FACT SHEET

Application File Number: R-88597

Applicant: LEAF SARLYA

County: JACKSON

Watermaster: SHAVON HAYNES, 13, SWR

Priority Date: JUNE 28, 2018

Source: AN UNNAMED STREAM, TRIBUTARY TO EAST FORK COTTONWOOD CREEK

Purpose or Use of the stored water: DOMESTIC, LIVESTOCK, RECREATION, AND IRRIGATION

Storage Facilities Name: UPPER WESTERN CREEK TANK, WEST CREEK TANK, EAST CREEK TANK, AND POND

Volume: 0.8 ACRE-FOOT, BEING 0.1 AF IN UPPER WESTERN CREEK TANK, 0.1 AF IN WEST CREEK TANK, 0.1 AF IN EAST CREEK TANK, AND 0.5 AF IN POND

Basin Name & Number: KLAMATH, # 14

WAB: E FK COTTONWOOD CR > COTTONWOOD CR - AT STATE LINE

Points of Diversion:

POD	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
UPPER WESTERN CREEK POD	40 S	2 E	WM	30	NW NW	156 FEET SOUTH AND 30 FEET EAST FROM NW CORNER, SECTION 30
WEST CREEK POD	40 S	2 E	WM	30	SW NW	1579 FEET SOUTH AND 390 FEET EAST FROM NW CORNER, SECTION 30
EAST CREEK POD	40 S	2 E	WM	30	NE NW	92 FEET SOUTH AND 1775 FEET EAST FROM NW CORNER, SECTION 30
POND POD	40 S	2 E	WM	30	SW NW	1879 FEET SOUTH AND 537 FEET EAST FROM NW CORNER, SECTION 30

Dam Locations:

Res Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
UPPER WESTERN CREEK TANK	40 S	2 E	WM	30	NW NW	462 FEET SOUTH AND 250 FEET EAST FROM NW CORNER, SECTION 30	0.0	N/A
WEST CREEK TANK	40 S	2 E	WM	30	SW NW	1763 FEET SOUTH AND 381 FEET EAST FROM NW CORNER, SECTION 30	0.0	N/A
EAST CREEK TANK	40 S	2 E	WM	30	NE NW	353 FEET SOUTH AND 1971 FEET EAST FROM NW CORNER, SECTION 30	0.0	N/A
POND	40 S	2 E	WM	30	NE NW	636 FEET SOUTH AND 2041 FEET EAST FROM NW CORNER, SECTION 30	8.0	0.1

The Area to be submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
40 S	2 E	WM	30	NE NW
40 S	2 E	WM	30	NW NW
40 S	2 E	WM	30	SW NW

PUBLIC NOTICE DATE: August 21, 2018

14 DAY STOP PROCESSING DEADLINE DATE: August 31, 2018

30 DAY COMMENT DEADLINE DATE: September 20, 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 notification to withdraw Water Right Application **R-88597**.
- 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 processing fee) be returned.
- This notice must be received at Water Resources Department by:

August 24, 2018

- Return the notice to:

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