



**Oregon**  
Kate Brown, Governor

**Water Resources Department**  
725 Summer St NE, Suite A  
Salem, OR 97301  
(503) 986-0900  
Fax (503) 986-0904

## Superseding Water Right Application Initial Review

August 31, 2018

SEUBERT EXCAVATORS INC.  
PO BOX 57  
COTTONWOOD ID 83522

Reference: Application R-88497

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 2.1 acre-feet (AF) of water from unnamed stream, tributary to Malheur River, for storage in South Reservoir, 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. Mining is an allowable use under the Malheur Basin Program (690-510-0010).
4. 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 January 1 to through December 31 of each year. Oregon Revised Statute (ORS) 537.153(3)(b); OAR 690-310-0180(1)(b)
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
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.

### Summary

The diversion of 2.1 AF of water from unnamed stream, tributary to Malheur River for storage in South Reservoir, for mining October 1 through April 14 of each year is allowable.

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.

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 **September 14, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

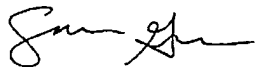
**If a Permit is Issued it will Likely Include the Following Conditions:**

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.

If you have any questions:

Feel free to contact me at [scott.a.grew@oregon.gov](mailto: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: None

# 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: September 4, 2018**

**14 DAY STOP PROCESSING DEADLINE DATE: September 14, 2018**

**30 DAY COMMENT DEADLINE DATE: October 4, 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](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 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**

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- Stop processing deadline is within 14 days of Initial Review.
- 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 processing fee) be returned.
- This notice must be received at Water Resources Department by:

**September 14, 2018**

- Return the notice to:

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

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