

Oregon Water Resources Department

Water Right Services Division

Water Right Application S-88296 in the)
name of BRAELEE BIRTCH) PROPOSED FINAL ORDER
)

Summary: The Department proposes to issue an order approving Application S-88296 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 the Umpqua Basin Program OAR 690-516. These statutes and rules can be viewed on the Oregon Water Resources Department's 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 September 30, 2016, Braelee Birtch filed a complete application for the following water use:
Amount of Water: 0.01 cubic foot per second (CFS)
Use of Water: domestic use expanded for one household
County: Douglas County
Location: within Section 23, Township 26 South, Range 6 West, W.M.
Source of Water: North Umpqua River, tributary to Umpqua River
2. On June 23, 2017, the Department mailed the applicant notice of its Initial Review, determining that **"The diversion of 0.01 CFS of water from North Umpqua River, a tributary of Umpqua River, for year-round domestic use expanded for one household is allowable."** The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On June 27, 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.
4. On July 12, 2018, the agent clarified the measured distance of the POD as follows: 1270 FEET NORTH AND 1260 FEET WEST FROM SE CORNER, SECTION 23.

Presumption Criteria (a) Consistency with Basin Program

5. The proposed use is allowed under the Umpqua Basin Program (OAR 690-516-0005). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

6. An assessment of water availability has been completed, a copy of which is in the file. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. The assessment determined water is not available for further appropriation (at 80 percent exceedance probability) because water has been fully appropriated by senior water rights. However, pursuant to a settlement agreement entered into by the Oregon Water Resources Department, Oregon Department of Fish and Wildlife, and Douglas County, seven (7) cubic feet per second (CFS) of additional water is available for human consumption, domestic, domestic expanded, industrial, commercial, irrigation, and agricultural use. As of the date of this application, 1.29 CFS of the total 4.0 CFS for human consumption, domestic, or domestic use expanded has been appropriated. ORS 537.153(2); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

7. The proposed use will not injure other water rights. ORS 537.153(2); OAR 690-310-0150(2)(e)

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

8. 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)

9. The proposed use is in an area of the state in which OAR 690-033-0310 thru -0340 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.

690-033-0310 Statewide Rules

1. The proposed use occurs occur in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)
2. 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 690-033-0310(1)(a)
3. The interagency review 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)
4. The interagency review team was convened to review the application and recommended conditions as necessary to achieve the standards listed in 690-033-0330(2)(a) and (b). The draft permit has been conditioned accordingly.

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

10. 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

11. No comments were received by the close of the comment period. OAR 690-310-0120(3)
12. 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

13. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.
14. The amount requested, 0.01 CFS, is necessary for the proposed use.
15. The applicant proposed to apply water when needed and use the most efficient method of water application for the use requested. These measures are adequate at this time. OAR 690-310-0150(2)(j)

CONCLUSION OF LAW

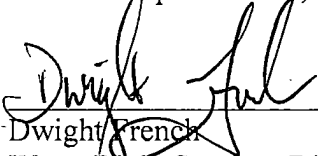
1. The proposed use would not impair or be detrimental to the public interest.

NOTE: 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 S-88296 and issuance of a permit consistent with the attached draft permit.

DATED September 11, 2018



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

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 by the Water Resources Department no later than **October 26, 2018**. Protests must be in writing and 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, a protest fee of \$410 required by ORS 536.050; and
- If you are not the applicant, a 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 **October 26, 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
- A standing fee of \$230. If a hearing is scheduled, an additional fee of \$580 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice Regarding Service Members: Active duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: <http://legalassistance.law.af.mil>

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- If you have any questions about statements contained in this document, please contact Lisa Graham at Elisabeth.A.Graham@oregon.gov or 503-986-0808.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Patricia McCarty at 503-986-0820.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0801.
 - Address any correspondence to : Water Right Services Division
725 Summer St NE, Suite A
Salem, OR 97301-1266
Fax: 503-986-0901
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STATE OF OREGON

COUNTY OF DOUGLAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

BRAELEE BIRTCH
2962 W HARVARD
ROSEBURG OR 97471

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

APPLICATION FILE NUMBER: S-88296

SOURCE OF WATER: NORTH UMPQUA RIVER, TRIBUTARY TO UMPQUA RIVER

USE: DOMESTIC USE EXPANDED FOR ONE HOUSEHOLD

MAXIMUM RATE: 0.01 CUBIC FOOT PER SECOND

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: SEPTEMBER 30, 2016

POINTS OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	6 W	WM	23	SE SE	1270 FEET NORTH AND 1260 FEET WEST FROM SE CORNER, SECTION 23

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
26 S	6 W	WM	23	SW SE
26 S	6 W	WM	23	SE SE

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

- A. Before water use may begin under this permit, the permittee shall install an in-line flow restrictor and 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 Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water-use 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 this permit.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
3. The permittee shall install, maintain, and operate fish screening and by-pass devices consistent with current Oregon Department of Fish and Wildlife (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 devices are to be in place and functional prior to diversion of any water. Permittee shall obtain written approval from ODFW that the installation of the required screen and by-pass devices meets the state's criteria or the permittee shall submit documentation that ODFW has determined screens and/or by-pass devices are not necessary.

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.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

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.

Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Issued

DRAFT - THIS IS NOT A PERMIT

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