

**Oregon Water Resources Department  
Water Right Services Division**

Water Right Application S-88391 in the )  
name of DOUGLAS COUNTY PARKS ) PROPOSED FINAL ORDER  
DEPARTMENT )

**Summary:** The Department proposes to issue an order approving Application S-88391 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 Department's website: <https://www.oregon.gov/OWRD/programs/policylawandrules/Pages/default.aspx>

The Department's main website can be viewed at [www.oregon.gov/owrd](http://www.oregon.gov/owrd)

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 April 13, 2017, Douglas County Parks Department filed a complete application for the following water use:

Source	NORTH UMPQUA RIVER, TRIBUTARY TO UMPQUA RIVER
Use	DOMESTIC USE EXPANDED FOR THREE HOUSEHOLDS
Rate	0.02 CUBIC FOOT PER SECOND (CFS)
County	DOUGLAS COUNTY
Location	SECTION 7, TOWNSHIP 26 SOUTH, RANGE 4 WEST, W.M.

2. On August 17, 2018, the Department mailed the applicant notice of its Superseding Initial Review, determining that "**The diversion of 0.02 CFS of water from North Umpqua River, tributary to Umpqua River, for the equivalent of year-round domestic use expanded for three households is allowable.**" The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On August 21, 2018, 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 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**

5. 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, 1.25 CFS of the total 4.0 CFS for human consumption, domestic, or domestic use expanded has been appropriated. Therefore, surface water is available in the amount and for the full period requested.

### **Presumption Criteria (c) Injury Determination**

6. 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**

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. **OAR 690-033-0310 Statewide Rules** – 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.
- a. 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)
  - b. 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)
  - c. 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 recommendations included the following:
    - i. Conditions to restore and enhance the riparian area, if disturbed when developing a point of diversion, along with conditions pertaining to fish screen and passage requirements. The draft permit has been conditioned accordingly.
    - ii. Households should be encouraged to implement voluntary water conservation measures to the maximum extent practicable during the months of July, August, September, and October. The applicant should develop a written water conservation plan and provide to the Water Resources Department within 60 days of the Final Order.
9. On May 7, 2019, the applicant provided a plan to manage and conserve water resources for the proposed use. Therefore, the condition requiring a water conservation plan has not been included in the attached draft permit.

**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's 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, 0.02 CFS, is necessary for the proposed use.

**CONCLUSION OF LAW**

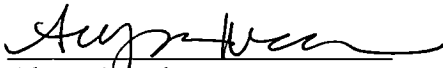
1. The proposed use would not impair or be detrimental to the public interest.

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-88391 and issuance of a permit consistent with the attached draft permit.

DATED June 25, 2019



Alyssa Mucken  
Water Rights Section Manager, 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 **August 9, 2019**. 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 **August 9, 2019**. 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.



DRAFT

**This is not a permit.**

DRAFT

STATE OF OREGON

COUNTY OF DOUGLAS

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DOUGLAS COUNTY PARKS DEPARTMENT  
1036 SE DOUGLAS AVE  
ROOM 116  
ROSEBURG OR 97470

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

APPLICATION FILE NUMBER: S-88391

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

PURPOSE OR USE OF THE WATER: DOMESTIC USE EXPANDED FOR THREE HOUSEHOLDS

MAXIMUM RATE: 0.02 CUBIC FOOT PER SECOND

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31 OF EACH YEAR

DATE OF PRIORITY: APRIL 17, 2017

POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
26 S	4 W	WM	7	SW SE	550 FEET NORTH AND 1900 FEET WEST FROM SE CORNER, SECTION 7

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
26 S	4 W	WM	7	SE SW
26 S	4 W	WM	7	SW SE
26 S	4 W	WM	18	NE NE
26 S	4 W	WM	18	NW NE
26 S	4 W	WM	18	SW NE
26 S	4 W	WM	18	SE NE
26 S	4 W	WM	18	NE NW
26 S	4 W	WM	18	SE NW
26 S	4 W	WM	18	NE SE
26 S	4 W	WM	18	NW SE

**1. Water Use Measurement, Recording, and Reporting Condition:**

- A. Before water use may begin under this permit, the permittee shall install an in-line flow restrictor 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 permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes water-use measurements to the Department annually, or more frequently as may be required by the Director. Further, the Director may require the permittee to report general water-use information, including the place and nature of use of water under the permit.
  - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. The permittee shall install, maintain, and operate fish screening and 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 devices are to be in place and functional, and approved in writing by ODFW prior to diversion of any water. The permittee may submit evidence in writing that ODFW has determined screens and/or by-pass devices are not necessary.
3. 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.
4. All water use under this permit shall comply with state and federal water quality laws. The permittee shall not violate any state and federal water quality standards, shall not cause pollution of any waters of the state, and shall not place or cause to be placed any wastes in a location where such wastes are likely to escape or be carried into the waters of the state by any means. The use may be restricted if the quality of source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards.

**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. 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, and is encouraged to implement voluntary water conservation measures to the maximum extent practicable during the months of July, August, September, and October.



3. 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.
4. 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.
5. 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.
6. 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.
7. 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.
8. Within one year after complete application of water to the proposed use, 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**

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

# Mailing List for PFO Copies

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Application S-88391

PFO Date June 25, 2019

**Original mailed via CERTIFIED MAIL to applicant:**

COUNTY OF DOUGLAS PARKS DEPARTMENT  
1036 SE DOUGLAS AVE  
ROOM 116  
ROSEBURG OR 97470

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

Protest/Standing Dates  
checked  
**08/09/2019**

**SENT VIA AUTO EMAIL:**

1. WRD - Susan Douthit - # 15
2. Rocky Houston, Douglas County Parks, [RLHOUSTON@CO.DOUGLAS.OR.US](mailto:RLHOUSTON@CO.DOUGLAS.OR.US)

**Copies sent to:**

3. WRD – File # S-88391
4. WRD – SW Section

Application Specialist: Barbara Park Poage