

Oregon Water Resources Department

Water Right Services Division

Water Right Application S-88593 in the)
name of DARRELL W. LINZY and) PROPOSED FINAL ORDER
LEWIS E. LINZY)

Summary: The Department proposes to issue an order approving Application S-88593 and a permit consistent with the attached draft permit.

Prior to the issuance of a permit, if one is issued, the Department must receive the following:

- **Permit recording fees in the amount of \$520.00. A check should be made out to the Oregon Water Resources Department or OWRD.**
- **Evidence that you have written authorization or an easement permitting access to lands not owned by you.**

Please include the application number on any documents submitted.

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 Mid Coast Basin Program OAR 690-518. 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 found at: <https://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 June 26, 2018, Darrell W. Linzy and Lewis E. Linzy filed a complete application for the following water use:

Source	A SPRING, TRIBUTARY TO FIVE RIVERS
Use	DOMESTIC USE EXPANDED FOR ONE HOUSEHOLD (INCLUDING IRRIGATION OF 0.5 ACRE LAWN AND GARDEN)
Rate	0.01 CUBIC FOOT PER SECOND (CFS)
County	LINCOLN COUNTY
Place of Use	SECTION 25, TOWNSHIP 14 SOUTH, RANGE 10 WEST, W.M.

2. On August 10, 2018, the Department mailed the applicant notice of its Initial Review, determining that **"The diversion of 0.01 CFS of water from a spring, tributary to Five Rivers for domestic use-expanded for one household (including irrigation of 0.5 acre lawn and garden) is allowable..."** The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On August 14, 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.
4. On July 5, 2019, the Department notified the applicant that, because water is not available during the full period requested, the diversion of 0.01 CFS for domestic use expanded was not allowable. However, the applicant could pursue a limited permit for human consumption use (indoor use only: cooking, drinking, and sanitation) at a rate of 0.005 CFS, further limited to 500 gallons per day.
5. On July 22, 2019, the Department received an Application Supplement for Human Consumption & Livestock Uses, stating that there are no other sources of water available for the proposed use.

Presumption Criteria (a) Consistency with Basin Program

6. The proposed use is allowed under the Mid-Coast Basin Program (OAR 690-518-0010(1)). ORS 537.153(2); OAR 690-310-0110(1)(a)

Presumption Criteria (b) Water Availability

7. An assessment of water availability at 80% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the electronic application file. This review is done consistent with OAR 690-410-0070(2)(a). The

assessment established that surface water is not available during the period May 1 through June 30 and August 1 through November 30 of each year. ORS 537.153(2); OAR 690-310-0150(2)(c)

Presumption Criteria (c) Injury Determination

8. 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

9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.153(2)(b); OAR 690-310-0150(2)(b)

10. 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.

OAR 690-033-0310 Statewide Rules

A. The proposed use occurs in an area that may affect the habitat of sensitive, threatened or endangered fish species. OAR 690-033-0310(2)

B. 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)

C. 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)

D. 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.

11. Based on the review of the presumption criteria (a)-(d) above, the presumption has **not** been established ORS 537.153(2); OAR 690-310-0110(1)(a)-(d)

12. OAR 690-310-120(2)(b) states that when the presumption is not established, the Department shall determine whether the proposed use will impair or be detrimental to the public interest considering the factors in ORS 537.170(8), and may make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest.

Further Evaluation of the Proposed Use

13. After considering various alternative water sources, including groundwater, stored water, purchased trucked water, community and municipal supplies, and transfer of existing water rights, there are no reasonable alternative sources of water.

14. Pursuant to ORS 537.170(8), the Department has considered the following factors:

- A. The maximum economic development of the waters involved: The applicants have demonstrated that denial of this application would result in loss of reasonable expectations for use of the property. OAR 690-310-0260(4)(c)
- B. The control of the waters of this state for all beneficial purposes, including drainage, sanitation and flood control: Human consumption use includes uses of water for sanitation (OAR 690-300-0010(24)). Because the applicants have no other reasonable source of water to provide sanitation to their home, human consumption use is necessary to provide the beneficial use of sanitation to the applicants.
- C. The amount of waters available for appropriation for beneficial use: Water is available human consumption use only during the full period requested.
- D. The prevention of wasteful, uneconomic, impracticable or unreasonable use of the waters involved: The use will be conditioned to require reasonable use of the water and installation of equipment to permit water use measurement and reporting.
- E. All vested and inchoate rights to the waters of this state or to the use of waters of this state, and the means necessary to protect such rights: Issuance of this right may increase the likelihood that water may not be available for all water rights.
- F. The State Water Resources Policy formulated under ORS 536.295 to 536.350 and 537.505 to 537.534: ORS 536.310(3) provides that "adequate and safe supplies be preserved and protected for human consumption use, while conserving maximum supplies for other beneficial uses." Because the proposed use is human consumption there is a preference for this use over all other uses.

15. Applying these factors one may conclude that the proposed use could increase the likelihood that water may not be available to all existing water rights (including those for the protection of fish and wildlife) because water is not available for the proposed use during the full period requested. However, because the proposed use is preferred above all other uses, is for sanitation, and will not be wasteful, uneconomic, impractical or unreasonable, and because denial of this application will result in the loss of reasonable expectations for use of the property, the public interest in the proposed use outweighs water availability concerns.

Other Criteria and Requirements

16. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826.

17. The amount requested, 0.01 CFS, is in excess of what is necessary for the proposed uses.

18. The amount allowed shall be limited to 0.005 CFS, and further limited to 500 gallons per day. ORS 537.153(3)(c); OAR 690-310-0150(2)(d)

19. The applicant proposed methods to measure the amount of water diverted, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream, or to prevent

damage to public uses of any affected surface waters. These measures are adequate at this time.
OAR 690-310-0150(2)(j)

20. No comments were received by the close of the comment period. OAR 690-310-0120(3)
21. The Department has determined that the proposed use will not impair or be detrimental to the public interest considering the factors in ORS 537.170(8), and even though the presumption is not established, the proposed use will not impair or be detrimental to the public interest.

CONCLUSION OF LAW

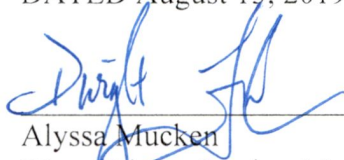
1. The proposed use would not impair or be detrimental to the public interest.

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-88593 and issuance of a permit consistent with the attached draft permit.

DATED August 13, 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 **September 27, 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 **September 27, 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.

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 Servicemembers: Active duty service members have a right to stay proceedings under the federal Servicemembers Civil Relief Act. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 503-584-3571, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>. The Oregon Military Department does not have a toll free telephone number.

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- If you have any questions about statements contained in this document, please contact Kim French at Kim.R.French@oregon.gov or 503-986-0816.
 - 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
Fax: 503-986-0901 Salem, OR 97301-1266
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STATE OF OREGON

COUNTY OF LINCOLN

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DARRELL W. LINZY
6017 NE 51ST AVE
VANCOUVER WA 98661

LEWIS E. LINZY
5952 E. FIVE RIVERS RD
TIDEWATER, OR 97390

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

APPLICATION FILE NUMBER: S-88593

SOURCE OF WATER: A SPRING, TRIBUTARY TO FIVE RIVERS

PURPOSE: HUMAN CONSUMPTION USE (INDOOR USE ONLY: COOKING, DRINKING, AND SANITATION)

MAXIMUM RATE: 0.005 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 500 GALLONS PER DAY

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: JUNE 26, 2018

POINT OF DIVERSION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	10 W	WM	25	NE SW	300 FEET SOUTH AND 1980 FEET EAST FROM W1/4 CORNER, SECTION 25

THE PLACE OF USE IS LOCATED AS FOLLOWS:

Twp	Rng	Mer	Sec	Q-Q
14 S	10 W	WM	25	NE SW

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

- A. Before water use may begin under this permit, the permittee shall install 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 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.

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. 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.
3. 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.
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 making beneficial use of water, 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

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

Mailing List for PFO Copies

Application S-88593

PFO Date August 13, 2019

Original mailed via CERTIFIED MAIL to applicant:

DARRELL W. LINZY
6017 NE 51ST AVE
VANCOUVER WA 98661

LEWIS E. LINZY
5952 E. FIVE RIVERS RD
TIDEWATER, OR 97390

SENT VIA AUTO EMAIL:

1. WRD - Nikki Hendricks - # 1

Copies sent to:

2. WRD – SW Division
3. ALO – U.S. Forest Service, Siuslaw National Forest, P.O. Box 400, Waldport OR 97394

PFO and Map sheet Copies to:

4. WRD – File # S-88593

Application Specialist: Kim French

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

Protest/Standing Dates
checked

09/27/2019
