



Water Right Application Initial Review

June 12, 2020

JOHNSON LIVESTOCK LLC
ATTN: BRENDON JOHNSON
79681 WOODCOCK RD
WAMIC OR 97063

Reference: Application R-88813

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:

Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. The application proposes the diversion of 68.5 acre-feet (AF) of water from Rock Creek and Threemile Creek, tributaries to White River; and North Fork of Gate Creek and an unnamed drainage, tributaries to Rock Creek, for storage in 14 reservoirs (described below) for livestock use, recreation, fish life, wildlife, and irrigation.

	Reservoir Name	AF	Dam Height (Feet)	Source			
				Rock Creek	Threemile Creek	N Fk Gate Creek	Unnamed Drainage
1	Pierce	8.0	15	X	X	X	
2	Lower Duckshack	8.1	9	X	X	X	
3	Duckshack North	8.9	10	X	X	X	
4	Duckshack South	8.0	12	X	X	X	
5	Upper Duckshack	5.7	11	X	X	X	
6	Woods	8.5	16	X	X	X	
7	Flood Field	0.7	5	X	X	X	
8	Grey Hill	2.7	9	X	X	X	
9	Ponderosa	7.3	11	X	X	X	
11	Valley 1	2.6	7	X	X	X	X
12	Valley 2 South	3.3	10	X	X	X	
13	Valley 2 North	1.1	8	X	X	X	X
14	Pub 2	1.1	6	X	X	X	
15	Valley Flood	2.5	9	X	X	X	X

2. The proposed use is not prohibited by law or rule except where otherwise noted below.

3. Livestock use, recreation, fish life, wildlife, and irrigation are allowable uses under the Deschutes Basin Program (OAR 690-505-0020(a)).
4. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established surface water is available during the period January 1 through June 30 of each year.
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 located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute 390.826.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Preliminary Determinations
<p>The diversion of 68.5 AF of water from Rock Creek and Threemile Creek, tributaries to White River; and North Fork of Gate Creek and an unnamed drainage, tributaries to Rock Creek, for storage in 14 reservoirs for livestock, recreation, fish life, wildlife, and irrigation is allowable January 1 through April 14 of each year, contingent on the submittal of additional required information.</p>

Because of the favorable determinations described herein, Application R-88813 can move to the next phase of the water-rights application review process, which includes a public interest review.

Additional Information Required:

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

- The maps submitted do not meet the requirements of OAR 690-310-0050(4)(a). Please provide maps that show the following:
 - The location of **each dam** 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 of the diversion points from the unnamed drainage for Reservoirs 11, 13, and 15. The locations may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).

Please submit this information no later than July 26, 2020. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need

additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

Public Comment & Further 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.

Division 33 Review – The Department's Division 33 administrative rules (OAR 690-033) 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 (STE) fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will now undergo an 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 required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – 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 an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to STE fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$670 required with any mitigation proposal submitted.

At this time, you must decide whether to proceed or to withdraw the application.

- To 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.
- To 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 **June 26, 2020**. 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.

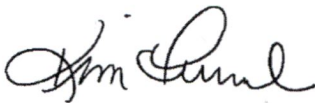
2. Water Use Measurement, Recording, and Reporting Condition:

- 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 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 the 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 may be required in the future to install, maintain, and operate fish screening and by-pass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

For Further Information:

Feel free to contact me at Kim.R.French@oregon.gov or 503-986-0816 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 503-986-0900. When corresponding by mail, please use this address: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
R-88813
WAB: 70088

APPLICATION FACT SHEET

Application File Number: R-88813

Applicant: JOHNSON LIVESTOCK LLC

County: WASCO

Watermaster: JEREMY GIFFIN, 11, SCR

Priority Date: MARCH 2, 2020

Source: ROCK CREEK AND THREEMILE CREEK, TRIBUTARIES TO WHITE RIVER; AND NORTH FORK OF GATE CREEK AND AN UNNAMED DRAINAGE, TRIBUTARIES TO ROCK CREEK

Purpose or Use of the stored water: LIVESTOCK USE, RECREATION, FISH LIFE, WILDLIFE, AND IRRIGATION

Volume: 68.5 ACRE-FEET TOTAL IN 14 RESERVOIRS

Basin Name & Number: Deschutes, # 5

WAB: WHITE R > DESCHUTES R - AT MOUTH

Points of Diversion:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Rock Creek	4 S	11 E	WM	14	SW SE	1000 FEET NORTH AND 1200 FEET EAST FROM S1/4 CORNER, SECTION 14
Threemile Creek	4 S	11 E	WM	10	NE NE	726 FEET SOUTH AND 528 FEET WEST FROM NE CORNER, SECTION 10
N Fork Gate Creek	4 S	11 E	WM	21	SE NE	1280 FEET NORTH AND 1500 FEET EAST FROM C1/4 CORNER, SECTION 21
Unnamed Drainage 1	4 S	12 E	WM	15	SE SE	NONE GIVEN
Unnamed Drainage 2	4 S	12 E	WM	16	NE SE	NONE GIVEN

Dam Location:

Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
RESERVOIR 11 (VALLEY 1)	4 S	12 E	WM	15	SE SE	NONE GIVEN	7	1.1
RESERVOIR 12 (VALLEY 2 SOUTH)	4 S	12 E	WM	15	SW SE	NONE GIVEN	10	0.9
RESERVOIR 13 (VALLEY 2 NORTH)	4 S	12 E	WM	15	SW SE	NONE GIVEN	8	0.4
RESERVOIR 14 (PUB 2)	4 S	12 E	WM	15	NE SW	NONE GIVEN	6	0.6
RESERVOIR 15 (VALLEY FLOOD)	4 S	12 E	WM	16	NE SE	NONE GIVEN	9	0.8

Reservoir Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height	Area Acres
RESERVOIR 5 (UPPER DUCK SHACK)	4 S	12 E	WM	21	SE SW	NONE GIVEN	11	1.3
RESERVOIR 6 (WOODS)	4 S	12 E	WM	21	SW SW	NONE GIVEN	16	1.3
RESERVOIR 7 (FLOOD FIELD)	4 S	12 E	WM	21	NE SE	NONE GIVEN	5	0.6
RESERVOIR 8 (GREY HILL)	4 S	12 E	WM	21	NW SE	NONE GIVEN	9	0.8
RESERVOIR 9 (PONDEROSA)	4 S	12 E	WM	21	NW SW	NONE GIVEN	11	2.6
RESERVOIR 2 (LOWER DUCK SHACK)	4 S	12 E	WM	21	SE SE	NONE GIVEN	9	2.7
RESERVOIR 3 (DUCKSHACK NORTH)	4 S	12 E	WM	21	SE SE	NONE GIVEN	10	2.3
RESERVOIR 4 (DUCKSHACK SOUTH)	4 S	12 E	WM	28	NE NE	NONE GIVEN	12	2.7
RESERVOIR 1 (PIERCE)	4 S	12 E	WM	28	NE NW	NONE GIVEN	15	4.3

The Area to be submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
4 S	12 E	WM	15	NE SW
4 S	12 E	WM	15	SW SE
4 S	12 E	WM	15	SE SE
4 S	12 E	WM	16	NE SE
4 S	12 E	WM	21	NW SW
4 S	12 E	WM	21	SW SW
4 S	12 E	WM	21	SE SW
4 S	12 E	WM	21	NE SE
4 S	12 E	WM	21	NW SE
4 S	12 E	WM	21	SE SE
4 S	12 E	WM	28	NE NE
4 S	12 E	WM	28	NE NW

PUBLIC NOTICE DATE: June 16, 2020

14 DAY STOP PROCESSING DEADLINE DATE: June 26, 2020

30 DAY COMMENT DEADLINE DATE: July 26, 2020

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-88813**.
- 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:

June 26, 2020

- Return the notice to:

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

Mailing List for IR Copies

Application R-88813

IR Date: June 12, 2020

Original and map mailed to applicant:

JOHNSON LIVESTOCK LLC
ATTN: BRENDON JOHNSON
79681 WOODCOCK RD
WAMIC OR 97063

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>On: _____ (DATE)</p>

Sent via auto email:

1. Applicant - brendon.m.johnson@gmail.com
2. WRD – Watermaster District #3, Robert L. Wood
3. WRD - Kyle Gorman SCR
4. ODFW
5. DEQ

Copies sent to:

1. WRD - File R-88813
2. WRD – SW Section
3. DSL – Wetlands Specialist
4. NW Power Planning Council Fish & Wildlife Division, Karl Weist, 851 SW Sixth Avenue, Ste 1020, Portland OR 97204
5. US Fish & Wildlife Service, Nancy Gilbert, 63095 Deschutes Market Road, Bend, OR 97701
6. National Marine Fisheries Service, Spencer Hovekamp, 3502 Hwy 30, La Grande, OR 97850
7. Confederated Tribes of the Warm Springs Reservation of Oregon, Robert Brunoe GM, Natural Resources, P.O. Box C, Warm Springs, OR 97761
8. Confederated Tribes of Umatilla Reservation, Eric Quaempts, Director Department of Natural Resources, 46411 Timine Way, Pendleton, OR 97801

Application Specialist: Kim French