



Water Right Application Initial Review

February 5, 2021

JONATHAN DAVID
16276 BARLOW DR
OREGON CITY OR 97045

Reference: Application S-88882

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 0.005 cubic foot per second (CFS) of water from North Tenmile Lake, tributary to Tenmile Creek, for year-round domestic use for one household.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Domestic use is allowable under the South Coast Basin Program (OAR 690-517-0000(3)).
4. An assessment of water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this assessment is in the application file. This assessment determined water is not available for further appropriation (at 80 percent exceedance probability) for domestic use/human consumption use due to senior water rights. However, water is available for a limited number of individual rights under a settlement agreement between the Oregon Department of Fish and Wildlife, Coos Bay North Bend Water Board, and Tenmile Lake Homeowners Association. That agreement provided for 740 additional human consumption rights at a maximum diversion rate of 0.005 CFS per household. As of the date of this application, twenty-two Water Right permits for human consumption have been issued. **Therefore, water is available if limited to human consumption use (indoor use only: cooking, drinking, sanitation), not to exceed 500 gallons per day per household.**
5. The proposed use is not located within or above any state scenic waterway.
6. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
7. See the **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations

The diversion of 0.005 CFS of water, further limited to 500 gallons per day, from North Tenmile Lake, tributary to Tenmile Creek, for year-round human consumption use (indoor use only: cooking, drinking, sanitation) for one household is allowable, contingent upon the submission of additional required information.

Because of the favorable determinations described herein, Application S-88882 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 permit approval. Please provide the following item(s):

- The map submitted does not meet the requirement of OAR 690-310-0050(4)(a). Please provide a map that shows the location of the point of diversion by reference to a recognized public land survey corner. The location may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).

Please submit the requested information listed above no later than March 11, 2021. If we do not receive the items listed above by March 11, 2021, the Department may reject the application and may refund fees.

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 **February 19, 2021**. 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.

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at <http://www.oregon.gov/ODA> to learn more about the plans and how they may affect the proposed water use.

If you have any questions:

Feel free to contact me at Elisabeth.A.Graham@oregon.gov or 503-986-0808 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: Lisa Graham, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Lisa Graham

Lisa Graham
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
S-88882
WAB: 31730401
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: S-88882

Applicant: JONATHAN DAVID

County: COOS

Watermaster: SUSAN DOUTHIT, 15, SWR

Priority Date: OCTOBER 14, 2020

Source: NORTH TENMILE LAKE, TRIBUTARY TO TENMILE CREEK

Purpose or Use: DOMESTIC USE FOR ONE HOUSEHOLD

Volume/ Rate: 0.005 CUBIC FOOT PER SECOND

Basin Name & Number: SOUTH COAST, # 17

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
23 S	12 W	WM	4	SE SW	NONE GIVEN

Place of Use:

Twp	Rng	Mer	Sec	Q-Q
23 S	12 W	WM	4	SE SW

PUBLIC NOTICE DATE: February 9, 2021

14 DAY STOP PROCESSING DEADLINE DATE: February 19, 2021

30 DAY COMMENT DEADLINE DATE: March 11, 2021

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 **S-88882**.

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:

February 19, 2021

- Return the notice to:

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