



Water Right Application Initial Review

April 23, 2021

BLAINE MESSERLE
63098 N BARRY RD
COOS BAY OR 97420

Reference: Application S-88928

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 an unnamed stream, tributary to Marlow Creek, for year-round human consumption use for one household.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Human consumption use is allowable under the South Coast Basin Program (OAR 690-517-0000(4)).
4. 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 application file. This review is done consistent with OAR 690-410-0070(2)(a). The assessment established, during the period of use requested, surface water is not available any time of the year.
5. Surface water is not available in the amount requested during the entire period requested. However, by providing additional information, you have requested a limited permit for human consumption use (indoor use only: cooking, drinking, and sanitation), limited to 500 gallons per day. Please refer to the **Additional Information** section below for details.
6. The proposed use is not located within or above any state scenic waterway.
7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations

The diversion of 0.005 CFS of water from an unnamed stream, tributary to Marlow Creek, for human consumption may be allowable, contingent upon the review of the additional information you provided.

Because of the favorable determinations described herein, Application S-88828 can move to the next phase of the water-rights application review process, which includes a public interest review.

Additional Information Opportunity

Due to requirements for existing water rights, water is not available in sufficient quantities to support the proposed use. However, human consumption of water (indoor use only: cooking, drinking and sanitation) from the proposed source may be considered a high public interest use if there is no reasonable alternative. We will review the information you provided and will work with the Oregon Department of Fish and Wildlife to attempt to determine conditions which will protect instream values during the months when instream flow requirements are not met. These conditions may include mitigation measures to offset the impact of the requested use.

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 **May 7, 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:**
 - 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.

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.

For Further Information:

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-88828
WAB: 72956
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: S-88828

Applicant: BLAINE MESSERLE

County: COOS

Watermaster: SUSAN DOUTHIT, 15, SWR

Priority Date: MARCH 11, 2021

Source: UNNAMED STREAM, TRIBUTARY TO MARLOW CREEK

Purpose or Use: HUMAN CONSUMPTION USE FOR ONE HOUSEHOD

Rate: 0.005 CUBIC FOOT PER SECOND

Basin Name & Number: SOUTH COAST, # 17

WAB: MARLOW CR > E FK MILLICOMA R - AT MOUTH

Points of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
25 S	11 W	WM	5	NE NE	1125 FEET SOUTH AND 1475 FEET WEST FROM NE CORNER, SECTION 5

Place of Use:

Twp	Rng	Mer	Sec	Q-Q
25 S	11 W	WM	5	NE NE

PUBLIC NOTICE DATE: April 27, 2021

14 DAY STOP PROCESSING DEADLINE DATE: May 7, 2021

30 DAY COMMENT DEADLINE DATE: May 27, 2021

Mailing List for IR Copies

Application S-88828

IR Date: April 23, 2021

Original and map mailed to applicant:

BLAINE MESSERLE
3098 N BARRY RD
COOS BAY OR 97420

Sent via auto email:

1. Applicant - alleganywd@gmail.com
2. WRD – Watermaster District #15, Susan M. Douthit
3. WRD - Jake Johnstone SWR
4. WRD – SW Section
5. ODFW
6. DEQ

Copies sent to:

1. WRD - File S-88828

Application Specialist: Lisa Graham

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

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-88828**.

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:

May 7, 2021

- Return the notice to:

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