



## FINDINGS OF FACT

### Application History

1. On April 30, 2018, Rock Creek Ranch Inc. filed a complete application for the following water use:

**Source:** WELL 2 (HARN 1669) IN ROCK CREEK BASIN  
**Use:** IRRIGATION OF 120.7 ACRES  
**Rate:** 2.01 CUBIC FEET PER SECOND (CFS)  
**Period of Use:** MARCH 1 THROUGH OCTOBER 31  
**County:** HARNEY COUNTY  
**Place of Use:** SECTION 13, TOWNSHIP 33 SOUTH, RANGE 29 EAST, W.M.

2. On July 13, 2018, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 0.88 CFS of water from Well 2 (HARN 1669) in Rock Creek Basin for irrigation of 70.1 acres is allowable March 1 to October 31 of each year. Conversely, the appropriation of 2.01 CFS of water from Well 2 (HARN 1669) in Rock Creek Basin for irrigation of 120.7 acres may be allowable, contingent upon resolution of the underlying conflict. The applicant did not notify the Department to stop processing the application within 14 days of that date.
3. On July 17, 2018, the Department noticed the application in its weekly public notice, requesting comments, and providing information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On May 28, 2019, the applicant's agent determined that Well 2, identified as HARN 1669, was identified incorrectly and submitted the correct well log, being HARN 52053, and a revised map, identifying the correct well location, for review.
5. The Department determined that the acreage conflict identified in the Initial Review could be resolved by reducing the rate to a total of 1.38 CFS, being 1.16 CFS for primary irrigation on 69.3 acres and 0.22 CFS for primary irrigation to make up a deficiency in rate on the conflicting 51.4 acres.
6. On March 23, 2021, the applicant's agent reduced the requested rate, as described above, to resolve the acreage conflict.

### Presumption Criteria (a) - Consistency with Basin Program

7. Irrigation is allowed under the Malheur Lake Basin Program (OAR 690-512-0010(1)). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)

### Presumption Criteria (b) - Water Availability

8. On February 20, 2021, a re-assessment of groundwater availability for well HARN 52053 was completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater will likely be available within the capacity of the resource, and if properly conditioned (and if authorized), the proposed use of groundwater will avoid injury to existing groundwater rights. ORS 537.621(3)(c); OAR 690-310-0150(2)(c)

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

9. The proposed use, if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e)

**Presumption Criteria (d) - Whether the use complies with rules of the Commission**

10. 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)
11. The Department has determined that the proposed groundwater use will not have the potential for substantial interference with surface water. ORS 537.621(3)(b); OAR 690-009-0040(4)
12. The proposed groundwater use is not located within a designated critical groundwater area. ORS 537.620(4)(a), 537.621(3)(a); OAR 690-310-0150(2)(a)

**Determination of Presumption that a proposed groundwater use will ensure the preservation of the public welfare, safety and health**

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g)

**Further evaluation of the proposed use**

13. No comments were received by the close of the comment period. OAR 690-310-0140(3)(a)
14. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not ensure the preservation of the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(3)

**Other Criteria and Requirements**

15. The proposed use is not located within or above a state scenic waterway, as designated under ORS 390.826. 537.621(3)(a); OAR 690-310-0150(2)(a)
16. The amount requested, 1.38 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d)
17. The applicant proposed methods to measure the amount of water appropriated, 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)
18. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

**CONCLUSIONS OF LAW**

1. The proposed use, as conditioned, would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

**PROPOSED ORDER**

The Department recommends approval of Application G-18665, as amended, and issuance of a permit consistent with the attached draft permit.

DATED August 31, 2021

**Alyssa Mucken**

Digitally signed by Alyssa Mucken  
Date: 2021.08.16 10:58:40 -07'00'

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 **October 15, 2021**.

**IMPORTANT:** Due to COVID-19, the Department's office is closed to walk-in services. The Department encourages the submission of protests by U.S. mail. Please consider mailing early to ensure the Department receives the protest by the deadline specified above.

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, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) 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 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 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 **October 15, 2021**. 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;



DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF HARNEY

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROCK CREEK RANCH INC.  
33123 ROCK CREEK LANE  
FRENCHGLEN OR 97736

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

APPLICATION FILE NUMBER: G-18665

SOURCE OF WATER: WELL 2 (HARN 52053) IN ROCK CREEK BASIN

| PURPOSE OR USE                                     | MAXIMUM RATE | ACRES |
|--|--------------|-------|
| PRIMARY IRRIGATION                                 | 1.16 CFS     | 69.3  |
| PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE | 0.22 CFS     | 51.4  |

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 30, 2018

AUTHORIZED POINT OF APPROPRIATION:

| POA Name | Twp  | Rng  | Mer | Sec | Q-Q   | Measured Distances  |
|----------|------|------|-----|-----|-------|---|
| WELL 2   | 33 S | 29 E | WM  | 13  | NW SE | 260 FEET SOUTH AND 220 FEET EAST FROM C1/4 CORNER, SECTION 13 |

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

AUTHORIZED PLACE OF USE:

| PRIMARY IRRIGATION |      |     |     |       |      |       |
|--------------------|------|-----|-----|-------|------|-------|
| Twp                | Rng  | Mer | Sec | Q-Q   | GLot | Acres |
| 33 S               | 29 E | WM  | 13  | NE SE | 3    | 5.5   |
| 33 S               | 29 E | WM  | 13  | NW SE |      | 16.0  |
| 33 S               | 29 E | WM  | 13  | SW SE |      | 26.1  |
| 33 S               | 29 E | WM  | 13  | SE SE | 4    | 21.7  |

| PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE |      |     |     |       |      |       |
|--|------|-----|-----|-------|------|-------|
| Twp  | Rng  | Mer | Sec | Q-Q   | GLot | Acres |
| 33 S   | 29 E | WM  | 13  | NE SE | 3    | 28.5  |
| 33 S   | 29 E | WM  | 13  | NW SE |      | 10.4  |
| 33 S   | 29 E | WM  | 13  | SE SE | 4    | 12.5  |

## PERMIT SPECIFIC 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. **Water Use Measurement, Recording, and Reporting:**
  - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. 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 used each month, and shall submit an annual report which includes the recorded 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.

3. **Static Water Level Measurement:**

The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and

- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the

#### 4. **Well Identification Tag:**

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

### **STANDARD CONDITIONS**

1. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
2. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The

Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

3. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to determine water-level elevation in the well at all times.
4. 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.
5. 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.
6. 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.

#### **DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS**

1. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.
2. Construction of the well 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 construction deadline to begin is missed.
3. 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.
4. 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**

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

# Mailing List for PFO/Draft Permit Copies

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Application G-18665

PFO Date August 31, 2021

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

ROCK CREEK RANCH INC.  
33123 ROCK CREEK LANE  
FRENCHGLEN OR 97736

Copies Mailed

By: \_\_\_\_\_

(SUPPORT STAFF)

on: \_\_\_\_\_

**Sent via auto email:**

1. Agent – John Short - johnshort@usa.com
2. WRD – Watermaster District #10, J R. Johnson
3. WRD - Jason Spriet ER

**Copies sent to:**

1. WRD - File # G-18665

Application Specialist: Kim French