

**JORDAN  
SCHRADER**

ATTORNEYS AT LAW

JORDAN SCHRADER RAMIS PC

VIA E-MAIL AND  
FIRST-CLASS MAIL

October 11, 2007

Phil Ward  
Director  
Oregon Water Resources Department  
725 Summer St NE Ste A  
Salem OR 97301-1271

Re: **Cougar Creek Water Company's Request for a Basin Program  
Exception under ORS 536.295(1)(c) and/or (f)**  
Our File No. 49586-35887

STEVEN L. SHROPSHIRE

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Oregon and Washington

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Dear Director Ward:

Our office represents Cougar Creek Water Company ("CCWC"). We are writing this letter to request an exception to the Willamette Basin Program pursuant to ORS 536.295(1)(c) and/or (f). CCWC is requesting a basin program exception to allow CCWC to obtain a new groundwater right for quasi-municipal use in the Santiam River – Calapooia River Subbasin of the Willamette Basin at the site of the present-day Elkhorn Golf Course. The new groundwater right would serve the existing golf course, a proposed destination resort development, and associated recreational amenities (collectively, the "Elkhorn Project"), without causing an increase in current withdrawals.

The Willamette Basin Program does not include quasi-municipal use as a classified use from July 1 through August 31. While a more expanded range of permitted uses is available from September 1 through June 30, including quasi-municipal use, the limitations imposed during July and August require CCWC to obtain a basin program exception. The proposed use is consistent with the general policies established in the Willamette Basin Program. CCWC requests that the Oregon Water Resources Commission ("Commission") approve this exception request based on the nonconsumptive nature of the proposed new use and/or the public benefits of riparian and watershed improvements that will be achieved by the Elkhorn Project.

**I. The Proposed Quasi-Municipal Use Will Be Largely Nonconsumptive in Nature and Is Not Likely to Be Regulated for Other Water Rights.**

The Elkhorn Project, of which the requested quasi-municipal use is a critical component, is designed to serve the current golf course and the proposed



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development without a net increase in the amount of water diverted from the Little North Fork Santiam River system. The water needs of the golf course are currently met by senior primary and supplemental water rights held by Elkhorn Golf & Resort, LLC, for irrigation and recreational/aesthetic use. These rights name the Little North Fork Santiam River, various unnamed surface streams, and storage reservoirs constructed on the golf course as the source of water. The rights authorize the use of a cumulative total of 0.65 cfs or 131.25 acre-feet during the May 1 to September 30 irrigation season each year. As part of the application process, Elkhorn Golf & Resort, LLC, will assign its rights to CCWC.

If a basin program exception is approved, the resulting new groundwater diversions will furnish both the domestic water supply for the proposed development and a portion of the irrigation water required by the golf course. CCWC will mitigate the impact of the new groundwater withdrawals by forgoing an equivalent diversion of irrigation water from current surface sources. Domestic water will return to the watershed in the form of treated effluent (Level IV—unrestricted irrigation use permitted) to be used as a substitute irrigation source on the golf course. The consumptive portion of the domestic supply, conservatively projected at 10%, will be mitigated by forgoing irrigation of a corresponding portion of the golf course. Therefore, under this proposal, the new groundwater use will be fully mitigated and will not result in additional withdrawals from the system.

In order to implement this unique mitigation approach, CCWC has proposed entering into a forbearance agreement with the Oregon Water Resources Department as part of its water rights permitting strategy. The terms of the agreement will account for the staged development schedule of the Elkhorn Project, and allow adequate flexibility to ensure that all new groundwater diversions are accounted for and appropriately mitigated. Under this proposal, the requested quasi-municipal use will be largely, if not completely, nonconsumptive in nature. The relative senior priority of the existing surface rights, and the lack of any history of prior regulation on the Little North Fork Santiam River, indicate that the new water use will likely not be regulated for other water rights because there will be no net change to the system.

## **II. The Elkhorn Project Will Result in a Public Benefit.**

The Elkhorn Project will also result in a public benefit through riparian and watershed improvements achieved by forgoing existing surface water diversions in exchange for new groundwater withdrawals. Rather than using all of its existing primary and supplemental surface water rights, CCWC plans to meet a portion of its golf course irrigation demand with treated effluent generated by the proposed development. By forgoing these surface water diversions, CCWC

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will be leaving water in the river during the critical, dry summer months when it is needed most. To the extent the new groundwater withdrawals have any impact on the surface flows in the Little North Fork Santiam River system, those impacts will be delayed. As a consequence, the Elkhorn Project should result in more water instream during the late summer months, generating a substantial public benefit.


### III. Conclusion.

Because quasi-municipal use is not classified in the Santiam River – Calapooia River Subbasin of the Willamette Basin from July 1 to August 31, CCWC requires a basin program exception under ORS 536.295. The requested use is not inconsistent with any policy outlined in the Willamette Basin Program and supports the relevant policies of coordinated water service planning and consolidation and preservation of the existing balance between instream and out-of-stream uses. Based on the nonconsumptive nature of the proposed use and the public benefit of riparian and watershed improvements achieved by the Elkhorn Project, CCWC respectfully requests that the Commission approve this request for a basin program exception.

Please call with any questions, comments, or to request additional information regarding this request.

Sincerely,

JORDAN SCHRADER RAMIS PC



Steven L. Shropshire

Enclosures

cc: Elkhorn Resort Management, LLC