



## Water Right Application Initial Review

June 28, 2024

HERIBERTO GARAY  
RAQUEL GARAY  
4084 AVENUE A  
WHITE CITY OR 97503

Reference: Application G-19022

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 Water Resources Department (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 Department has made the following preliminary determinations:

### **Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:**

1. Application G-19022 proposes the appropriation of 0.0125 cubic foot per second (CFS), further limited to 11.0 acre-feet (AF) annually, of water from a well (JACK 6269) in Whetstone Creek Basin for irrigation of 4.2 acres from January 1 through December 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is allowed under the Rogue Basin Program (OAR 690-515-0040(1)(a)).
4. The proposed groundwater use is not within a designated critical groundwater area. OAR 690-310-0080(1)(a).
5. An assessment of groundwater availability has been completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater for the proposed use is not over-appropriated. In addition, the Department has determined that the proposed groundwater use will not have the potential for substantial interference (PSI) with surface water. OAR 690-009-0040. OAR 690-310-0080(1)(b); OAR 690-300-0010(57).
6. If properly conditioned (and if authorized), the proposed use of groundwater will not injure other water rights.

7. The proposed use is located above the Rogue Scenic Waterway, as designated under Oregon Revised Statute 390.826. The Department has determined, based upon OAR 690-310-0260, that there **is** a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. The one CFS limit prescribed in OAR 690-310-0260(11) has been exceeded. Please refer to the **Additional Information Opportunity #1** section below for more information.
8. The Department has determined that JACK 6269 does not meet current minimum well construction standards. The annular seal does not extend to the appropriate depth. To meet minimum well construction standards, the well must be recased and resealed with an approved grout to a minimum depth of 51 feet below ground surface. See the **Minimum Well Construction Standards – Repair Required** section below for more information.
9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded; however this documentation is dated more than one year prior to application. See the **Additional Information Required** section below.
10. The standard irrigation season for the appropriation of groundwater is limited to March 1 through October 31 of each year. The period of use will be limited to March 1 through October 31 on any permit that may be issued under this application; however, the applicant may provide additional information regarding how beneficial use of water can be made during the period of November 1 through February 28/29 for the Department’s consideration. See the **Additional Information Opportunity #2** section below for more information.

<b>Summary of Preliminary Determinations</b>
<b>The appropriation of 0.0125 CFS, further limited to 11.0 AF annually, of water from a well (JACK 6269) in Whetstone Creek Basin for irrigation of 4.2 acres from January 1 through December 31 of each year is not allowable.</b>

**Additional Information Opportunity #1:**

As noted above, the Department has determined that there is a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife. When the Department makes this finding, the Department must deny the application unless:

- A. Mitigation is provided in accordance with provisions of ORS 390.835(9) and (10); or
- B. Evidence to overcome the finding is submitted.

**Although it is unlikely that a permit will be issued**, if the Department’s findings change and you would like to pursue a permit under this application, you must submit a mitigation proposal accompanied by a \$790 fee (ORS 536.050(1)(b)(B)) or evidence to overcome the finding. The Department will consider

the information and determine if the proposal will ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

**Please submit this information no later than August 1, 2024.** 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 is needed 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. Please note that an administrative hold does not extend the stop processing deadline discussed in a later section of this Initial Review.

**Minimum Well Construction Standards – Repair Required:**

Prior to the issuance of any Proposed Final Order that may recommend approval, evidence demonstrating compliance with well construction standards must be submitted and approved by the Department. In repairing the well(s), you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Tommy Laird of the Department's Well Construction and Compliance Section at 503-302-8618 to determine how to proceed.

**Please submit this information no later than August 1, 2024.** If you are unable to submit the information listed above by this date, 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 is needed 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.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's groundwater supply (OAR 690-200).

**Additional Information Required:**

**Although it is unlikely that a permit will be issued,** if the Department's findings change, additional information will be required prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following:

- A. The Department must receive documentation that the proposed use complies with the local acknowledged comprehensive land-use plan. Please submit documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded. **This documentation must be dated no more than one year prior to application acceptance.**

**Please submit this information no later than August 1, 2024.** If you are unable to submit the information listed above by this date, 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 is needed 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 information requested above or a request for an administrative hold by the above date, the Department may reject the application.

**Additional Information Opportunity #2:**

The application proposed use of water January 1 through December 31 of each year. However, the irrigation season is March 1 through October 31. Therefore, information must be provided showing that use of water outside the irrigation season of March 1 through October 31 will be a beneficial use of water.

If you can provide information that indicates use of the water during November 1 through February 28/29 is beneficial, the Department will take this into consideration.

**Please submit this information no later than August 1, 2024.** 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 is needed 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.

**Public Comment:**

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.

**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 \$310 processing fee). You must notify the Department **in writing** by **July 12, 2024**. For your convenience you may use the enclosed "STOP PROCESSING" form.

**Although it is unlikely that a permit will be issued, if the Department’s findings change and a permit is issued, it will likely include the following conditions:**

1. 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.
2. 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 not be valid, unless the Department authorizes the change in writing.
3. **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 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.

4. **Groundwater Level Measurement, Reporting, and Shut-Off Condition:**

For each well on this authorization, beginning on the permit signature date for existing wells or in the year well construction is completed for new wells, and each year thereafter, the permit holder must report a static water-level measurement (“measurement”) taken in March. The measurement is required whether the well is used or not. If pumping is to commence following completion of the well and prior to the next March, then a measurement must be made at least one week following well completion and before pumping commences.

Measurements must be properly reported within 30 days of measurement using forms specified by the Department. A measurement will be properly reported if the submission includes all required information as listed in the document attached. Measurements must be made with equipment that is accurate to the standards specified in Oregon Administrative Rule (OAR) 690-217-0045.

Measurements must be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed land surveyor, licensed well constructor, pump installer licensed by the Construction Contractors Board, or Department staff. The Department is not responsible for regular measurement of the static water level, but Department staff may

measure the well during the normal course of groundwater level monitoring or to confirm the submitted measurement(s).

For each well on this permit, the Department will establish a reference groundwater level using the best available data. The reference level is intended to represent the highest elevation (shallowest depth) static water level that has been measured or can be reasonably estimated to have existed within each well at any time before its reference level is set. If Annual High Water Levels have been increased measurably by human activity, then the Department may set a different reference level using best available information. If the permit holder fails to measure and report the static water level within 12 months of permit issuance, or of completion of the well(s), then Department staff will estimate the static water level using available data, including measurements in surrounding wells. In case the permit is amended or the subsequent certificate is transferred, the Department may establish a new reference level for any new or additional wells under new permits or certificates issued under this right. The reference level for a new or additional well should reflect the highest static water level in that well or, if that measurement occurred after the time represented by the original reference level, then the water level that would have been measured in that well, if the well existed and was measured at the time represented by the original reference level.

All water use authorized under this permit must immediately stop if any of the following occur:

- A. Any annual high elevation static groundwater level in any well on this permit declines 25 or more feet below the reference level for that well, or
- B. Groundwater levels are not measured and properly reported as specified above for any completed well that is authorized on the permit for two consecutive years, or
- C. Hydraulic interference contributes to a decline of 25 or more feet in any neighboring well with senior priority, at any time during the year.

The Department will determine when any of the above conditions have occurred and may order the permit holder to stop all water use under this permit. The permit holder is also responsible for stopping all water use if they become aware that any of the conditions have occurred, even without notice from the Department. Following such a stop, water use under this permit will not be allowed and may only resume once the permit holder receives notice from the Department. If the permit holder fails to stop use, then the Department may take control of the controlling works of any wells authorized under this permit and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

The permit holder acknowledges that that one or more of the conditions requiring stoppage of use may occur prior to any use of any well on this permit.

The Department may allow the permit holder to pause annual water level measurement and reporting requirements from some of the permitted wells if measurements from those wells are redundant with other data being collected by the Department. The permit holder must receive written notification of such an allowance before stopping measurements. If this happens, the Department may reinstate the measurement requirements at any time.

**5. Scenic Waterway:**

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

**6. 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.

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 website at [www.oregon.gov/ODA](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 [Adam.M.Frederick@water.oregon.gov](mailto:Adam.M.Frederick@water.oregon.gov) or 971-707-8400 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: Adam Frederick, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

*Adam Frederick*

Adam Frederick  
Water Right Application Specialist  
Oregon Water Resources Department

Enclosures: Application Process Description  
Stop Processing Request Form

G-19022  
WAB: No PSI  
Proposed to Deny

# APPLICATION FACT SHEET

Application File Number: G-19022

Applicant: HERIBERTO GARAY AND RAQUEL GARAY

County: JACKSON

Watermaster: SHAVON L. HAYNES, #13, SWR

Priority Date: SEPTEMBER 11, 2020

Source: A WELL (JACK 6269) IN WHETSTONE CREEK BASIN

Use: IRRIGATION OF 4.2 ACRES

Quantity: 0.0125 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 11.0 ACRE-FEET ANNUALLY

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: ROGUE, #15

Well Location:

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
JACK 6269	36 S	1 W	WM	22	NW SW	116 FEET SOUTH AND 448 FEET EAST FROM W1/4, SECTION 22

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
36 S	1 W	WM	22	NW SW	4.2

**PUBLIC NOTICE DATE: July 2, 2024**

**14 DAY STOP PROCESSING DEADLINE DATE: July 12, 2024**

**30 DAY COMMENT DEADLINE DATE: August 1, 2024**



## **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 website at: [www.oregon.gov/owrd](http://www.oregon.gov/owrd)

### **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) 986-0900.

### **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.
- 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.

### **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 with or one or more permit conditions.

**STOP PROCESSING REQUEST FORM**

**FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS**

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- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **G-19022**.

After reviewing the Initial Review for my application, I request that processing be stopped, and fees be refunded (minus a \$310 processing 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 \$310 processing fee) be returned.

- This notice must be received by the Water Resources Department no later than:

**July 12, 2024**

- Return the notice to:

OWRD, Water Right Services Division  
STOP PROCESSING  
725 Summer Street, NE - Suite A  
Salem, OR 97301-1266

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