



Oregon

Theodore R. Kulongoski, Governor

Water Resources Department

North Mall Office Building
725 Summer Street NE, Suite A
Salem, OR 97301-1271
503-986-0900
FAX 503-986-0904

**CERTIFIED MAIL
Return Receipt Requested**

WILBER BROTHERS
ATTN: GEORGE WILBER
77 W ADAMS ST
BURNS, OR 97720

August 15, 2008

Reference: File G-17048

Dear Mr. Wilber:

**THIS IS NOT A PERMIT AND IS
SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.**

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit 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 you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed to use 2.0 cubic feet per second (CFS) from Well 1 (HARN 50760) in Malheur Lake Basin for irrigation use on 86.4 acres and supplemental irrigation use on 436.5 acres from March 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Well 1 (HARN 50760) in Malheur Lake Basin for irrigation use is allowable under the Malheur Basin Program.
4. If properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights and the resource.

The Department has determined, based upon OAR 690-009, that the proposed ground water use will not have the potential for substantial interference with any surface water source.

5. The acreage shown on the map for supplemental irrigation is 436.5 acres. The acreage listed in the application states supplemental irrigation of 451.4 acres. The Department will use the acreage shown on the map unless we receive a revised map before the issuance of a proposed final order.
6. The area proposed to be irrigated under this application is currently covered by an existing irrigation water right evidenced by Certificate of Water Right 52032, which conflicts with your application. Please see the **Conflict Resolution Information** section below for more information.
7. The Department has determined there are deficiencies with the application. Please refer to the **Additional Information Required** section below for specific information.

Summary of Initial Determinations

The use of 2.0 CFS from Well 1 (HARN 50760) in Malheur Lake Basin for irrigation use on 86.4 acres and supplemental irrigation use on 436.5 acres is allowable during the full period requested, March 1 through October 31.

Because of these favorable determinations, the Department can now move your application to the next phase of the water rights application review process where public interest factors will be evaluated.

Conflict Resolution Information:

According to Department records, there is an existing irrigation water right evidenced by Certificate of Water Right 52032 covering a portion of the land proposed under this application. The conflicts exist in the SESE, Section 25, Township 20 South, Range 35 East, W.M., and NENW, Section 31, Township 20 South, Range 36 East, W.M. If you would like this application to be the primary right, the Department must receive a completed form authorizing cancellation of the existing right, a completed affidavit of diminution of the existing right to reduce it to supplemental use, a transfer of the existing right, or other means of dealing with the conflict between the existing right and the use proposed under this application.

If the Department issues a permit and you *have not* resolved the conflict, the new permit will be supplemental to the existing right, which will limit and/or jeopardize the water rights on the land as follows:

- If the existing right is found to have been forfeited, the use which is supplemental to such certificate may also be canceled.
- You may only use the supplemental right after the primary right becomes unavailable. The primary right must be exhausted first.

- The season of use for the supplemental irrigation will be limited to that of the primary right.

Additional Information Required:

The Department has determined additional fees are needed to continue processing your application. The Department must receive exam fees in the amount of \$200.00. Please include your application number on your check made out to the Oregon Water Resources Department. Your exam requirements consisted of:

Base fee	\$500.00
1 st CFS.....	\$200.00
One additional CFS.....	\$100.00
One additional use.....	<u>\$200.00</u>
Total Exam Fee Required.....	\$1,000.00
Total Exam Fee Paid.....	\$800.00

Please submit this information no later than Thursday, September 18, 2008. 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 you will need 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 items requested above or a request for an administrative hold by this date, the Department will likely proceed with a proposed final order recommending denial of the application.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically 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.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$150 processing charge per application.) To accomplish this you must notify the Department in writing by **Friday, August 29, 2008**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If A Permit Is Issued It Will Likely Include The Following Conditions:

1. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month, and shall submit a 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.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
2. To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual

measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well 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 non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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 Department.

3. The use described herein may be considered primary irrigation only after the underlying primary water rights have been canceled, diminished, or transferred to other lands. At the time of perfection, the permittee may request that the right be certificated as primary if the conflict with underlying rights has been resolved, and the water has been used beneficially as the primary source according to the terms and conditions of the permit.

The water source identified in your 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/NRD/water_agplans.shtml to learn more about the plans and how they may affect your proposed water use.

If you have any questions:

Feel free to call me at 503-986-0815 if you have any questions regarding the contents of this letter or your application. Please have your application number available if you call. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0801. When corresponding by mail, please use this address: Joel Plahn, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Joel Plahn
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17048
GW

APPLICATION FACT SHEET

Application File Number: G-17048

Applicant: WILBER BROTHERS

County: HARNEY

Watermaster: 10

Priority Date: MAY 1, 2008

Source: WELL 1 (HARN 50760) IN MALHEUR LAKE BASIN

Use: IRRIGATION USE ON 86.4 ACRES AND SUPPLEMENTAL IRRIGATION USE ON 436.5 ACRES

Quantity: 2.0 CUBIC FEET PER SECOND

Basin Name & Number: Malheur, #10

Stream Index Reference: Volume 2 MALHEUR R

Well Location(s): NENE, SECTION 25, T20S, R35E, W.M.; 250 FEET SOUTH AND 60 FEET WEST FROM NE CORNER, SECTION 25

Place of Use:

	IRRIGATION	SUPPLEMENTAL IRRIGATION
NE $\frac{1}{4}$ NE $\frac{1}{4}$		40.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$		14.8 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$		39.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$		14.4 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$	13.6 ACRES	
SECTION 25		
TOWNSHIP 20 SOUTH, RANGE 35 EAST, W.M.		
SW $\frac{1}{4}$ NW $\frac{1}{4}$		26.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$		1.2 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$		31.1 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$		40.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	5.0 ACRES	32.0 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		39.8 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$	6.0 ACRES	
SECTION 30		
NE $\frac{1}{4}$ NW $\frac{1}{4}$	8.9 ACRES	15.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$		21.3 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$		0.1 ACRE
SE $\frac{1}{4}$ NW $\frac{1}{4}$		22.6 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$		0.8 ACRE
NE $\frac{1}{4}$ SE $\frac{1}{4}$		6.8 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$		10.2 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$		6.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$		36.8 ACRES
SECTION 31		

IRRIGATION

SUPPLEMENTAL IRRIGATION

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 12.2 ACRES
SECTION 32
TOWNSHIP 20 SOUTH, RANGE 36 EAST, W.M.

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 1.2 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 17.0 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 9.2 ACRES 7.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 17.8 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 0.8 ACRE
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 20.6 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 ACRE
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 4.8 ACRES

SECTION 5

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.8 ACRE

SECTION 6

TOWNSHIP 21 SOUTH, RANGE 36 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, August 29, 2008

PUBLIC NOTICE DATE: Tuesday, August 19, 2008

30 DAY COMMENT DEADLINE DATE: Thursday, September 18, 2008

Mailing List for IR Copies

Application #G-17048

IR Date: August 15, 2008

Original mailed to applicant:

WILBER BROTHERS, 77 W ADAMS ST, BURNS, OR 97720

Copies sent to:

1. WRD - File # G-17048
2. WRD - Water Availability: Ken Stahr

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

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Regional Manager (not SCR): E
4. WRD - Watermaster # 10
5. Department of Agriculture

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

Caseworker: Joel Plahn

COPYSHT.IR