



# 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

DON FARRELLY  
7220 SE ALDER  
PORTLAND, OR 97215

September 5, 2008

Reference: File G-16978

Dear Mr. Farrelly:

### **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 the use of 130.0 gallons per minute, which is 0.29 cubic foot per second (CFS) of water from Well 1 for year-round nursery use on 23.4 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are fully included in irrigation and agriculture uses, both of which are allowed by OAR 690-502, the Willamette Basin Program. Therefore, the use of water from Well 1 in Abernethy Creek Basin for nursery use is classified.
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 have the potential for substantial interference with Bargfeld Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available during the period July 1 through October 31.

5. The application proposed year-round use of water. However, surface water from Bargfeld Creek is only available November 1 through June 30. Therefore, it is unclear if beneficial use of water can be made within the limited season of November 1 through June 30.

If you can provide information that indicates that the limited season of November 1 through June 30 can be used beneficially, the Department will take this into consideration.



If you choose to provide more information on this matter, please submit materials no later than **October 5, 2008**. If we do not receive additional information to evaluate, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

6. The proposed use is located above the Clackamas Scenic Waterway, as designated under ORS 390.826.
7. The area proposed to be used for nursery use under this application is currently covered by application S-87057, which conflicts with your application. Please see the **Conflict Resolution Information** section below for more information.

### **Summary of Initial Determinations**

**Because not all items above are favorable, the use of 0.29 CFS of water from Well 1 in Abernethy Creek Basin for nursery use on 23.4 acres is not allowable, and it appears unlikely that you will be issued a permit. At this time, you must decide whether to proceed or to withdraw your application as described below.**

### **Conflict Resolution Information:**

Although the water availability determination is not favorable and it appears unlikely that you will be issued a permit, if you are able to overcome the unfavorable determination the conflict must be resolved.

According to Department records, application S-87057 covers the land proposed under this application for the same use. If you would like this application to be the primary right, the Department must receive a completed form authorizing withdrawal of application S-87075, a request to reduce it to supplemental nursery use, or other means of dealing with the conflict between the existing application (S-87057) 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 application S-87057, which will limit and/or jeopardize the water rights on the land as follows:

- If the existing application 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 nursery use will be limited to that of the primary right.

**Please submit this information no later than October 9, 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.



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.

At this time, you must decide whether to proceed or to withdraw your application as described below.

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, September 19, 2008**. For your convenience you may use the enclosed "STOP PROCESSING" form.

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.

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

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. If substantial interference with 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. 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.



4. (1) Use of water from any well, as allowed herein, shall be regulated if the well displays:
  - (a) An average water level decline of three or more feet per year for five consecutive years; or
  - (b) A total water level decline of fifteen or more feet; or
  - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).
  - (a) Use of water from a new well shall not begin until the initial water level in the well has been measured. A measurement of initial water level shall be made at the time a pump is installed, but before pumping begins.
  - (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year at the time of spring high water during the period March 15 through April 15.
  - (c) All water level measurements shall be made by a qualified individual. Qualified individuals include certified water rights examiners, licensed water well drillers, registered geologists, registered professional engineers, registered land surveyors, licensed well constructor, pump installer licensed by the Construction Contractors Board, or the permittee/appropriator.
  - (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
5. The well shall produce ground water only from the Troutdale or Boring Lava water reservoir.
6. Prior to appropriating water from wells under this permit, the permittee shall ensure that all wells have an Oregon Water Resources Department (Department) well identification number or well tag number. If a well does not have an identification or tag number, the permittee shall apply for one from the Department. The well identification or tag number shall be attached to the well and shall be used as a reference number for any correspondence regarding the well including any water use, water level, or pump test reports.
7. 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.

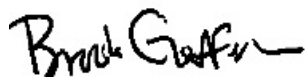
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a proposed final order. You should be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of your application.

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](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 503-986-0808 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: Brook Geffen, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in black ink that reads "Brook Geffen". The signature is written in a cursive, flowing style.

Brook Geffen  
Water Right Application Caseworker

enclosures:    Application Process Description and Stop Processing Request Form

G-16978  
WAB 2-82  
POU 2-82  
GW



# APPLICATION FACT SHEET

Application File Number: G-16978

Applicant: DON FARRELLY

County: CLACKAMAS

Watermaster: 20

Priority Date: DECEMBER 13, 2007

Source: WELL 1 IN ABERNETHY CREEK BASIN

Use: NURSERY USE ON 23.4 ACRES

Quantity: 0.29 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 18B ABERNETHY CR MISC

Well Location(s): SWSW, DLC 56 (16), SECTION 16, T3S, R3E, W.M.; 1200 FEET NORTH AND 3100 FEET WEST FROM SE CORNER, DLC 56

Place of Use:

NESW,	DLC 56 (16)	0.4 ACRES
NWSW,	DLC 56 (16)	19.0 ACRES
SWSW,	DLC 56 (16)	3.4 ACRES
SESW,	DLC 56 (16)	0.6 ACRE
SECTION 16		
TOWNSHIP 3 SOUTH, RANGE 3 EAST, W.M.		

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 19, 2008**

**PUBLIC NOTICE DATE: Tuesday, September 9, 2008**

**30 DAY COMMENT DEADLINE DATE: Thursday, October 9, 2008**



# Mailing List for IR Copies

Application #G-16978

IR Date : September 5, 2008

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**Original mailed to applicant:**

DON FARRELLY , 7220 SE ALDER, PORTLAND, OR 97215

Copies sent to:

1. WRD - File # G-16978
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Watermaster # 20
4. Department of Agriculture

Affected Landowners (include "Notice of Initial Review--Affected Landowner"):

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

5. Steve Applegate

Caseworker: Brook Geffen

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

**REMINDER:** Copy **all** IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)