



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 NIENKE
21765 SW 78TH AVE
TUALATIN, OR 97062

September 12, 2008

Reference: File G-17061

Dear Mr. Nienke:

**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 requested the use of 3.57 cubic feet per second (CFS), from Well 1 and Well 2 in Malheur Slough Basin for irrigation use on 251.2 acres from March 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Well 1 and Well 2 in Malheur Slough Basin for irrigation use is allowable under the Malheur Lake 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 standard allowable rate for irrigation use from ground water is 1/80 CFS per acre. Your application requested 3.57 CFS for 251.2 acres. If the application is approved, the rate allowed will be limited to 3.14 CFS.

Summary of Initial Determinations

The use of 3.14 CFS from Well 1 and Well 2 in Malheur Slough Basin for irrigation use on 251.2 acres may be allowed during the full period requested, March 1 through October 31.

Because of the Department's determination, your application can be moved to the next phase of the water rights application review process where public interest factors will be evaluated. However, due to #5 above, your application will likely be limited accordingly.

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 26, 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:

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. 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 Department.

3. 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). A tag showing the Well ID shall be permanently attached to the well. If a well does not have a Well ID, the permittee shall apply for one from the Department and attach it to the well within 60 days of the date the permit is issued. 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 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

APPLICATION FACT SHEET

Application File Number: G-17061

Applicant: DON NIENKE

County: HARNEY

Watermaster: 10

Priority Date: MAY 27, 2008

Source: WELL 1 AND WELL 2 IN MALHEUR SLOUGH BASIN

Use: IRRIGATION USE ON 251.2 ACRES

Quantity: 3.57 CUBIC FEET PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 MALHEUR L & MISC

Well Location(s):

WELL 1 - SESW, SECTION 18, T23S, R33E, W.M.; 1300 FEET NORTH AND 3940 FEET WEST FROM SE CORNER, SECTION 18

WELL 2 - SESE, SECTION 18, T23S, R33E, W.M.; 1300 FEET NORTH AND 1300 FEET WEST FROM SE CORNER, SECTION 18

Place of Use:

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 31.4 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 31.4 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 31.4 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 31.4 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES

SECTION 18

TOWNSHIP 23 SOUTH, RANGE 33 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 26, 2008

PUBLIC NOTICE DATE: Tuesday, September 16, 2008

30 DAY COMMENT DEADLINE DATE: Thursday, October 16, 2008

Mailing List for IR Copies

Application #G-17061

IR Date : September 12, 2008

Original mailed to applicant:

DON NIENKE , 21765 SW 78TH AVE, TUALATIN, OR 97062

Copies sent to:

1. WRD - File # G-17061
2. WRD - Water Availability: Ken Stahr
3. WRD - Regional Well Inspector: E

IR, Map, and Fact Sheet Copies sent to:

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

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

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

Chris T. Palmer 711 Ponderosa Village Box 61 Burns, OR 97720

Caseworker: Joel Plahn

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