



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

October 10, 2008

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

KENNETH H. BURBANK
FRED CRAMER
2101 MAIN ST
BAKER CITY OR 97814

Reference: File [G-17065](#)

INITIAL REVIEW

THIS IS NOT A PERMIT AND IS SUBJECT TO CHANGE DURING PROCESSING

Dear Applicants:

This letter is to inform you that processing of your water-use permit application has begun, and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable if the proposed use is to be allowed. Based on the information you supplied, the Department has made the following initial determinations:

1. The application proposed the use of 2.67 cubic feet per second (CFS) of water from Well 1, Well 2, Well 3, and Well 4 in the Dry River Basin for irrigation use on 320.0 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, Well 2, Well 3, and Well 4 in Dry River Basin, for irrigation use is allowable under the Deschutes Basin Program.
4. If properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights and the resource.
5. The Department has determined, based upon OAR 690-09, that the proposed ground water source is hydraulically connected to Deschutes River, and will have the potential for substantial interference with surface water. Therefore, in accordance with OAR 690-410-0070(1) and 690-400-0010(11)(a), surface water availability and public-interest considerations related to the surface-water source must be considered.
6. Surface water is not available at any time of the year due to senior water rights on Deschutes River and downstream waters.

7. The proposed use of hydraulically-connected ground water with the potential for substantial interference is not allowable in the Deschutes Basin from April 15 through September 30 of each year (OAR 690-33-120(2)(b)).
8. The mainstem Deschutes River is a State Scenic Waterway. The proposed use will measurably reduce scenic waterway flows as defined in ORS 390.835.
9. Because the proposed wells, located in the Deschutes Ground Water Study Area, have the potential for substantial interference and will interfere with scenic waterway flows, by law, the Department is required to deny your application unless you provide mitigation. The unfavorable findings of this Initial Review may be overcome if you provide mitigation pursuant to the Deschutes Ground Water Mitigation Rules (OAR 690-505-0500 through 0630). Those rules provide a process under which applicants may mitigate for the impact their proposed use would have on surface water flows.
10. The Department has determined your mitigation obligation is 576.0 acre-feet (AF) annually. The required mitigation is based on the use of 2.67 CFS for irrigation use on 320.0 acres from March 1 through October 31 of each year. The mitigation obligation is calculated based on a consumptive-use factor of 1.8 AF per acre.
11. The Department has determined that mitigation for the proposed use must be located in the General Zone of Impact.

Summary of Initial Review

The use of 2.67 CFS from Well1, Well 2, Well 3, and Well 4 in the Dry River Basin for irrigation use on 320.0 acres is not allowable. However, if you provide sufficient mitigation water to offset the proposed use, it may be allowed under OAR 690-505-0610.

Mitigation Obligation Options:

To satisfy your mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 576.0 qualifying mitigation credits from an individual or mitigation bank. If you are interested in obtaining mitigation credits, you may want to contact me for a list of mitigation credit holders.

If you decide to purchase mitigation credits, you must submit a documentary evidence form demonstrating that you have obtained mitigation credits. The mitigation bank or the individual you have obtained credits from should provide you with a completed form. Blank forms may be obtained from the Department at the address above, or from the Bend Regional office.

If you are proposing to implement a mitigation project, you must identify and describe the project in sufficient detail so that the Department can make a preliminary determination as to whether the proposed project will likely meet your mitigation obligation. Please contact Laura Wilke (503.986.0884) for further information on mitigation projects, forms, and specific requirements to be included in your proposal.

Mitigation credits must be obtained and/or a mitigation project must be completed before a permit can be issued.

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, October 24 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 do anything at this time. 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 at each point of appropriation. The totalizing flow meter must be installed and maintained in good working order. The permittee 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; where the meter is located within a private structure, the watermaster shall request access upon reasonable notice.

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.

Ground Water Mitigation Conditions

1. Mitigation Obligation: 576.0 acre-feet of mitigation water in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook).
2. Mitigation Source: obtain 576.0 acre-feet of mitigation water or equivalent mitigation credits that meet the requirements of OAR 690-505-0610(2)-(5).
3. Mitigation water must be legally protected instream in the General Zone of Impact for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.
4. The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.
5. If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the maintenance and terms and conditions of a valid contract or satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department.
6. Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

Scenic Waterway Condition

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 reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained.

If you have questions:

This Initial Review was produced by Kerry Kavanagh. If you have any questions about any of the information contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0816 or Kerry.L.Kavanagh@wrд.state.or.us. Please have your application number available if you call. If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kavanagh", with a long horizontal flourish extending to the right.

Kerry Kavanagh
Water Rights Application Caseworker

enclosures: Stop Processing Request Form; Response to Notice of Mitigation Obligation; and
Deschutes Mitigation Rules

[G-17065](#)

WAB 5-30530112
POU X-XXXXXXX
GW

Application Fact Sheet

Mail to: Applicant, Watermaster, District Biologist (ODFW)

Application Number: G-17065

Applicant: KENNETH H. BURBANK AND FRED CRAMER

County: DESCHUTES

Watermaster: District #11

Priority Date: JUNE 5, 2008

Source: WELL 1, WELL 2, WELL 3, AND WELL 4 IN DRY RIVER BASIN

Use: IRRIGATION USE

Quantity: 2.67 CUBIC FEET PER SECOND

Basin Name & Number: Deschutes, #5

Point of Appropriation:

Well	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Well 1	20 S	16 E	WM	26	NENE	100 FEET SOUTH AND 800 FEET WEST FROM NE CORNER, SECTION 26
Well 2	20 S	16 E	WM	25	SE SW	700 FEET NORTH AND 2735 FEET WEST FROM SE CORNER, SECTION 25
Well 3	20 S	16 E	WM	24	SW SW	1300 FEET NORTH AND 80 FEET EAST FROM SW CORNER, SECTION 24
Well 4	20 S	16 E	WM	36	SW SE	1100 FEET NORTH AND 1480 FEET WEST FROM SE CORNER, SECTION 36

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
20 S	16 E	WM	23	SW NE	8.31
20 S	16 E	WM	23	SE NE	4.02
20 S	16 E	WM	23	NE SW	9.02
20 S	16 E	WM	23	SE SW	5.33
20 S	16 E	WM	23	NE SE	32.81
20 S	16 E	WM	23	NW SE	39.14
20 S	16 E	WM	23	SW SE	35.81
20 S	16 E	WM	23	SE SE	25.56
20 S	16 E	WM	25	SW NE	27.82
20 S	16 E	WM	25	SE NE	1.12
20 S	16 E	WM	25	SW NW	1.11
20 S	16 E	WM	25	SE NW	27.79
20 S	16 E	WM	25	NE SW	38.15
20 S	16 E	WM	25	NW SW	4.36
20 S	16 E	WM	25	SE SW	8.61
20 S	16 E	WM	25	NE SE	4.34
20 S	16 E	WM	25	NW SE	38.19
20 S	16 E	WM	25	SW SE	8.51

Public Notice Date: Tuesday, October 14 2008

14-day Stop Processing Deadline: Friday, October 24 2008

End of 30-day Comment Period: Thursday, November 13 2008

Mailing List for IR Copies

Application: [G-17065](#)

IR Date: October 10, 2008

Original mailed to:

Applicant: [KENNETH H. BURBANK](#)
[FRED CRAMER](#)
[2101 MAIN ST](#)
[BAKER CITY OR 97814](#)

Copies Mailed	
by: _____	(STAFF)
on: _____	(DATE)

Copies sent to:

1. WRD - File [G-17065](#)
2. WRD - Water Availability: Ken Stahr
3. WRD - Laura Wilke
4. DRC - Scott McCaulou

IR, Map, and Fact Sheet Copies sent to:

(NOTE: please send only one copy per office, even if there is more than one name on the list)

1. Watermaster District 11
2. ODFW District Biologist: Amy Stuart & Brett Hodgson
3. ODFW: Rick Kepler
4. Columbia River Intertribal Fish Commission
5. US Fish & Wildlife
6. NW Power Planning Council
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Paul Measeles & Jim Johnson
9. OPRD: Jan Houck & John Potter
10. DSL: Nancy Pustis (Bend)

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

11. David Newton, CWRE #419
Newton Consultants, Inc., 521 SW 6th St, Suite 100, Redmond OR 97756-2702

Caseworker: Kerry Kavanagh

**RESPONSE TO NOTICE OF MITIGATION OBLIGATION
CREDIT OR PROJECT OPTION**

A mitigation obligation may be satisfied by obtaining mitigation credits, providing for implementation of a mitigation project, or both (OAR 690-505-0610(2)). Please read and complete this acknowledgment of mitigation obligation and return it to the Department.

Applicant(s): **KENNETH H. BURBANK** AND FRED CRAMER

Applicant's agent (*if applicable*):

Application number: **G-17065**

Proposed Use: **IRRIGATION** USE

Period of Use: MARCH 1 THROUGH OCTOBER 31

Rate requested: **2.67 CUBIC FEET PER SECOND**

Volume requested: 960.0 acre-feet (320.0 ACRES X 3.0 AF/ACRE)

Mitigation Obligation: 576.0 acre-feet

Zone of Impact: General Zone of Impact

Please read and initial the following statements:

_____ I/We intend to provide mitigation in the amounts noted above and in the appropriate zone of impact.

_____ I/We understand that mitigation must be provided within five years of issuance of the final order.

The source of mitigation water will be (please check):

_____ Purchase mitigation credits and / or _____ A mitigation project resulting in credits

Please describe the type of project (e.g., transfer, etc.) and any associated water-right certificate, if known:

(over)

I understand that I must provide mitigation credits in the amount noted, or a suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5) in the appropriate zone of impact.

Applicant(s)

or

Applicant's agent

Date_____

Telephone Number:_____

Mail to: Attn: Kerry Kavanagh
 Oregon Water Resources Department
 725 Summer St NE Suite A
 Salem OR 97301-1266