



# 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

November 21, 2008

STEVE RICKMAN  
69705 OLD EXPERIMENT RD  
BURNS, OR 97720

Reference: File G-16997

Dear Mr. Rickman:

**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 2.98 cubic feet per second (CFS) of water from two proposed wells within the Poison Creek Slough Basin for irrigation use on 239.8 acres from March 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. 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 Poison Creek Slough. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available in the amount requested during the period May 1 through October 31.

4. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.

5. Your application states that, if necessary, you will propose to mitigate through cancellation or transfer of existing water rights. Please see the Additional Information Opportunity section below for more information.
6. The Department shall not issue a permit for any use of ground water which has the potential to substantially interfere with surface water in the Malheur Lake Basin (OAR 690-512-0040) unless the applicant shows, by a preponderance of evidence, that unappropriated water is available to supply the proposed use at the times and in the amounts requested. The evidence provided shall be prepared by a qualified hydrologist or other water resources specialist and shall include:
  - (a) Streamflow measurements of gage records from the stream in hydraulic connection with the source; or
  - (b) An estimate of water availability from the stream in hydraulic connection with the source which includes correlations with streamflow measurements or gage records on other similar streams and considers current demands for water affecting the stream flows.

If you are unable to submit the information listed above, you may request an administrative hold for up to 180 days. You must submit the request in writing, stating how much time you will need. 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 the Department will likely proceed with a Proposed Final Order recommending denial of the application.

7. You are encouraged to contact Harney County as you may need to obtain authorization to cross Old Experiment Road.
8. As you are aware, the area proposed to be irrigated under this application is currently covered by existing irrigation water rights evidenced by a decreed water right included in the Silvies River Decree, 1926, in the name of Brown, N. and Sons, and Transfer T-9737, which conflicts with your application. Please see the Conflict Resolution Information section below for more information.

### Summary of Allowable Water Use

**Because not all items above are favorable, the use of 2.98 CFS of water from Well 1 and Well 2 in Poison Creek Slough Basin for irrigation use on 239.8 acres is not allowable. As water is not available, the proposed use is not allowable without mitigation, 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:**

According to Department records, there are existing irrigation water rights evidenced by the Silvies River Decree, 1926, in the name of Brown, N. and Sons, and Transfer T-9737 covering the land proposed under this application. You mentioned in your application that you intend to remove the current primary right by way of cancellation or transfer, and make this right primary in your effort to mitigate the surface water impacts of the proposed use of ground water. Please provide a detailed proposal of your plans for mitigation, including your plan to transfer or cancel a surface water right that is equal in rate and duty to the proposed use of water under this application. You may want to contact your local watermaster to determine if the existing water rights are valid and reliable. The Department will evaluate your proposal upon submission. 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 Opportunity**

Your application states that, if necessary, you will propose to mitigate through cancellation or transfer of existing water rights. If you wish to propose mitigation, please provide a detailed proposal for mitigation.

**Please submit this information no later than December 25, 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.

**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, December 5, 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.

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 503-986-0853 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: Michele McAleer, 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 cursive script that reads "Michele R. McAleer".

Michele McAleer  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-16997  
WAB 12-31200106  
POU 12-31200106  
GW

# APPLICATION FACT SHEET

Application File Number: G-16997

Applicant: STEVE RICKMAN

County: HARNEY

Watermaster: 10

Priority Date: January 28, 2008

Source: WELL 1 AND WELL 2 IN POISON CREEK SLOUGH BASIN

Use: IRRIGATION USE ON 239.8 ACRES

Quantity: 2.98 CUBIC FEET PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 POISON CR & MISC

Well Locations:

WELL 1 - NENE, SECTION 24, T23S, R31E, W.M.; 460 FEET SOUTH AND 1120 FEET WEST FROM NE CORNER, SECTION 24

WELL 2 - SWSW, SECTION 18, T23S, R32E, W.M.; 280 FEET NORTH AND 520 FEET EAST FROM SW CORNER, SECTION 18

Place of Use:

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  34.4 ACRES

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  39.0 ACRES

SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  39.0 ACRES

SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  39.0 ACRES

NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  29.0 ACRES

NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  16.4 ACRES

SECTION 24

TOWNSHIP 23 SOUTH, RANGE 31 EAST, W.M.

SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  12.0 ACRES

SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.0 ACRES

SECTION 18

TOWNSHIP 23 SOUTH, RANGE 32 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, December 5, 2008**

**PUBLIC NOTICE DATE: Tuesday, November 25, 2008**

**30 DAY COMMENT DEADLINE DATE: Thursday, December 25, 2008**

# Mailing List for IR Copies

Application #G-16997

IR Date: November 21, 2008

## Original mailed to applicant:

STEVE RICKMAN , 69705 OLD EXPERIMENT RD, BURNS, OR 97720

### Copies sent to:

1. WRD - File # G-16997
2. WRD - Water Availability: Ken Stahr

### IR, Map, and Fact Sheet Copies sent to:

3. WRD - Regional Manager (not SCR): Eastern
4. Department of Agriculture

### IR, Map, and Fact Sheet Copies sent **via e-mail** to:

5. WRD - Watermaster # 10
6. ODFW: Tim Walters
7. DEQ: Eric Nigg

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
----------------------------------------------------------------------

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

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

8. Steven Applegate Consulting, 3395 Huckleberry Ct S, Salem OR 97302
9. Roadmaster, Harney County Public Works 266 S Date Burns, OR 97720

Caseworker: Michele McAleer

VCOPYSH.T.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.)