



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

SCENIC FRUIT CO.
ATTN: MARIDEAN AND HUGH EISELE
7510 SE ALTMAN RD
GRESHAM, OR 97080

January 9, 2009

Reference: File G-17085

Dear Applicant:

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 1.5 cubic feet per second (CFS) from Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6 in Tickle Creek Basin for year-round agriculture uses and nursery use on 120.0 acres and supplemental irrigation on 120.0 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 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6 in Tickle Creek Basin for agriculture uses and supplemental irrigation is allowable under the Willamette Basin Program.

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 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, Well 6 in Tickle 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 not have the potential for substantial interference with any surface water source.

5. The Department has determined the proposed place of use has an underlying ground water right, Permit G-13115 (Application G-14285). Further review of the proposed source of water (Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6) under this application and the authorized point of appropriations (Well 1 (CLAC 52000)), Well 2, Well 3, Well 4, Well 5, and Well 6) under Permit G-13115 indicate that the proposed wells will likely develop water from the same groundwater aquifer as that of Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6. Because these wells develop water from the same groundwater source, the proposed well under this application may not be used as supplemental sources to Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6. Because Permit G-13115 allows the maximum rate of 1/80 CFS per acre of water, and because the wells under this application will produce ground water from the same source, the use of 1.5 CFS from the proposed wells is not allowable.

On July 23, 2008, the Department sent a letter to Edward Crane requesting clarification of the Claim of Beneficial Use that was prepared for Permit G-13115, a copy of the letter has been attached for your convenience. Clarification as to the wells and uses developed under Permit G-13115 could potentially change the Departments determinations. You may put this application on administrative hold to clarify the Claim of Beneficial Use. Please submit this clarification no later than **Thursday, February 12, 2009**.

6. The proposed use is located above the Clackamas River Scenic Waterway, as designated under Oregon Administrative Rule 390.826.
7. The acreage listed on the map totals 123.22 acres, however the acreage in the table on the map totals 120.0 acres. The Department will rely on the acreage in the table unless notified otherwise.
8. The Department has determined that 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 1.5 CFS from Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6 in Tickle Creek Basin for agricultural uses, and nursery use on 120.0 acres, is allowable during the full period requested, January 1 through December 31.

The use of 1.5 CFS from Well 1 (CLAC 52000), Well 2, Well 3, Well 4, Well 5, and Well 6 in Tickle Creek Basin for supplemental irrigation use is not allowable.

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.

Additional Information Required:

Additional information is required to process your application. Please provide the following:

- The table on the map describes 18.0 acres in the NESE, Section 29, Township 2, South, Range 5 East, W.M. However the map shows hatching in the NWSW Section 29.

In addition, the legal description for Well 1 on the map describes 520 feet South and 1850 feet West from NE corner, NESW, Section 29. The legal description provided would place Well 1 in the NWSW, Section 29, however the well is shown on the map to be in the *NESE, Section 30*.

- Please submit a map that addresses these discrepancies.

Please submit this information no later than Thursday, February 12, 2009. 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 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.

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, January 23, 2009**. 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

Reference Water Level Determination

Following the first year of water use, the user shall report one static water level measurement in the month specified above which will establish the reference level against which future annual measurements will be compared. The Director may require the user to obtain and report additional water levels after the reference level has been determined. 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 well(s) shall produce ground water from no shallower than 500 feet below land surface.
4. For reliable water level measurement, the wells shall be equipped with and measured through measuring tubes pursuant to OAR 690-210-0280.
5. The amount of water used for nursery use is limited to a maximum of 5.0 acre feet per acre and a diversion of 0.15 cubic foot per second per acre. For irrigation of containerized nursery plants, the amount of water diverted is limited to one fortieth of one cubic foot per second and 5.0 acre feet per acre per year. For irrigation of in-ground nursery plants, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted is limited to one eightieth of one cubic foot per second and 2.5 acre feet per acre during the irrigation season of each year.
6. 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.
7. 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 tag), which shall be permanently attached to the well. 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,

A handwritten signature in black ink, appearing to read 'J Plahn', with a long horizontal flourish extending to the right.

Joel Plahn
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17085
GW

APPLICATION FACT SHEET

Application File Number: G-17085

Applicant: SCENIC FRUIT CO ATTN: MARIDEAN AND HUGH EISELE

County: CLACKAMAS

Watermaster: 20

Priority Date: JULY 18, 2008

Source: WELL 1 (CLAC 52000), WELL 2, WELL 3, WELL 4, WELL 5, AND WELL 6 IN
TICKLE CREEK BASIN

Use: AGRICULTURE USES; NURSERY USE ON 120.0 ACRES; SUPPLEMENTAL
IRRIGATION ON 120.0 ACRES

Quantity: 1.5 CUBIC FEET PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 23A TICKLE CR & MISC

Well Location(s):

WELL 1 (CLAC 52000) - NESE, SECTION 30, T2S, R5E, W.M.; 520 FEET SOUTH AND
1850 FEET WEST FROM NE CORNER, SECTION 29

WELL 2 - NESE, SECTION 30, T2S, R5E, W.M.; 1605 FEET NORTH AND 520 FEET WEST
FROM SE CORNER, SECTION 30

WELL 3 - NESE, SECTION 30, T2S, R5E, W.M.; 1935 FEET NORTH AND 1255 FEET WEST
FROM SE CORNER, SECTION 30

WELL 4 - SESE, SECTION 30, T2S, R5E, W.M.; 1135 FEET NORTH AND 1260 FEET WEST
FROM SE CORNER, SECTION 30

WELL 5 - SESE, SECTION 30, T2S, R5E, W.M.; 335 FEET NORTH AND 1250 FEET WEST
FROM SE CORNER, SECTION 30

WELL 6 - NENE, SECTION 31, T2S, R5E, W.M.; 590 FEET SOUTH AND 1255 FEET WEST
FROM NE CORNER, SECTION 31

Place of Use:

NW $\frac{1}{4}$ SW $\frac{1}{4}$ AGRICULTURE USES

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 18.0 ACRES NURSERY USES AND SUPPLEMENTAL IRRIGATION

SW $\frac{1}{4}$ SW $\frac{1}{4}$ AGRICULTURE USES

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 25.0 ACRES NURSERY USES AND SUPPLEMENTAL IRRIGATION
SECTION 29

NE $\frac{1}{4}$ SE $\frac{1}{4}$ AGRICULTURE USES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 18.0 ACRES NURSERY USES AND SUPPLEMENTAL IRRIGATION
SE $\frac{1}{4}$ SE $\frac{1}{4}$ AGRICULTURE USES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 40.0 ACRES NURSERY USES AND SUPPLEMENTAL IRRIGATION
SECTION 30

NE $\frac{1}{4}$ NE $\frac{1}{4}$ AGRICULTURE USES
NE $\frac{1}{4}$ NE $\frac{1}{4}$ 19.0 ACRES NURSERY USES AND SUPPLEMENTAL IRRIGATION
SECTION 31
TOWNSHIP 2 SOUTH, RANGE 5 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, January 23, 2009

PUBLIC NOTICE DATE: Tuesday, January 13, 2009

30 DAY COMMENT DEADLINE DATE: Thursday, February 12, 2009

Mailing List for IR Copies

Application #G-17085

IR Date: January 9, 2009

Original mailed to applicant:

SCENIC FRUIT CO., ATTN: MARIDEAN AND HUGH EISELE, 7510 SE ALTMAN RD,
GRESHAM, OR 97080

Copies sent to:

1. WRD - File # G-17085
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

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

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.)

Crane, Ed, CWRE #156

13755 SE 119th DR, Clackamas OR 97015

Caseworker: Joel Plahn

COPYSHT.IR