



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

January 9, 2009

JAMES C. AND ELIA A. SHEPHERD
476 N KOA
BURNS, OR 97720

Reference: File G-17095

Dear Mr. and Mrs. Shepard:

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 0.8875 cubic foot per second (CFS) of water from a well in Willow Creek Basin for irrigation use on 71.0 acres from March 1 through September 30.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from a well in Willow Creek 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. According to Departmental records, there is an underlying ground water right evidenced by Certificate of Water Right 39760 (Permit G-2363, Application G-2546) covering a portion of the land proposed under this application (approximately 18.0 acres, being approximately 3.0 acres in SWSE, 10.0 acres in SESW, and 5.0 acres in SWSW, Section 7, Township 24 South, Range 30 East, W.M.). *A copy of the certificate and map are enclosed.*

Further review of the proposed source of water under this application and the authorized points of appropriation under Certificate 39760 indicate that the proposed wells under this application will likely develop water from the same groundwater aquifer as the wells authorized by Certificate 39760. Because Certificate 39760 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 0.225 CFS ($1/80 \text{ CFS} * 18.0 \text{ acres}$) for 18.0 acres from the proposed wells is not allowable.

If you would like this application to include the approximately 18.0 acres, you may resolve the conflict by completing a form authorizing cancellation of the existing right, or transferring the existing right. If the Department issues a permit and you *have not* resolved the conflict, the new permit will not include the 18.0 acres. Please confirm the area of overlap is indeed 18.0 acres; the area in the SWSE of Section 7, Township 24 South, Range 30 East, W.M., is estimated to be 3.0 acres. Also please provide a revised map showing the number of acres that overlap with lands authorized under Certificate 39760. *Please see tabulation of overlapping area on the Application Fact Sheet.*

Please submit the revised map no later than 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 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.

6. The standard allowable rate for irrigation use from ground water is 1/80 CFS per acre. If the application is approved, the rate allowed will be limited to 0.663 CFS for 53.0 acres (71.0 acres proposed less 18.0 acres not allowed as described in # 5 above).

Summary of Initial Determinations

The use of 0.663 CFS from a well in Willow Creek Basin for irrigation use on 53.0 acres is allowable during the full period requested, March 1 through September 30 .

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.

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.
 - 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.
 - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.
2. 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.
 3. 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.

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 503-986-0816 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: Kerry Kavanagh, 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 "K. Kavanagh", written in a cursive style.

Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17095
WAB 12-31200202
POU 12-31200202
GW no psi

APPLICATION FACT SHEET

Application File Number: G-17095

Applicant: JAMES C. AND ELIA A. SHEPHERD

County: Harney

Watermaster: 10

Priority Date: August 19, 2008

Source: A WELL IN WILLOW CREEK BASIN

Use: IRRIGATION USE ON 71.0 ACRES

Quantity: 0.8875 CUBIC FOOT PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 SILVIES R MISC

Well Location: NWSE, SECTION 7, T24S, R30E, W.M.; 1235 FEET SOUTH AND 595 FEET EAST FROM C1/4 CORNER, SECTION 7

Place of Use:

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 25.0 ACRES

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 6.0 ACRES

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 5.0 ACRES

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 ACRES

NW $\frac{1}{4}$ SE $\frac{1}{4}$ 20.0 ACRES

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 5.0 ACRES

SECTION 7

TOWNSHIP 24 SOUTH, RANGE 30 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

Area of overlap with Certificate 39760 (Permit G-2363, Application G-2546) – approx.18.0 ac

SW $\frac{1}{4}$ SE $\frac{1}{4}$? ACRES (APPROX 3.0 AC)

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 10.0 ACRES

SW $\frac{1}{4}$ SW $\frac{1}{4}$ 5.0 ACRES

SECTION 7

TOWNSHIP 24 SOUTH, RANGE 30 EAST, W.M.

Mailing List for IR Copies

~~Application #G 17095~~

~~IR Date: January 9, 2009~~

Original mailed to applicant:

JAMES C. AND ELIA A. SHEPHERD
476 N KOA
BURNS, OR 97720

Copies sent to:

1. WRD - File # G-17095
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Regional Manager: EASTERN
4. WRD - Watermaster # 10

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.)

Caseworker: Kerry Kavanagh

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.)

