



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 30, 2009

DR. TODD KUETHER
23930 NW HANSEN RD
NORTH PLAINS, OR 97133

Reference: File S-87341

Dear Dr. Kuether:

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 0.10 cubic foot per second (CFS) of water from an unnamed stream, tributary to East Fork McKay Creek for primary irrigation on 7.8 acres from March 1 through October 31. The application also requested the use of 19.5 acre feet (AF) of water from Schmidt Reservoir, constructed under permit R-5245, for secondary irrigation on 7.8 acres from March 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from unnamed stream, a tributary of East Fork McKay Creek, for irrigation use is allowed from November 1 through April 30 only under the Willamette Basin Program.

The use of water from Schmidt Reservoir, a tributary of East Fork McKay Creek, for irrigation use is allowable under the Willamette Basin Program, from March 1 through October 31.

4. Surface water is not available during the period April 1 through December 31.

Stored water is available for further appropriation from Schmidt Reservoir, year-round, contingent upon approval of transfer application T-10726.

Summary of Initial Determinations

The use of 0.10 CFS of water from an unnamed stream, tributary to East Fork McKay Creek, for irrigation use is not allowable during the entire season requested, and it appears unlikely that you will receive a permit for this use.

The use of 19.50 AF of water from Schmidt Reservoir, a tributary of East Fork McKay Creek, for irrigation use on 7.8 acres is allowable during the full period requested, March 1 through October 31, contingent upon approval of transfer application T-10726.

Because the use of 0.10 CFS of water from an unnamed stream, tributary to East Fork McKay, Creek is not allowable for primary irrigation use, the use of 19.50 AF of water from Schmidt Reservoir will be considered primary irrigation if you decide to proceed with this application.

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 #3 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, February 13, 2009**. 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 diversion. 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. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

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 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,



Michele McAleer
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

S-87341
WAB 2-95
POU 2-95
GW

APPLICATION FACT SHEET

Application File Number: S-87341

Applicant: TODD KUETHER

County: WASHINGTON

Watermaster: 18

Priority Date: November 18, 2008

Source: UNNAMED STREAM, A TRIBUTARY OF EAST FORK MCKAY CREEK;
SCHMIDT RESERVOIR, CONSTRUCTED UNDER PERMIT R-5245, A TRIBUTARY OF
EAST FORK MCKAY CREEK

Use: IRRIGATION USE ON 7.8 ACRES

Quantity: 0.1 CUBIC FOOT PER SECOND; 19.5 ACRE FEET

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 21 MCKAY CR MISC

Points of Diversion:

NWNE, SECTION 4, T2N, R2W, W.M.; 570 FEET SOUTH AND 2210 FEET WEST
FROM NE CORNER, SECTION 4

Place of Use:

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 7.8 ACRES
SECTION 4
TOWNSHIP 2 NORTH, RANGE 2 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, February 13, 2009

PUBLIC NOTICE DATE: Tuesday, February 3, 2009

30 DAY COMMENT DEADLINE DATE: Thursday, March 5, 2009

Mailing List for IR Copies

Application #S-87341

IR Date : January 30, 2009

Original mailed to applicant:

TODD KUETHER , 23930 NW HANSEN RD, NORTH PLAINS, OR 97133

Copies sent to:

1. WRD - File # S-87341
2. WRD - Water Availability: Ken Stahr

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

3. WRD - Watermaster # 18
4. ODFW: Danette Ehlers
5. DEQ: Sally Puent

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture

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

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

7. Stuntzner Engineering and Forestry, LLC., Attn: Eric Urstadt, 2137 19th Ave, Forest Grove,
OR 97116

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

COPYSHT.IR

Caseworker: Michele McAleer