



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

MIKE PEILA
PO BOX 537
HINES, OR 97738

April 3, 2009

Reference: File G-17138

Dear Mr. Peila:

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 to appropriate 5.29 cubic feet per second (CFS) of water from Well 1 (HARN 51503) and Well 2 in Sage Hen Creek Basin, for irrigation use on 201.0 acres and supplemental irrigation use on 222.0 acres 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 (HARN 51503) and Well 2 in Sage Hen Creek Basin, for irrigation use and supplemental 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 from:

- Well 1 (HARN 51503) will not have the potential for substantial interference with any surface water source;
- Well 2 will have the potential for substantial interference with Sage Hen Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water from Sage Hen Creek is not available May 1 through September 30.

5. 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 appropriation of water from Well 2.

6. A portion of the area proposed to be irrigated under this application is currently covered by an existing irrigation water right evidenced by Silvies River Decree, which conflicts with your application. Please see the **Conflict Resolution Information** section below for more information.
7. The proposed supplemental irrigation use shall be limited to match that of the primary water right. The Silvies River Decree allows the use of water for irrigation from March 20 through September 1. If the application is approved, the season allowed for supplemental irrigation will be limited to March 20 through September 1.
8. The Department has determined that Well 1 (HARN 51503) does not meet current minimum well construction standards. Prior to the issuance of a permit, evidence demonstrating compliance with well construction standards must be submitted to the Department, and the Department's Enforcement Section must approve the well construction. In repairing the well(s), you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Kris Byrd of the Department's Enforcement Section at 503-986-0851 to determine how to proceed.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's ground water supply (OAR 690-200).

9. Since there is not a well log associated with Well 2, the Department is unable to determine if the well meets current minimum well construction standards.

10. The map submitted with your application shows 220.0 acres for supplemental irrigation use. However, your application materials indicate you intend to irrigate 222.0 acres for supplemental irrigation use. Please refer to the **Additional Information Required** section below for requisite materials to clarify this discrepancy. Until the Department receives clarification, the Department will rely on acreage shown on the map, being 220.0.
11. The standard allowable rate for irrigation use of ground water is 1/80 CFS per acre. Your application requested 5.29 CFS for irrigation use on 201.0 acres and supplemental irrigation use on 220.0 acres. If the application is approved, the rate allowed will be limited to 5.25 CFS, being 2.5 CFS for irrigation use on 201.0 acres and 2.75 CFS for supplemental irrigation use on 220.0 acres.
12. Please refer to the **Additional Information Required** section below for specific information regarding additional deficiencies with the application.

Summary of Initial Determinations

The use of 5.25 CFS from WELL 1 (HARN 51503) in Sage Hen Creek Basin for irrigation use on 201.0 acres is allowable March 1 through October 31 and for supplemental irrigation use March 20 through September 30, contingent upon the submittal of evidence demonstrating compliance with current minimum well construction standards for Well 1 (HARN 51503).

Due to determination #5, the use of 5.25 CFS from Well 2 in Sage Hen Creek Basin for irrigation use on 201.0 acres and supplemental irrigation use on 220.0 acres is not allowable at anytime.

Although it is unlikely a permit will be issued due to determination #5, if determination #5 is overcome, contingent upon providing well construction information *and* the Department's determination that the well is in compliance with minimum well construction standards, appropriation of water may be allowable for irrigation use March 1 through April 30 and October 1 through October 31 and for supplemental irrigation use March 20 through April 30.

Because of these favorable determinations for Well 1 (HARN 51503), 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 prior to issuance of any Proposed Final Order that may recommend approval.

1. The map submitted does not meet the requirements of OAR 690-310-0050. Your map appears to be drawn to a scale of 4 inch = 1 mile, however your coordinates appear to be drawn to a scale of 4 inch = ½ mile. Please provide a map that shows the coordinates on the same scale as the map.
2. The map submitted with your application shows 220.0 acres for supplemental irrigation use. However, your application materials indicate you intend to irrigate 222.0 acres for

supplemental irrigation use. Please notify the Department if you intended to request 220.0 acres or 222.0 acres for supplemental irrigation use. If the application is in error, please submit updated application materials. If the map is in error, please submit an updated map.

3. In order for the Department to determine if the well construction for Well 2 meets current minimum well construction standards, the following information is required:
- boring report; or
 - well report; or
 - rough log; or
 - other evidence that would describe the well construction.

Please note that repair of the well(s) will not necessarily overcome the potential for substantial interference with surface water, and might not result in the issuance of a permit.

Conflict Resolution Information:

Of the proposed lands to be irrigated under this application 70.0 acres, being 30.0 acres within SWSE and 40.0 acres within SESE, Section 10, Township 24 South, Range 30 East, are currently covered by an existing irrigation water right evidenced by Silvies River Decree, which conflicts with your application. See attached map of Township 24 South, Range 30 E from the Silvies River Decree.

If you would like this application to be the primary right, the Department must receive:

- A completed form authorizing cancellation of the conflicting portions of the existing right, along with a map describing those portions; or
- A completed affidavit of diminution of the conflicting portions of the existing right to reduce them to supplemental use, along with a map describing those portions; or
- A transfer of the conflicting portions of the existing right; or
- Another mean of dealing with the conflict between the existing right and the use proposed under this application.

If you would like this application to be supplemental to the existing certificate, the Department must receive a revised map showing the place of use of both the primary and supplemental lands. Please note the supplemental lands will be limited and/or jeopardized 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. Water from the primary source must be exhausted first.
- The season of use for the supplemental irrigation will be limited to that of the primary right.

Please submit required information and conflict resolution information no later than Thursday, April 17, 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. If we do not receive the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

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, April 10, 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. 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.

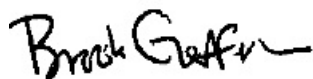
3. Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, 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 503-986-0808 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: Brook Geffen, 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 that reads "Brook Geffen" with a stylized flourish at the end.

Brook Geffen
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17138
WAB 12-31200202
POU 12-31200202
GW 12-31200202

APPLICATION FACT SHEET

Application File Number: G-17138

Applicant: MIKE PEILA

County: HARNEY

Watermaster: 10

Priority Date: NOVEMBER 4, 2008

Source: WELL 1 (HARN 51503) AND WELL 2 IN SAGE HEN CREEK BASIN

Use: IRRIGATION USE ON 201.0 ACRES AND SUPPLEMENTAL IRRIGATION USE ON 220.0 ACRES

Quantity: 5.29 CUBIC FEET PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 SILVIES R MISC

Well Locations:

WELL 1 (HARN 51503) - SESE, SECTION 9, T24S, R30E, W.M.; 363 FEET NORTH AND 594 FEET WEST FROM SE CORNER, SECTION 9

WELL 2 - SWNE, SECTION 10, T24S, R30E, W.M.; 871 FEET SOUTH AND 1254 FEET WEST FROM NE CORNER, SECTION 10

Place of Use:

<u>QUARTER/QUARTER</u>	<u>IRRIGATION</u>	<u>SUPPLEMENTAL IRRIGATION</u>
NE $\frac{1}{4}$ SE $\frac{1}{4}$		20.0 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$		20.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$		26.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$		32.0 ACRES
SECTION 9		
NW $\frac{1}{4}$ NE $\frac{1}{4}$	5.0 ACRES	
SW $\frac{1}{4}$ NE $\frac{1}{4}$	40.0 ACRES	
SE $\frac{1}{4}$ NE $\frac{1}{4}$	6.0 ACRES	
SE $\frac{1}{4}$ NW $\frac{1}{4}$	6.0 ACRES	
NE $\frac{1}{4}$ SW $\frac{1}{4}$		3.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$		15.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$		40.0 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		21.0 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$	34.0 ACRES	
NW $\frac{1}{4}$ SE $\frac{1}{4}$	40.0 ACRES	
SW $\frac{1}{4}$ SE $\frac{1}{4}$	30.0 ACRES	
SE $\frac{1}{4}$ SE $\frac{1}{4}$	40.0 ACRES	
SECTION 10		

QUARTER/QUARTER

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

IRRIGATION**SUPPLEMENTAL IRRIGATION**

31.0 ACRES
12.0 ACRES

SECTION 16
TOWNSHIP 24 SOUTH, RANGE 30 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, April 17, 2009

PUBLIC NOTICE DATE: Tuesday, April 7, 2009

30 DAY COMMENT DEADLINE DATE: May 3, 2009

Mailing List for IR Copies

Application #G-17138

IR Date: March 27, 2009

Original mailed to applicant:

MIKE PEILA , PO BOX 537, HINES, OR 97738

Copies sent to:

WRD - File # G-17138

WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

WRD - Regional Manager: E

WRD - Watermaster # 10

Department of Agriculture

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

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

Caseworker: Brook Geffen

COPYSH.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.)

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)