



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

HANS NELSON AND SONS NURSERY INC.
ATT: DAN NELSON
31020 SE WAYBILL RD
BORING, OR 97009-9427

April 3, 2009

Reference: File S-86622

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 14.0 acre feet (AF), from Reservoir 1 constructed under Permit R-14141, a tributary to Sandy River, for nursery and irrigation use from March 1 through October 31 and agriculture use from November 1 through the end of February.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of stored water from Reservoir 1, tributary to Sandy River for nursery use, irrigation use and agriculture use is allowable under the Sandy Basin Program.
4. Stored water is available in the amount and for the full period requested.
5. The proposed use is located above the Sandy River Scenic Waterway, as designated under ORS 390.826.

Summary of Initial Determinations

The use of 14.0 AF from Reservoir 1 constructed under Permit R-14141, tributary to Sandy River for nursery and irrigation use from March 1 through October 31 on 111.25 acres and agriculture use from November 1 through the end of February is 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.

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 17, 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 at each point of diversion. The permittee shall maintain the meter(s) in good working order. The permittee 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(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
2. 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.
3. 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.
4. 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.

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 503-986-0815 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

S-86622
WAB 3-storage
POU 3-storage
GW

APPLICATION FACT SHEET

Application File Number: S-86622

Applicant: HANS NELSON AND SONS NURSERY INC.

County: CLACKAMAS

Watermaster: 20

Priority Date: JUNE 15, 2006

Source: RESERVOIR 1 CONSTRUCTED UNDER PERMIT R-14141, TRIBUTARY TO SANDY RIVER

Use: NURSERY AND IRRIGATION USE ON 111.25 ACRES, AGRICULTURE USE

Quantity: 14.0 ACRE FEET

Basin Name & Number: Sandy, #3

Stream Index Reference: Volume 2 SANDY R

Point of Diversion Location: SWSW, SECTION 25, T1S, R4E, W.M.; 1300 FEET NORTH AND 590 FEET EAST FROM SW CORNER, SECTION 25

Place of Use:

<u>NURSERY AND IRRIGATION USE</u>	<u>AGRICULTURE</u>
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 28.5 ACRES	NW $\frac{1}{4}$ SW $\frac{1}{4}$
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.4 ACRES	SW $\frac{1}{4}$ SW $\frac{1}{4}$
SECTION 25	
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 11.9 ACRES	SE $\frac{1}{4}$ NE $\frac{1}{4}$
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 0.2 ACRE	NW $\frac{1}{4}$ NW $\frac{1}{4}$
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 18.75 ACRES	NE $\frac{1}{4}$ SE $\frac{1}{4}$
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 16.5 ACRES	SE $\frac{1}{4}$ SE $\frac{1}{4}$
SECTION 26	
TOWNSHIP 1 SOUTH, RANGE 4 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: Thursday, May 7, 2009

Mailing List for IR Copies

Application #S-86622

IR Date: April 3, 2009

Original mailed to applicant:

HANS NELSON AND SONS NURSERY INC, ATTN: DAN NELSON 31020 SE WAYBILL RD,
BORING, OR 97009-9427

Copies sent to:

1. WRD - File # S-86622
2. WRD - Water Availability: Ken Stahr

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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IR, Map, and Fact Sheet Copies sent VIA EMAIL to:

3. WRD -Watermaster # 20 (include Division 33 form)
4. ODFW: (include Division 33 form)
5. DEQ: (include Division 33 form)

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture

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

Kim Ann Tomlinson, 38200 SE Lusten RD Boring, OR 97009

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

Ed Crane CWRE # 156

Caseworker: Joel Plahn

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