



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**

4 DSD LLC
ATTENTION: CASEY SAFRENO
175 PHILLIPS RD
WOODSIDE, CA 94062

August 14, 2009

Reference: File R-87489

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 proposed to appropriate 200.0 acre-feet (AF) of water from runoff and a spring, tributaries of Sixshooter Creek, for storage in Pond A for multiple purpose use, including but not limited to irrigation, wildlife habitat, and fish habitat.

The application proposed that Pond A will inundate 9.0 acres and have a dam height of 49.0 feet.

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Under the John Day Basin Program (Oregon Administrative Rule (OAR) 590-506), the storage of water for "multiple purpose" is not classified. However, waters legally stored may be used for irrigation from January 1 through April 30 and for domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, and recreation (OAR 690-506-0040 (8)(b)). Therefore, the storage of water from runoff and a spring, tributaries of Sixshooter Creek, shall be limited to these uses, namely domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, recreation, and irrigation. Please keep in mind that if a permit is issued under this application, you would need to obtain a secondary permit to use the water for out-of-reservoir uses.

4. Surface water is not available during the period July 1 through December 31.
5. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year.
6. The proposed use is located above the John Day River Scenic Waterway, as designated under ORS 390.826.
7. Prior to issuance of a permit and construction of the project, final dam designs and specifications must be submitted to the Department and approved by the Department's dam-safety engineer.
8. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Determinations

The storage of 200.0 AF from runoff and a spring, tributaries of Sixshooter Creek, for (one or more of the following uses: domestic, livestock, ground water recharge, fire protection, fish life, wildlife, pollution abatement, recreation, and irrigation) may be allowed from January 1 through April 14.

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, #4 and #5 above, your application will likely be limited accordingly.

Additional Information Required:

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following:

- Please designate one or more of the classified uses listed in #3 above. Please note that there is an additional examination fee of \$250 for each additional use beyond the first use. You may find that applying for the storage of water for irrigation, provided that you obtain a secondary permit, is sufficient for your purposes.
- The map submitted does not meet the requirements of OAR 690-310-0050(4)(a). Please provide a map that shows the location of the spring and the location of the dam (or center of reservoir) by reference to a recognized public land survey corner. The location may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner). Please be sure to show clearly the location of the spring and dam/center on the map. The application map submitted on June 30, 2009 does not show the location of the spring, nor the location of the dam or center of the reservoir.

Please submit this information no later than September 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.

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 \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, August 28, 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.
 - B. Before water use may begin under this permit, a staff gage that measures the entire range and stage between full reservoir level and dead pool storage must be installed in the reservoir. The staff gage shall be United States Geological Survey style porcelain enamel iron staff gage style A, C, E or I.
 - C. The permittee shall maintain all required devices in good working order.
 - D. The permittee shall allow the watermaster access to the devices; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - E. 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.

- F. The Director may provide an opportunity for the permittee to submit alternative measuring and 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.
 3. The permittee is required to pass all live flow outside the storage season. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
 4. Additional conditions may be added upon approval of dam plans and specifications.
 5. Diversion of water under this right may be regulated while state Scenic Waterway flows are unmet downstream.

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 503-986-0816 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,



Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

APPLICATION FACT SHEET

Application File Number: R-87489

Applicant: 4 DSD LLC; ATTENTION: CASEY SAFRENO

County: Wheeler

Watermaster: 4

Priority Date: June 30, 2009

Source: RUNOFF AND A SPRING, TRIBUTARIES OF SIXSHOOTER CREEK

Use: MULTIPLE PURPOSE, INCLUDING BUT NOT LIMITED TO IRRIGATION,
WILDLIFE HABITAT, AND FISH HABITAT

Quantity: 200.0 ACRE FEET

Basin Name & Number: John Day, #6

Stream Index Reference: Volume 1A MTN CR MISC

Point of Diversion Location:

SPRING - NENW, SECTION 15, T11S, R24E, W.M.; NONE GIVEN

Dam Location:

POND A - NENW, SECTION 15, T11S, R24E, W.M.; NONE GIVEN

Place of Use:

NE $\frac{1}{4}$ NW $\frac{1}{4}$
SE $\frac{1}{4}$ NW $\frac{1}{4}$
SECTION 15
TOWNSHIP 11 SOUTH, RANGE 24 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, August 28, 2009

PUBLIC NOTICE DATE: Tuesday, August 18, 2009

30 DAY COMMENT DEADLINE DATE: Thursday, September 17, 2009

Mailing List for IR Copies

Application #R-87489

IR Date : August 14, 2009

Original mailed to applicant:

4 DSD LLC
ATTENTION: CASEY SAFRENO
175 PHILLIPS RD
WOODSIDE, CA 94062

Copies sent to:

1. WRD - File # R-87489
2. WRD - Water Availability: Ken Stahr

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

3. WRD - Watermaster # 4
4. ODFW: Tim Unterwegner
5. DEQ: Pat Vernon

IR, Map, and Fact Sheet Copies sent to:

6. WRD - George Robison, Dam Safety
7. WRD - Regional Manager: NC
8. State Parks
9. Department of Agriculture
10. Columbia River Intertribal Fish Commission, Julie Carter,
729 NE Oregon St, Ste 200, Portland OR 97232
11. US Fish & Wildlife Service, Gary Miller, 3502 Hwy 30, La Grande, OR 97850
12. NW Power Planning Council, Fish & Wildlife Division, Karl Weist
851 SW Sixth Ave, Ste 1020, Portland OR 97204
13. Confederated Tribes of the Umatilla Indian Reservation, Carl Merkle or Jennifer Hudson
PO Box 638, 73239 Confederated Way, Pendleton, OR 97801
14. National Marine Fisheries Service, Spencer Hovekamp
3502 Hwy 30, La Grande, OR 97850

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

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

15. Katie Turner, Newton Consultants, Inc., 521 SW 6th St, Suite 100, Redmond OR 97756-2702

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>

Caseworker: Kerry Kavanagh

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