



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

DENNIS WERNER
463 S MOON BEAM WAY
EAGLE, ID 83616

June 17, 2010

Reference: File S-87605

Dear Mr. Werner:

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 11.0 cubic feet per second (CFS) of water from North Alkali Creek, a tributary of Alkali Creek, for wetland enhancement March 1 through October 31 and 3.0 CFS from November 1 through February 28/29.

The application materials described the water delivery system as non-consumptive, with water diverted from North Alkali Creek via a supply ditch through three wetland reservoirs (constructed under Permits R-14826, R-14827, and R-14828) and returned downstream to Alkali Creek.

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from North Alkali Creek, a tributary of Alkali Creek, for wetland enhancement is allowable under the Owyhee Basin Program.
4. Surface water is available in the amount and for the full period requested.
5. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year. Under OAR 690-033-0140, the Department may approve a water right permit for: 1) domestic use, 2) projects that provide net benefits for native resident and native anadromous fish recovery, 3) emergency use necessary for public health and safety, or 4) multipurpose storage projects or other projects with measurable public benefits.

At the next stage of the application process, the Department will further consider whether the proposed use is non-consumptive and may find that the use is in the public interest and allow the full season requested.

Summary of Initial Determinations

The use of 11.0 CFS from North Alkali Creek, a tributary of Alkali Creek, for wetland enhancement is allowable from March 1 through April 14 and October 1 through October 31 and the use of 3.0 CFS from North Alkali Creek, a tributary of Alkali Creek, for wetland enhancement is allowable November 1 through February 28/29. However, at the next stage of the application process, the Department may find that the proposed use is in the public interest and allow the full season requested.

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 \$200 processing charge per application). To accomplish this you must notify the Department in writing by **Thursday, July 1, 2010**. 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 diversion. The permittee shall maintain the meter or measuring device in good working order.
 - B. 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.
 - C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

- D. 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.

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

S-87605
WAB 11-no wab
POU 11-no wab
GW

APPLICATION FACT SHEET

Application File Number: S-87605

Applicant: DENNIS WERNER

County: Malheur

Watermaster: 9

Priority Date: May 10, 2010

Source: NORTH ALKALI CREEK, A TRIBUTARY OF ALKALI CREEK

Use: WETLAND ENHANCEMENT

Quantity: 11.0 CUBIC FEET PER SECOND (CFS) DURING THE PERIOD MARCH 1 THROUGH OCTOBER 31 AND 3.0 CFS DURING THE PERIOD NOVEMBER 1 THROUGH FEBRUARY 28/29

Basin Name & Number: Owyhee, #11

Stream Index Reference: Volume 1A SNAKE R MISC

Point of Diversion Location: NESW, SECTION 14, T22S, R46E, W.M.; 3800 FEET SOUTH AND 2900 FEET WEST FROM NE CORNER, SECTION 14

Place of Use:

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

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

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

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

SECTION 14

TOWNSHIP 22 SOUTH, RANGE 46 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Thursday, July 1, 2010

PUBLIC NOTICE DATE: Tuesday, June 22, 2010

30 DAY COMMENT DEADLINE DATE: Thursday, July 22, 2010

Mailing List for IR Copies

Application #S-87605

IR Date: June 17, 2010

Original mailed to applicant:

DENNIS WERNER
463 S MOON BEAM WAY
EAGLE, ID 83616

Copies sent to:

1. WRD - File # S-87605
2. WRD - Water Availability: Ken Stahr

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

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

3. WRD - Watermaster # 9
4. ODFW: Ray Perkins
5. DEQ: Eric Nigg

IR, Map, and Fact Sheet Copies sent to:

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

Caseworker: Kerry Kavanagh

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