



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

September 24, 2010

ALLAN ELLIOTT
CARLTON NURSERY COMPANY, LLC
PO BOX 398
DAYTON, OR 97114

Reference: File G-17294

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 1.0 cubic foot per second (CFS) of water from Well 1 (YAMH 557), Well 2 (YAMH 6409), and proposed Well 3 in Warner Creek Basin, tributary to Warner Creek, for year-round nursery use on 95.3 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are fully included in irrigation and agriculture uses, both of which are allowed by OAR 690-502, the Willamette Basin Program. Therefore, the use of water from Well 1 (YAMH 557), Well 2 (YAMH 6409), and proposed Well 3 in Warner Creek Basin, tributary to Warner Creek for nursery use is a classified use.
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 (YAMH 557), Well 2 (YAMH 6409), and proposed Well 3 in Warner Creek Basin, tributary to Warner Creek, will all have the potential for substantial interference with both Warner Creek and Palmer Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available during the period July through September.

Summary of Allowable Water Use

Because not all items above are favorable, the use of 1.0 CFS of water from Well 1 (YAMH 557), Well 2 (YAMH 6409), and Proposed Well 3 in Warner Creek Basin for nursery uses on 95.3 acres is not allowable, and it appears unlikely that you will be issued a permit unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order. At this time, you must decide whether to proceed or to withdraw your application as described below.

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.

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, October 8, 2010**. 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 appropriation. 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. 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.

3. To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well 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 non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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.

4. The well(s) shall only produce ground water from water-bearing zones below 80 feet in the alluvial groundwater reservoir.
5. Although the wells under this application are located within the Amity Hills /Walnut Hills Limited Area, the wells are to be constructed to allow groundwater no shallower than 80 feet (as described in Item #5 above) and, therefore, shall develop water from the alluvial ground water reservoir, and not the Columbia River Basalt Group aquifers affected by this limitation.

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

G-17294
WAB 2-30200801
POU 2-30200801
GW

APPLICATION FACT SHEET

Application File Number: G-17294

Applicant: ALLAN ELLIOTT CARLTON NURSERY COMPANY, LLC

County: YAMHILL

Watermaster: 16

Priority Date: DECEMBER 28, 2009

Source: WELL 1 (YAMH 557), WELL 2 (YAMH 6409), AND PROPOSED WELL 3 IN WARNER CREEK BASIN

Use: NURSERY USES ON 95.3 ACRES

Quantity: 1.0 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, #2

Stream Index Reference: Volume 12A PALMER CR & MISC

Well Location(s):

WELL 1 (YAMH 557): NWNW, SECTION 16, T5S, R3W, W.M.; 70 FEET NORTH AND 5 FEET EAST FROM NW CORNER, DLC 56

WELL 2 (YAMH 6409): SESE, SECTION 8, T5S, R3W, W.M.; 150 FEET NORTH AND 390 FEET WEST FROM NW CORNER, DLC 56

PROPOSED WELL 3: SESE, SECTION 8, T5S, R3W, W.M.; 1120 FEET NORTH AND 1120 FEET WEST FROM NW CORNER, DLC 56

Place of Use:

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 15.6 ACRES

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 8.4 ACRES

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 0.9 ACRE

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 0.8 ACRE

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 15.3 ACRES

NW $\frac{1}{4}$ SE $\frac{1}{4}$ 39.0 ACRES

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 11.2 ACRES

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 4.1 ACRES

SECTION 8

TOWNSHIP 5 SOUTH, RANGE 3 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, October 8, 2010

PUBLIC NOTICE DATE: Tuesday, September 28, 2010

30 DAY COMMENT DEADLINE DATE: Thursday, October 28, 2010

Mailing List for IR Copies

Application #G-17294

IR Date: September 24, 2010

Original mailed to applicant:

ALLAN ELLIOTT, CARLTON NURSERY COMPANY, LLC, PO BOX 398, DAYTON, OR 97114

Copies sent to:

1. WRD - File # G-17293
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent VIA E MAIL to:

3. WRD - Watermaster # 16 (include Division 33 form)
4. ODFW: Tom Murtaugh (include Division 33 form)
5. DEQ: Nancy Gramlich (include Division 33 form)

IR, Map, and Fact Sheet Copies sent to:

6. Department of Agriculture
7. NW Region Well Inspector

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

8. Yamhill County Public Works, Attn: John Phelan, Road Department Director, 2060 Lafayette Avenue, McMinnville, OR 97128

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

9. CWRE # 60772, Malia Kupillas

Caseworker: Michele McAleer

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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