



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

October 26, 2010

GARTH AND SUSAN MULKEY
13535 DE ARMOND RD
MONMOUTH, OR 97361

Reference: File R-87590

Dear Applicants:

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 103.0 acre-feet (AF) of water from runoff, tributary to Berry Creek, and Berry Creek, tributary to Soap Creek, for multiple purpose storage (irrigation, fish and wildlife) year-round.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of 103.0 AF of water from runoff, a tributary of Berry Creek, and Berry Creek, a tributary of Soap Creek for storage for irrigation, fish, and wildlife use is allowable under the Willamette Basin Program from November 1 through April 30.

Multiple purpose storage is not a classified use in the Willamette Basin Program.

4. Surface water is not available during the period August 1 through August 30.
5. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Determinations

The storage of 103.00 AF from runoff, a tributary of Berry Creek, and Berry Creek, a tributary of Soap Creek for Irrigation, Fish, and Wildlife use may be allowed from November 1 through April 30 of each year.

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 #4 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 permit approval. Please provide the following item(s):

- Under OAR 690-005-0035 (2)(d), the Department must receive a completed Land Use Information Form or a receipt signed and dated by the relevant planning jurisdiction that states the proposed use of water and location(s) where water will be diverted, conveyed, and used comply with the local acknowledged comprehensive land-use plan.

The land-use form you submitted does not include approval for lands identified in your application as being in Township 10S, Range 5W, Section 2, which appear to include tax lots 200 and 301, where the point of diversion from Berry Creek is located. Please provide a completed Land Use Information Form that includes all lands where water is to be diverted, conveyed or used, and indicates that the application is in compliance with the local acknowledged comprehensive land-use plan.

- 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.
- 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 conveyance of water, being canals, ditches, or flumes, which will divert water from Berry Creek to the proposed Valley View Reservoir.**

Please submit this information no later than Thursday, November 25, 2010 . 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 **Tuesday, November 9, 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 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.
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.

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,

A handwritten signature in cursive script that reads "Michele R. McAleer".

Michele McAleer
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

R-87590
WAB 2-30200302
POU 2-30200302
GW

APPLICATION FACT SHEET

Application File Number: R-87590

Applicant: GARTH AND SUSAN MULKEY

County: POLK

Watermaster: 16

Priority Date: MARCH 12, 2010

Source: RUNOFF, A TRIBUTARY OF BERRY CREEK, AND BERRY CREEK, A TRIBUTARY OF SOAP CREEK

Use: IRRIGATION, FISH, AND WILDLIFE USE

Quantity: 103.00 ACRE FEET

Basin Name & Number: WILLAMETTE, #2

Stream Index Reference: Volume 9A SOAP CR MISC

Point of Diversion(s):

DAM LOCATION: SWSW, SECTION 35, T9S, R5W, W.M.; 900 FEET NORTH AND 1325 FEET EAST FROM SW CORNER, SECTION 35

POD/BERRY CREEK: NESW, SECTION 2, T10S, R5W, W.M.; 70 FEET SOUTH AND 800 FEET WEST OF CENTER SECTION 2

Place of Use:

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

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

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

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

SECTION 35

TOWNSHIP 9 SOUTH, RANGE 5 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Tuesday, November 9, 2010

PUBLIC NOTICE DATE: Tuesday, October 26, 2010

30 DAY COMMENT DEADLINE DATE: Thursday, November 25, 2010

Mailing List for IR Copies

Application #R-87590

IR Date : October 26, 2010

Original mailed to applicant:

GARTH AND SUSAN MULKEY , 13535 DE ARMOND RD, MONMOUTH, OR 97361

**** Do not mail IR to applicant: Caseworker to send via e-mail to applicant at their e-mail address: mulkeyfarm@yahoo.com**

Copies sent to:

1. WRD - File # R-87590
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: Karen Hans (include Division 33 form)
5. DEQ: Nancy Gramlich (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"):

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

7. CWRE #117, James Schutte

Caseworker: Michele McAleer

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