



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

KEN BROWN AND DAN DAIL
830 N FIR VILLA RD
DALLAS, OR 97338

January 7, 2011

Reference: File R-87591

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 storage of 29.0 acre-feet (AF) of water from an unnamed stream and runoff, tributary to Baskett Slough, with a dam height of 20.5 feet, inundating 3.5 acres for year-round multiple purpose use, to include recreation, wildlife, irrigation and fire suppression.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Under Oregon Administrative Rule (OAR) 690-502-0040(4), water may be appropriated for storage from November 1 through June 30.
4. Surface water is not available during the period August 1 through September 30.
5. The storage of water from an unnamed stream and runoff, tributary to Baskett Slough, for "multiple purpose" is not allowable under the Willamette Basin Program.

However, the storage of water for other uses listed in the application, specifically recreation, wildlife, and irrigation is allowable.

The storage of water for fire suppression is not allowable under the Willamette Basin Program. However, water used for emergency firefighting is exempt from permitting requirements (ORS 537.141 (1)(a)).

6. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.

7. On April 1, 2010, George Robison, the Department's Dam Safety Coordinator, conducted an inspection of the Brown-Harland Reservoir (Dam File B-45) and provided written approval of dam plans and specifications, and found the dam to be in good condition.

Summary of Initial Determinations

The use of 29.0 AF of water from an unnamed stream and runoff, tributary to Baskett Slough, for recreation, wildlife, and irrigation is allowable from November 1 through June 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 # 3 and 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.

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, January 21, 2011**. 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 allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and the place and nature of use of water under the permit.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
2. The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8” for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
 3. The permittee shall pass all live flow outside the storage season described above.
 4. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.
 5. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.
 6. 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.
 7. 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-87591
WAB 2-30200702
POU 2-30200702

APPLICATION FACT SHEET

Application File Number: R-87591

Applicant: KEN BROWN AND DAN DAIL

County: POLK

Watermaster: 16

Priority Date: MARCH 12, 2010

Source: UNNAMED STREAM AND RUNOFF, TRIBUTARY TO BASKETT SLOUGH

Use: MULTIPLE PURPOSE, INCLUDING RECREATION, WILDLIFE, IRRIGATION AND FIRE SUPPRESSION

Quantity: 29.0 ACRE FEET

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 10 MUD CR SLOUGH & MISC

Dam Location(s): SWSW. SECTION 23, T7S, R5W, W.M.; 300 FEET WEST FROM SW CORNER, HARRISON BRUNK DLC 61

Place of Use:

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 23
TOWNSHIP 7 SOUTH, RANGE 5 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, January 21, 2011

PUBLIC NOTICE DATE: Tuesday, January 11, 2011

30 DAY COMMENT DEADLINE DATE: Thursday, February 10, 2011

Mailing List for IR Copies

Application #R-87591

IR Date : January 7, 2011

Original mailed to applicant:

*KEN BROWN AND DAN DAIL , 830 N FIR VILLA RD, DALLAS, OR 97338

*sent 1/6/11 via e-mail (by MRM) to Leadell@juno.com per applicant's request

-Please **do not mail** hard copy

Copies sent to:

1. WRD - File # R-87591
2. WRD - Water Availability: Ken Stahr
3. Dam Safety - Barry Norris

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

IR, Map, and Fact Sheet Copies sent VIA-EMAIL to:

4. WRD - Watermaster # 16 (include Division 33 form)
5. ODFW: Karen Hans (include Division 33 form)
6. DEQ: Nancy Gramlich (include Division 33 form)

IR, Map, and Fact Sheet Copies sent to:

7. Department of Agriculture

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

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

8. Brian Brown, at e-mail per his request: BryanB@OFPC.com (Sent by MRM on 1/6/11)

COPYSHT.IR

Caseworker: Michele McAleer