



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

DAN AHART
PO BOX 532
BURNS, OR 97720

February 17, 2011

Reference: File G-17447

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 the appropriation of 9.7 cubic feet per second (CFS) of water, being 1.00 CFS from Well 1, 1.56 CFS from Well 2, 1.56 CFS from Well 3, 1.50 CFS from Well 4, 1.50 CFS from Well 5, 1.56 CFS from Well 6, and 1.00 CFS from Well 7 in Nine Mile Slough Basin for irrigation of 755.0 acres from March 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The Department identified well log HARN 665 for the existing well, Well 1, which is the same well authorized under Certificate 51253.
4. The appropriation of water from Well 1 (HARN 665), Well 2, Well 3, Well 4, Well 5, Well 6, and Well 7 in Nine Mile Slough Basin for irrigation is allowable under the Malheur Lake Basin Program.
5. 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 will not have the potential for substantial interference with any surface water source.

6. Your application requested irrigation of 775.0 acres, however, the map provided with the application shows irrigation of 755.0 acres. The Department will proceed with the acreage shown on the map unless notified in writing before Thursday, March 24, 2011.

7. A portion of the area proposed to be irrigated under this application, located in Section 33, Township 23 South, Range 32.5 East, W.M., is currently covered by an existing irrigation water right evidenced by Certificate 51253 from the same well, being Well 1 (HARN 665), which conflicts with this application. Certificate 51253 allows the use of 0.59 CFS from Well 1 (HARN 665) for irrigation of 79.0 acres which is less than the maximum standard rate (1/80 CFS per acre irrigated). Based on the maximum standard rate, this application may allow the use of 0.40 CFS to make up deficiency in rate for irrigation of 79.0 acres in Section 33, T23S, R32.5E, W.M. and 0.013 CFS for irrigation of 1.0 acre; the difference between the 80.0 acres applied for and the 79.0 acres authorized under Certificate 51253. If approved, the total rate of water allowed from Well 1 (HARN 665) will be 0.413 CFS for the irrigation of 80.0 acres.
8. The standard allowable limit for irrigation use from ground water is 1/80 CFS per acre. By subtracting the proposed rate of 1.00 CFS from Well 1 (HARN 665), the remaining proposed rate is 8.7 CFS for irrigation of 675.0 acres (755.0 acres less 80.0 acres) from Wells 2-7. If the application is approved, the rate allowed from Wells 2-7 will be limited to 8.44 CFS (675.0 acres * 1/80 CFS per acre).
9. The Department has determined that Well 1 (HARN 665) does not meet current minimum well construction standards. Prior to the issuance of a permit, evidence demonstrating compliance with well construction standards must be submitted to the Department, and the Department's Enforcement Section must approve the well construction. In repairing the well, you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Kris Byrd of the Department's Enforcement Section at 503-986-0851 to determine how to proceed.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's ground water supply (OAR 690-200).
10. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Determinations

The use of 0.413 CFS from Well 1 (HARN 665) in Nine Mile Slough Basin, being 0.013 CFS for irrigation of 1.0 acre and 0.40 CFS to make up deficiency in rate for irrigation of 79.0 acres may be allowed during the full period requested, March 1 through October 31, contingent upon the submittal of evidence demonstrating compliance with current minimum well construction standards for Well 1 (HARN 665).

The use of 8.44 CFS, further limited to no more than 1.56 CFS from Well 2, 1.56 CFS from Well 3, 1.50 CFS from Well 4, 1.501 CFS from Well 5, 1.56 CFS from Well 6, and 1.00 CFS from Well 7 in Nine Mile Slough Basin for irrigation of 675.0 acres may be allowed during the full period requested, March 1 through October 31.

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 # 7 and 8 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:

- Department staff found a discrepancy regarding the location of Well 1 (HARN 665) as shown on your application map. Based on well log and Department geographical information, the Department has identified the location of Well 1 (HARN 665) as 1240 feet south and 1280 feet east from West 1/4 Corner, Section 33, T23S, R32.5E, W.M. **Please submit a revised map showing the correct location and well coordinates of Well 1 (HARN 665).**
- **Please submit a revised map showing where the 1.0 acre will be located in the SW 1/4 SW 1/4 of Section 33, T23S, R32.5E, W.M.** You applied to irrigate 40.0 acres while Certificate 51253 authorizes the irrigation of 39.0 acres in this quarter-quarter section.

Please submit this information no later than Thursday, March 24, 2011. 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 **Thursday, March 3, 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 appropriation. The permittee shall maintain the meter(s) or measuring device(s) in good working order.
 - B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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(s) or measuring device(s); provided however, where any meter(s) or measuring device(s) is/are 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. The Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

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. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of 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 restricted use shall continue until the water level rises above the decline level which triggered the action or 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 causing substantial interference with senior water rights. The water user shall not 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.

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,

A handwritten signature in cursive script that reads "K Kavanagh".

Kerry Kavanagh
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17447
WAB 12-no psi
POU 12-no psi
GW

APPLICATION FACT SHEET

Application File Number: G-17447

Applicant: DAN AHART

County: Harney

Watermaster: 10

Priority Date: January 3, 2011

Source: WELL 1 (HARN 665), WELL 2, WELL 3, WELL 4, WELL 5, WELL 6, AND WELL 7
IN NINE MILE SLOUGH BASIN

Use: IRRIGATION OF 755.0 ACRES

Quantity: 9.7 CUBIC FEET PER SECOND (CFS), BEING 1.00 CFS FROM WELL 1, 1.56 CFS
FROM WELL 2, 1.56 CFS FROM WELL 3, 1.50 CFS FROM WELL 4, 1.50 CFS FROM
WELL 5, 1.56 CFS FROM WELL 6, AND 1.00 CFS FROM WELL 7

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 MALHEUR L & MISC

Well Locations:

WELL 1 (HARN 665) - SWSW, SECTION 33, T23S, R32.5E, W.M.; 825 FEET
NORTH AND 1235 FEET WEST FROM SW CORNER, SECTION 33

WELL 2 - NENW, SECTION 4, T24S, R32.5E, W.M.; 1290 FEET SOUTH AND 1340
FEET EAST FROM NW CORNER, SECTION 4

WELL 3 - SWSE, SECTION 4, T24S, R23.5E, W.M.; 300 FEET NORTH AND 2145
FEET WEST FROM SE CORNER, SECTION 4

WELL 4 - NENE, SECTION 5, T24S, R32.5E, W.M.; 165 FEET SOUTH AND 660
FEET WEST FROM NE CORNER, SECTION 5

WELL 5 - SESW, SECTION 5, T24S, R32.5E, W.M.; 250 FEET NORTH AND 2510
FEET EAST FROM SW CORNER, SECTION 5

WELL 6 - NWNE, SECTION 8, T24S, R32.5E, W.M.; 80 FEET SOUTH AND 1300
FEET EAST FROM N1/4 CORNER, SECTION 8

WELL 7 - SWNW, SECTION 9, T24S, R32.5E, W.M.; 1400 FEET SOUTH AND 2380
FEET WEST FROM N1/4 CORNER, SECTION 9

Place of Use:

NW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SECTION 33
TOWNSHIP 23 SOUTH, RANGE 32.5 EAST, W.M.

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 31.0 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 31.0 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 31.4 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 31.4 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 31.4 ACRES
SECTION 4

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 39.0 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 40.0 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$ 20.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 40.0 ACRES
SECTION 5

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 31.4 ACRES
NW $\frac{1}{4}$ NE $\frac{1}{4}$ 31.4 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 31.4 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 31.4 ACRES
SECTION 8

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 40.0 ACRES
SECTION 9
TOWNSHIP 24 SOUTH, RANGE 32.5 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Thursday, March 3, 2011

PUBLIC NOTICE DATE: Tuesday, February 22, 2011

30 DAY COMMENT DEADLINE DATE: Thursday, March 24, 2011

Mailing List for IR Copies

Application #G-17447

IR Date : February 17, 2011

Original mailed to applicant:

DAN AHART
PO BOX 532
BURNS, OR 97720

Copies sent to:

1. WRD - File # G-17447
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Regional Manager: EASTERN
4. WRD - Watermaster # 10

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

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

1. Lois Clemens, Tim Clemens, and Tom Clemens, 235 Highway 20 North, Hines, OR 97738
2. Eric Woodworth, P.O. Box 427, Hines, OR 97738

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

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Caseworker: Kerry Kavanagh