



Oregon

John A. Kitzhaber, MD, 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**

December 16, 2011

BROCK & PHILLIP OBENDORF FARMS, LLC
ATTENTION: BROCK OBENDORF
26538 SAND RD
PARMA, ID 83660

Reference: File G-17500

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 10.03 cubic feet per second (CFS), further limited to no more than 10.03 CFS from Well 1 - Obendorf Well 1, 5.125 CFS from Well 2 - Jaca Well 1 (MALH 2428), and 4.712 CFS from Well 3 - Jaca Well 5 (MALH 2426), in Sheep Creek Basin for irrigation of 229.3 acres and supplemental irrigation of 779.7 acres April 1 through October 31.
2. The standard allowable rate for irrigation and supplemental irrigation from ground water is 1/80 CFS per acre. If the application is approved, the rate allowed for irrigation of 229.3 acres will be limited to 2.87 CFS and the rate allowed for supplemental irrigation of 779.7 acres will be limited to 9.75 CFS.
3. The proposed use is not prohibited by law or rule except where otherwise noted below.
4. The appropriation of water from Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426) in Sheep Creek Basin for irrigation and supplemental irrigation is allowable under the Owyhee Basin Program.
5. Ground water will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights.

6. The Department has determined, based upon OAR 690-009, that the proposed ground water use from Well 1 - Obendorf Well 1 and Well 2 - Jaca Well 1 (MALH 2428) will not have the potential for substantial interference with surface water.
7. The Department has determined, based upon OAR 690-009, that the proposed ground water use from Well 3 - Jaca Well 5 (MALH 2426) will have the potential for substantial interference with Jordan Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. Surface water is not available at any time of year.
8. Because the proposed use of hydraulically connected ground water has the potential for substantial interference with surface water, OAR 690-033-0120(2) prohibits the appropriation of ground water from Well 3 - Jaca Well 5 (MALH 2426) from April 15 through September 30 of each year.
9. The proposed use falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
10. The Department has determined that Well 2 - Jaca Well 1 (MALH 2428) and Well 3 - Jaca Well 5 (MALH 2426) do not meet current minimum well construction standards. In order to meet current minimum well construction standards, Well 2 - Jaca Well 1 (MALH 2428) must be re-sealed to a minimum depth of 21 feet below ground surface using an appropriate sealing material such as cement, unhydrated bentonite or concrete, and Well 3 - Jaca Well 5 (MALH 2426) must be sealed to a minimum depth of 229 feet below ground surface.

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(s), 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 note that repair of Well 3 - Jaca Well 5 (MALH 2426) will not necessarily overcome the potential for substantial interference with surface water and might not result in the issuance of a permit for appropriation of ground water from this well.

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).

11. The proposed use is located above the Owyhee River Scenic Waterway, as designated under ORS 390.826.

Per ORS 390.835, the Ground Water Section is able to calculate ground water interference with surface water that contributes to the Owyhee River Scenic Waterway. However, the proposed use under this application will not individually, or cumulatively with other ground water uses, reduce surface water flows within the scenic waterway in

excess of a combined total of one percent of the average daily flow by month or one cubic foot per second, whichever is less (OAR 690-310-260 (11)). Therefore, the Department finds that there *is not* a preponderance of evidence that the proposed use of ground water will measurably reduce the surface water flows necessary to maintain the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

12. Additional exam fees are required prior to issuance of any Proposed Final Order that may recommend approval as the Department considers primary irrigation and supplemental irrigation separate uses. The total exam fee is \$4500, and the Department has received a total of \$4400; please provide the balance of \$100.

Category	Fee
Base	\$ 1000
First CFS	\$ 250
Ten additional CFS/fraction @ \$250 each	\$ 2500
One additional use	\$ 250
Two additional points of appropriation @ \$250 each	\$ 500
TOTAL EXAM FEES:	\$ 4500

Please submit the outstanding exam fees no later than Thursday, January 19, 2012.

13. The Department has determined a portion of the proposed place of use has underlying ground water rights evidenced by Certificates 45423 and 45776 (see attached maps). Further review of the proposed source of water [Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426)] under Application G-17500 and the authorized point of appropriation (Well 2 - Jaca Well 1 - MALH 2428) under Certificates 45423 and 45776 indicate that Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426) will likely develop water from the same ground water aquifer.

Because these wells develop water from the same ground water source, Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426) under Application G-17500 may not be used as supplemental sources to each other.

In addition, because Certificates 45423 and 45776 allow the maximum rate of 1/80 CFS per acre of water, Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426) under Application G-17500 may not be used to make up a deficiency in rate for the well assigned Jaca Well 1 - MALH 2428.

If you would like to use Well 1 - Obendorf Well 1, Well 2 - Jaca Well 1 (MALH 2428), and Well 3 - Jaca Well 5 (MALH 2426) under Application G-17500 to irrigate the lands that conflict with underlying certificates, the Department must receive one of the following by Thursday, January 19, 2012:

- A completed form authorizing cancellation of the conflicting portions of the existing rights, along with maps describing those portions; or

- A transfer application addressing the conflicting portions of the existing rights; or
 - Another means of dealing with the conflict between the existing rights and the use proposed under this application.
14. If you are unable to submit the requested/required information noted in Determinations 12 and 13 by Thursday, January 19, 2012, you may send a written request for an administrative hold for up to 180 days.

Summary of Allowable Water Use

Because not all items above are favorable, the appropriation of 9.75 CFS, limited to no more than 9.75 CFS from Well 1 - Obendorf Well 1, 5.125 CFS from Well 2 - Jaca Well 1 (MALH 2428), and 4.712 CFS from Well 3 - Jaca Well 5 (MALH 2426) in Sheep Creek Basin, further limited to no more than 2.87 CFS for irrigation of 229.3 acres and 9.75 CFS for supplemental irrigation of 779.7 acres April 1 through October 31 of each year is not allowable, and it appears unlikely that you will be issued a permit unless the conflict with the underlying certificates is resolved. In addition, you must submit evidence demonstrating compliance with current minimum well construction standards for Well 2 - Jaca Well 1 (MALH 2428) and Well 3 - Jaca Well 5 (MALH 2426) prior to permit issuance.

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, December 30, 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 or measuring device 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 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. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.
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.

- 4. 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.

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

G-17500
WAB 11-31111001 - Well 3 - Jaca #5 (MALH 2426); no psi - Well 1 - Obendorf Well 1 and Well 2 (Jaca Well 1 (MALH 2428)
POU 11- 31111001
GW

APPLICATION FACT SHEET

Application File Number: G-17500

Applicant: BROCK & PHILLIP OBENDORF FARMS, LLC;
ATTENTION: BROCK OBENDORF

County: Malheur

Watermaster: 9

Priority Date: November 3, 2011

Source: WELL 1 - OBENDORF WELL 1, WELL 2 - JACA WELL 1 (MALH 2428), AND
WELL 3 - JACA WELL 2 (MALH 2426) IN SHEEP CREEK BASIN

Use: IRRIGATION OF 229.3 ACRES; SUPPLEMENTAL IRRIGATION OF 779.7 ACRES

Quantity: 10.03 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO NO MORE
THAN 10.03 CFS FROM WELL 1 - OBENDORF WELL 1, 5.125 CFS FROM WELL 2 - JACA
WELL 1 (MALH 2428), AND 4.712 CFS FROM WELL 3 - JACA WELL 5 (MALH 2426)

Basin Name & Number: Owyhee, #11

Stream Index Reference: Volume 1A JORDAN CR MISC

Well Locations:

WELL 1 - OBENDORF WELL 1 - NWNE, SECTION 15, T30S, R46E, W.M.; 500
FEET SOUTH AND 1850 FEET WEST FROM NE CORNER, SECTION 15

WELL 2 - JACA WELL 1 (MALH 2428) - SESE, SECTION 15, T30S, R46E, W.M.;
300 FEET NORTH AND 140 FEET WEST FROM SE CORNER, SECTION 15

WELL 3 - JACA WELL 5 (MALH 2426) - SWSW, SECTION 10, T30S, R46E, W.M.;
1290 FEET NORTH AND 6500 FEET EAST FROM SW CORNER, SECTION 9

Place of Use:

	<u>Primary</u>	<u>Supplemental</u>
NE ¼ SW ¼	1.0 ACRE	29.5 ACRES
NW ¼ SW ¼	3.8 ACRES	29.5 ACRES
SW ¼ SW ¼		29.5 ACRES
SE ¼ SW ¼		29.5 ACRES
NE ¼ SE ¼		29.5 ACRES
NW ¼ SE ¼		29.5 ACRES
SW ¼ SE ¼		29.5 ACRES
SE ¼ SE ¼		29.5 ACRES
SECTION 9		
SE ¼ NW ¼		24.5 ACRES
NE ¼ SW ¼	1.5 ACRES	24.5 ACRES
NW ¼ SW ¼		29.0 ACRES
SW ¼ SW ¼		28.7 ACRES
SE ¼ SW ¼		15.0 ACRES
SECTION 10		
TOWNSHIP 30 SOUTH, RANGE 46 EAST, W.M.		

Place of Use (continued):

	<u>Primary</u>	<u>Supplemental</u>
NW ¼ SW ¼	3.7 ACRES	12.0 ACRES
SW ¼ SW ¼	6.5 ACRES	24.5 ACRES
SECTION 14		
NW ¼ NE ¼	3.5 ACRES	20.4 ACRES
SW ¼ NE ¼	17.3 ACRES	17.3 ACRES
NE ¼ NW ¼		38.0 ACRES
NW ¼ NW ¼	2.5 ACRES	30.7 ACRES
SW ¼ NW ¼	4.3 ACRES	14.5 ACRES
SE ¼ NW ¼	3.0 ACRES	30.7 ACRES
NE ¼ SW ¼	31.4 ACRES	31.4 ACRES
NW ¼ SW ¼	31.4 ACRES	31.4 ACRES
SW ¼ SW ¼	31.4 ACRES	31.4 ACRES
SE ¼ SW ¼	31.4 ACRES	31.4 ACRES
NE ¼ SE ¼		31.4 ACRES
NW ¼ SE ¼	24.9 ACRES	31.4 ACRES
SW ¼ SE ¼	26.5 ACRES	31.4 ACRES
SE ¼ SE ¼	5.2 ACRES	31.4 ACRES
SECTION 15		
TOWNSHIP 30 SOUTH, RANGE 46 EAST, W.M.		

14 DAY STOP PROCESSING DEADLINE DATE: Friday, December 30, 2011

PUBLIC NOTICE DATE: Tuesday, December 20, 2011

30 DAY COMMENT DEADLINE DATE: Thursday, January 19, 2012

Mailing List for IR Copies

Application #G-17500

IR Date: December 16, 2011

Original mailed to applicant:

BROCK & PHILLIP OBENDORF FARMS, LLC
ATTENTION: BROCK OBENDORF
26538 SAND RD
PARMA, ID 83660

Copies sent to:

1. WRD - File # G-17500
2. WRD - Water Availability: Ken Stahr

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

3. WRD - Watermaster # 9
4. ODFW - Ray Perkins
5. DEQ - Tonya Dombrowski, Bend, OR

IR, Map, and Fact Sheet Copies sent to:

6. WRD - Regional Manager: NC
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
Nixyaawii Governance Center, 46411 Timine 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"):

13. CK3, LLC, 368 SW 5th Avenue, Ontario, OR 97914

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

Caseworker: Kerry Kavanagh

VCOPYSH.T.IR