



# 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

DON NIENKE  
21765 SW 78TH AVE  
TUALATIN, OR 97062

March 9, 2012

Reference: File G-17531

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 an 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 8000 gallons per minute, or 17.8 cubic feet per second (CFS), of water from Well CF1, Well CF2, Well CF3, Well CF4, Well CF5, Well CF6, Well CF7, and Well CF8 in Donner Und Blitzen Basin for irrigation of 1306.8 acres April 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from Well CF1, Well CF2, Well CF3, Well CF4, Well CF5, Well CF6, Well CF7, and Well CF8 in Donner Und Blitzen Basin for irrigation is allowable under the Malheur Lake Basin Program.
4. 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.

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.

5. The application proposed a water use rate that is higher than the general basin-wide standard and submitted information that demonstrates the need for the higher rate. Oregon Revised Statute 537.621(4) allows the Department to authorize the requested rate except upon specific findings related to the application to support a determination that a lesser amount is needed. The Department has determined there is a need for the higher rate, being 17.8 CFS and a limit of 1/60th CFS per acre irrigated.

### Summary of Initial Determinations

**The appropriation of 17.8 CFS of water from Well CF1, Well CF2, Well CF3, Well CF4, Well CF5, Well CF6, Well CF7, and Well CF8 in Donner Und Blitzen Basin for irrigation of 1306.8 acres is allowable during the full period requested, April 1 through October 31.**

Because of these favorable determinations, the Department can now move your application to the next phase of the water-rights application review process, where public interest factors will be evaluated.

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.

#### 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.

#### 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, March 23, 2012**. For your convenience you may use the enclosed "STOP PROCESSING" form.

#### 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. 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 amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-SIXTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.
4. 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](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-17531  
WAB 12- no psi  
POU 12- no psi  
GW

# APPLICATION FACT SHEET

Application File Number: G-17531

Applicant: DON NIENKE

County: Harney

Watermaster: 10

Priority Date: February 9, 2012

Source: WELL CF1, WELL CF2, WELL CF3, WELL CF4, WELL CF5, WELL CF6, WELL CF7, AND WELL CF8 IN DONNER UND BLITZEN BASIN

Use: IRRIGATION OF 1306.8 ACRES

Quantity: 17.8 CUBIC FEET PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 1A DONNER & BLITZEN R & MISC

Well Locations:

WELL CF1 - SWNW, SECTION 1, T28S, R30E, W.M.; 1850 FEET SOUTH AND 400 FEET EAST FROM NW CORNER, SECTION 1

WELL CF2 - SENE, SECTION 35, T27S, R30E, W.M.; 3630 FEET NORTH AND 40 FEET WEST FROM SE CORNER, SECTION 35

WELL CF3 - NWSE, SECTION 35, T27S, R30E, W.M.; 1980 FEET NORTH AND 2310 FEET WEST FROM SE CORNER, SECTION 35

WELL CF4 - SENW, SECTION 35, T27S, R30E, W.M.; 3300 FEET NORTH AND 3168 FEET WEST FROM SE CORNER, SECTION 35

WELL CF5 - SWNW, SECTION 35, T27S, R30E, W.M.; 3380 FEET NORTH AND 5082 FEET WEST FROM SE CORNER, SECTION 35

WELL CF6 - SENW, SECTION 2, T28S, R30E, W.M.; 1650 FEET SOUTH AND 3360 FEET WEST FROM NE CORNER, SECTION 2

WELL CF7 - SESW, SECTION 35, T27S, R30E, W.M.; 860 FEET NORTH AND 3100 FEET WEST FROM SE CORNER, SECTION 35

WELL CF8 - NWSE, SECTION 1, T28S, R30E, W.M.; 2838 FEET SOUTH AND 2904 FEET EAST FROM NW CORNER, SECTION 1

Place of Use:

NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  6.6 ACRES  
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  3.3 ACRES  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  34.2 ACRES  
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  39.0 ACRES  
SECTION 34

SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.5 ACRES  
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  29.5 ACRES  
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  34.1 ACRES  
NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  6.0 ACRES  
SECTION 35

TOWNSHIP 27 SOUTH, RANGE 30 EAST, W.M.

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.5 ACRES  
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  17.75 ACRES  
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.5 ACRES  
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  17.75 ACRES  
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  17.75 ACRES  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  17.75 ACRES  
SECTION 1

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  6.0 ACRES  
SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.5 ACRES  
NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  34.1 ACRES  
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  26.2 ACRES  
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  35.5 ACRES  
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  14.2 ACRES  
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  38.6 ACRES  
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  14.2 ACRES  
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  31.5 ACRES  
NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  31.5 ACRES  
SECTION 2

TOWNSHIP 28 SOUTH, RANGE 30 EAST, W.M.

Place of Use (continued):

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  34.2 ACRES  
NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.6 ACRES  
SECTION 3

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.0 ACRES  
NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  31.0 ACRES  
SECTION 11

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.0 ACRES  
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  31.0 ACRES  
SECTION 12

TOWNSHIP 28 SOUTH, RANGE 30 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, March 23, 2012**

**PUBLIC NOTICE DATE: Tuesday, March 13, 2012**

**30 DAY COMMENT DEADLINE DATE: Thursday, April 12, 2012**

# Mailing List for IR Copies

Application #G-17531

IR Date: March 9, 2012

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**Original mailed to applicant:**

DON NIENKE  
21765 SW 78TH AVE  
TUALATIN, OR 97062

Copies sent to:

1. WRD - File # G-17531
2. WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

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

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

5. Geren R Moon, PO Box 712, Hines, OR 97738

Affected District (include "Notice of Initial Review--Affected District")

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

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

on: \_\_\_\_\_  
(DATE)

Caseworker: Kerry Kavanagh

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