



# 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 AND JOHN TOELLE  
72702 COW CREEK RD  
BURNS, OR 97720

August 16, 2013

Reference: File G-17644

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 4.52 cubic feet per second (CFS) from Well 1, Well 2, Well 3, and Well 4 in East Cow Creek Basin for irrigation of 71.8 acres and supplemental irrigation of 199.6 acres March 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 1, Well 2, Well 3, and Well 4 in East Cow Creek 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 standard allowable rate for irrigation use is 1/60 CFS per acre. If the application is approved, the rate allowed for irrigation of 71.8 acres will be limited to 1.2 CFS and the rate allowed for supplemental irrigation of 199.6 acres will be limited to 3.32 CFS.

**Summary of Initial Determinations**

**The appropriation of 4.52 CFS from Well 1, Well 2, Well 3, and Well 4 in East Cow Creek Basin, further limited to 1.2 CFS for irrigation of 71.8 acres and 3.32 CFS for supplemental irrigation of 199.6 acres is allowable during the full period requested, March 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, August 30, 2013**. 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 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. 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.
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. The well(s) shall be continuously cased and continuously sealed to a minimum depth of 50 feet below land surface. The well(s) may not be completed in such a manner to allow ground water to be developed from shallower water-bearing zones. If during well construction, it becomes apparent that the well can be constructed to eliminate interference with nearby shallow wells or hydraulically connected streams in a manner other than specified in this permit, the permittee can contact the Department Hydrogeologist for this permit or the Ground Water/Hydrology Section Manager to request approval of such construction. The request shall be in writing, and shall include a rough well log and a proposed construction design for approval by the Department. The

request can be approved only if it is received and reviewed prior to placement of any permanent casing and sealing material. If the well is constructed first and then the request made, the requested modification will not be approved. If approved, the new well depth and construction specifications will be incorporated into any certificate issued for this permit.

5. 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.

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-17644  
WAB 12- no psi  
POU 12- no psi  
GW

# APPLICATION FACT SHEET

Application File Number: G-17644

Applicant: DON AND JOHN TOELLE

County: Harney

Watermaster: 10

Priority Date: April 2, 2013

Source: WELL 1, WELL 2, WELL 3, AND WELL 4 IN EAST COW CREEK BASIN

Use: IRRIGATION OF 71.8 ACRES; SUPPLEMENTAL IRRIGATION OF 199.6 ACRES

Quantity: 4.52 CUBIC FEET PER SECOND

Basin Name & Number: Malheur Lake, #12

Stream Index Reference: Volume 2 COW CR & MISC

## Well Locations:

WELL 1 - SESW, SECTION 25, T22S, R32.5E, W.M.; 430 FEET NORTH AND 3440 FEET WEST FROM THE SE CORNER, SECTION 25

WELL 2 - NESW, SECTION 25, T22S, R32.5E, W.M.; 1920 FEET NORTH AND 3685 FEET WEST FROM THE SE CORNER, SECTION 25

WELL 3 - NENW, SECTION 25, T22S, R32.5E, W.M.; 4990 FEET NORTH AND 3520 FEET WEST FROM SE CORNER, SECTION 25

WELL 4 - SESE, SECTION 25, T22S, R32.5E, W.M.; 750 FEET NORTH AND 1200 FEET WEST FROM SE CORNER, SECTION 25

## Place of Use:

	<u>Primary</u>	<u>Supplemental</u>
NE $\frac{1}{4}$ NW $\frac{1}{4}$	9.7 ACRES	
NW $\frac{1}{4}$ NW $\frac{1}{4}$	10.1 ACRES	19.3 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$	16.0 ACRES	17.4 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$	2.0 ACRES	
NE $\frac{1}{4}$ SW $\frac{1}{4}$	4.7 ACRES	2.0 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$	9.0 ACRES	29.0 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$	20.3 ACRES	17.2 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		33.4 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$		8.0 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$		28.0 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$		38.0 ACRES
SECTION 25		
SE $\frac{1}{4}$ NE $\frac{1}{4}$		2.2 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$		5.1 ACRES
SECTION 26		
TOWNSHIP 22 SOUTH, RANGE 32.5 EAST, W.M.		

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, August 30, 2013**

**PUBLIC NOTICE DATE: Tuesday, August 20, 2013**

**30 DAY COMMENT DEADLINE DATE: Thursday, September 19, 2013**

# Mailing List for IR Copies

Application #G-17644

IR Date: August 16, 2013

**Original mailed to applicant:**

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DON AND JOHN TOELLE  
72702 COW CREEK RD  
BURNS, OR 97720

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>
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**SENT VIA EMAIL:**

1. WRD - Watermaster #10
2. Agent - [scott@apeands.com](mailto:scott@apeands.com)

**Copies sent to:**

1. WRD - File # G-17644
2. WRD - Water Availability: Shawn Turner

**IR, Map, and Fact Sheet Copies sent to:**

3. WRD - Regional Manager: EASTERN

Caseworker: Kerry Kavanagh

COPYSHT.IR

## APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to take and use the waters of Oregon, a citizen must first obtain a permit from the Water Resources Department. The water must be used for beneficial purpose - without waste. To become well-informed about water right topics, weekly public notice, forms and fees please visit our web site at [www.wrd.state.or.us](http://www.wrd.state.or.us)

### 1. *Pre-application considerations*

- follow instructions in the application packet
- if you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Information Group (WRIG) at 503-986-0801

### 2. *Application filing*

- application with fee is received by the Department
- Department determines completeness of application
- if use is not allowed by statute (ORS 538), the application and fees are returned to the applicant
- incomplete application and fees are returned to the applicant
- only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing

### 3. *Initial Review (IR)*

- caseworker reviews application by considering basin plans, water availability, statutory restrictions and all other appropriate factors
- caseworker sends IR report to applicant
- contact the caseworker if you have questions about the IR
- seven days after date of the IR, it is included in Department's weekly Public Notice
- public comments must be submitted within 30 days after the Public Notice
- **administrative hold** may be requested in writing by applicant

### 4. *Proposed Final Order (PFO)*

- caseworker evaluates application against required criteria and develops draft permit, if appropriate
- PFO includes instructions for filing of protests
- caseworker considers public comments and mails PFO to applicant
- the PFO is included in Department's weekly Public Notice
- public protests to the PFO must be submitted within 45 days after the Public Notice

**Stop Processing deadline is within 14 days of Initial Review - use the form below**

- applicant may request no further action and fee refund of all but \$200

### STOP PROCESSING REQUEST FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

Applicant notification to withdraw Water Right Application # \_\_\_\_\_

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$200 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application

Signature \_\_\_\_\_ date \_\_\_\_\_

Signature \_\_\_\_\_ date \_\_\_\_\_

*Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except \$200 examination fee) be returned.*

This notice must be received at Water Resources Department by \_\_\_\_\_

Return the notice to: OWRD, Water Rights Division  
STOP PROCESSING  
725 Summer Street, NE - Suite A  
Salem OR 97301-1271

## 5. *Final Order (FO)*

- if no protest is filed, Final Order is issued

### *The protest process*

If one or more protests are filed, permit process consists of:

- settlement discussion
- contested case hearing
- proposed order
- period of time to file exceptions
- possible hearing by Water Resources Commission
- final order issued

### *Permit holder responsibilities*

- comply with all water use conditions of the permit
- advise Department of address change or assignment to new permit holder
- if need arises, request extension of time or authorize cancellation of permit
- submit timely claim of beneficial use (COBU) to Department
- most permits require COBU to be prepared by a Certified Water Right Examiner
- permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions