

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number G-17540

Prior to the issuance of a permit, the Department must receive permit recording fees in the amount of \$450.00. Please include your application number on your check made out to the Oregon Water Resources Department.

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On March 8, 2012, Toby Stadeli submitted an application to the Department for the following water use permit:

- Amount of Water: 1.0 CUBIC FOOT PER SECOND (CFS)
- Use of Water: PRIMARY IRRIGATION OF 27.3 ACRES AND SUPPLEMENTAL IRRIGATION OF 55.1 ACRES
- Source of Water: WELL 1 (MARI 6145) IN DRIFT CREEK BASIN, AND WELL 2 AND WELL 3 IN PUDDING RIVER BASIN
- Area of Proposed Use: MARION COUNTY WITHIN SECTION 8, TOWNSHIP 7 SOUTH, RANGE 1 WEST, W.M.

On September 21, 2012, the Department mailed the applicant notice of its Initial Review, determining that *"Because not all items above are favorable, the appropriation of 1.0 CFS of water, being no more than 0.34 CFS for primary irrigation of 27.3 acres and 0.69 CFS for supplemental irrigation of 55.1 acres March 1 through October 31 of each year, from Well 1 (Mari 6145) in Drift Creek Basin, and Well 2 and Well 3 in Pudding River Basin is not allowable, and it appears unlikely that you will be issued a permit unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order."* The applicant did not notify the Department to stop processing the application within 14 days of that date.

On September 23, 2012, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

On May 6, 2013, Greg Kupillas, authorized agent, amended the application by omitting Well 1 (MARI 6145) and proposed Well 3, re-naming proposed Well 2 as proposed Well 1, and adding proposed Well 2 at a new location; reducing the proposed rate to 0.3 CFS; reducing the acreage to the irrigation of 9.2 acres and supplemental irrigation of 15.1 acres; and reducing the annual duty to 2.0 acre feet (AF) per acre. On May 6, 2013, Greg Kupillas also submitted a revised map showing the new locations of the two proposed wells and the revised place of use.

On July 25, 2013, the Department completed a second public interest review of the amended application.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- any applicable basin program
- applicable statutes, administrative rules, and case law
- the amount of water available
- the rate and duty for the proposed use
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- pending senior applications and existing water rights of record
- any applicable comprehensive plan or zoning ordinance
- recommendations by other state agencies
- the Scenic Waterway requirements of ORS 390.835
- designations of any critical ground water areas
- any comments received

Findings of Fact

The Willamette Basin Program allows irrigation.

An assessment of ground water availability has been completed by the Department's Ground Water/Hydrology section. A copy of this assessment is in the file. 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.

Ground Water Findings Under OAR 690-009

Based on the July 25, 2013 public interest review, the Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will not have the potential for substantial interference with surface water.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

Well 1 and Well 2 in Pudding River Basin are not within or above a State Scenic Waterway.

The Department finds that the amount of water requested, 0.3 CFS, is an acceptable amount.

The proposed ground water use is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The proposed use requested in this application is allowed in the Willamette Basin Program.

Water is available for the proposed use.

The proposed use will not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The application is in compliance with the State Agency Coordination Program regarding land use.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary

to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED August 20, 2013



E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **October 4, 2013**. Protests must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To affect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the

following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;

- If you are the applicant, the protest fee of \$350 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$700 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the Proposed Final Order.
- *If you do not protest this Proposed Final Order and if no substantive changes are made in the Final Order, you will not have an opportunity for judicial review, protest or appeal of the Final Order when it is issued.*

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **October 4, 2013**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and

- A standing fee of \$200. If a hearing is scheduled, an additional fee of \$500 must be submitted along with a request for intervention.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF MARION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

TOBY STADELI
10622 SELAH SPRINGS DR NE
SILVERTON, OR 97381

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-17540

SOURCE OF WATER: WELL 1 AND WELL 2 IN PUDDING RIVER BASIN

PURPOSE OR USE: IRRIGATION OF 9.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 15.0 ACRES

MAXIMUM RATE/VOLUME: 0.3 CUBIC FOOT PER SECOND (CFS), BEING 0.19 CFS FOR IRRIGATION OF 9.2 ACRES AND 0.11 CFS FOR SUPPLEMENTAL IRRIGATION OF 15.0 ACRES

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: MARCH 8, 2012

WELL LOCATIONS:

WELL 1 - NW ¼ NE ¼, SECTION 8, T7S, R1W, W.M.; 20 FEET SOUTH AND 1350 FEET WEST FROM NE CORNER, SECTION 8

WELL 2 - NW ¼ NE ¼, SECTION 8, T7S, R1W, W.M.; 20 FEET SOUTH AND 1750 FEET WEST FROM NE CORNER, SECTION 8

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-EIGHTIETH of one cubic foot per second and 2.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

	<u>Primary</u>	<u>Supplemental</u>
NE ¼ NE ¼	9.2 ACRES	
NW ¼ NE ¼		15.0 ACRES
SECTION 8		
TOWNSHIP 7 SOUTH, RANGE 1 WEST, W.M.		

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the meter in good working order.
 - B. The permittee shall keep a complete record of the amount of water used each month, and shall submit an annual report which includes the recorded water use measurements to the Department by December 1 of each year. 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 the 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.
- (1) Use of water from any well, as allowed herein, shall be controlled or shut off if the well displays:
- (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).
- (a) Use of water from a new well shall not begin until an initial static water level in the well has been measured and reported to the Department.
 - (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year during the period March 1 through March 31.
 - (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights

- examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructor, licensed pump installer, or the permittee/appropriator.
- (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
- (e) The permittee/appropriator shall report the record of measurement to the Department on a form available from the Department. The record of measurement shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements, and shall be submitted to the Department within 90 days from the date of measurement. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director

Mailing List for PFO Copies

Application #G-17540

PFO Date August 20, 2013

Original **emailed** to applicant:

TOBY STADELI
10622 SELAH SPRINGS DR NE
SILVERTON, OR 97381

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

SENT VIA EMAIL:

1. WRD - Watermaster #16
2. Applicant - tstadel@yahoo.com
3. Agent - phggek@bctonline.com

Protest/
Standing Dates
checked

Copies sent to:

1. WRD - File # G-17540
2. WRD - Water Availability - Shawn Turner

CASEWORKER : Kerry Kavanagh