



# 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

September 13, 2013

KIM MCCREARY  
1272 HIGHWAY 20-26  
VALE, OR 97918

RISE AND SHINE, LLC  
1626 RAY CT  
FERNLEY, NV 89408

Reference: File G-17651

Dear Applicants:

**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 820 gallons per minute (gpm), or 1.827 cubic feet per second (CFS), being 730 gpm (1.627 CFS) from Rise and Shine Well 1 (MALH 1072) and 90 gpm (0.2 CFS) from Rise and Shine Well 2 for irrigation of 40.2 acres and supplemental irrigation of 199.3 acres March 1 through October 31.

The application proposed the deepening of Rise and Shine Well 1 (MALH 1072) from the current depth of 115 feet to a depth of approximately 300 feet with a seal to a depth of at least 40 feet below land surface. The proposed well construction will develop water-bearing sands or sandstones within the lacustrine Glens Ferry Formation.

2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from Rise and Shine Well 1 (MALH 1072) and Rise and Shine Well 2 in Malheur River Basin for irrigation is allowable under the Malheur Basin Program.

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 1/80 CFS per acre. If the application is approved, the rate allowed for irrigation of 40.2 acres will be limited to 0.5 CFS.

6. The Department has determined that Well 1 (MALH 1072) 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 and approved by the Department. 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 Well Construction and Compliance 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).

### Summary of Initial Determinations

**The appropriation of 1.827 CFS, being 1.627 CFS from Rise and Shine Well 1 (MALH 1072) and 0.2 CFS from Rise and Shine Well 2 in Malheur River Basin, limited to no more than 0.5 CFS for irrigation of 40.2 acres, and up to 1.827 CFS for supplemental irrigation of 199.3 acres is allowable 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 (MALH 1072).**

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 \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, September 27, 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. To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

**Before Use of Water Takes Place**

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

**After Use of Water has Begun**

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well 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 non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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.

- 3. The well(s) shall be continuously cased and continuously sealed to a minimum depth of 40 feet below land surface. The well(s) may not be completed in such a manner to allow ground water to be developed from the Quaternary sand and gravel aquifer. 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.

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.

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-17651  
WAB 10- no psi  
POU 10- no psi  
GW

# APPLICATION FACT SHEET

Application File Number: G-17651

Applicant: KIM MCCREARY AND RISE AND SHINE, LLC

County: Malheur

Watermaster: 9

Priority Date: April 15, 2013

Source: RISE AND SHINE WELL 1 (MALH 1072) AND RISE AND SHINE WELL 2 IN MALHEUR RIVER BASIN

Use: IRRIGATION OF 40.2 ACRES; SUPPLEMENTAL IRRIGATION OF 199.3 ACRES

Quantity: 1.827 CUBIC FEET PER SECOND (CFS), BEING 1.63 CFS FROM RISE AND SHINE WELL 1 (MALH 1072) AND 0.20 CFS FROM RISE AND SHINE WELL 2

Basin Name & Number: Malheur, #10

Stream Index Reference: Volume 2 MALHEUR R

Well Locations:

RISE AND SHINE WELL 1 (MALH 1072) - NESE, SECTION 23, T18S, R45E, W.M.; 2640 FEET SOUTH AND 5280 FEET WEST FROM NE CORNER, SECTION 24

RISE AND SHINE WELL 2 - NWNW, SECTION 24, T18S, R45E, W.M.; 180 FEET SOUTH AND 5160 FEET EAST FROM NE CORNER, SECTION 24

Place of Use:

	<u>Primary</u>	<u>Supplemental</u>
SE $\frac{1}{4}$ NE $\frac{1}{4}$	9.3 ACRES	7.2 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$		15.2 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$		16.0 ACRES
	SECTION 23	

NW $\frac{1}{4}$ NW $\frac{1}{4}$	27.6 ACRES	
SW $\frac{1}{4}$ NW $\frac{1}{4}$	3.3 ACRES	30.7 ACRES
NE $\frac{1}{4}$ SW $\frac{1}{4}$		30.8 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$		32.8 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$		33.8 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$		32.8 ACRES

SECTION 24

TOWNSHIP 18 SOUTH, RANGE 45 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 27, 2013**

**PUBLIC NOTICE DATE: Tuesday, September 17, 2013**

**30 DAY COMMENT DEADLINE DATE: Thursday, October 17, 2013**

# Mailing List for IR Copies

Application #G-17651

IR Date: September 13, 2013

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**Original mailed to applicant:**

KIM MCCREARY  
1272 HIGHWAY 20-26  
VALE, OR 97918

RISE AND SHINE, LLC  
1626 RAY CT  
FERNLEY, NV 89408

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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**SENT VIA EMAIL:**

1. WRD - Watermaster #9

Copies sent to:

1. WRD - File # G-17651
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Regional Manager: EASTERN

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

4. Warm Springs Irrigation District, 317 A Street West, Vale, OR 97918

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

5. CK3, LLC, 368 SW 5<sup>th</sup> Avenue, Ontario, OR 97914

Caseworker: Kerry Kavanagh

COPYSH.T.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 \$225

### 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 \$225 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 \$225 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