



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

BARLOW OAKS LLC
25571 S BARLOW RD
CANBY, OR 97013

November 1, 2013

Reference: File G-17680

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 1.11 cubic feet per second (CFS) from Well 1 (CLAC 56198) and Well 2 (CLAC 2555/CLAC 2556) in Rock Creek Basin for year-round nursery use on 44.2 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are fully included in irrigation and agriculture uses, both of which are allowed by OAR 690-502, the Willamette Basin Program. Therefore, the appropriation of water from Well 1 (CLAC 56198) and Well 2 (CLAC 2555/CLAC 2556) in Rock Creek Basin for nursery use is allowable.
4. Ground water will likely be available within the capacity of the resource, and 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 from Well 1 (CLAC 56198) and Well 2 (CLAC 2555/CLAC 2556) will have the potential for substantial interference with Rock Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available during the period June 1 through October 31. However, by providing additional information, you may be able to pursue a limited permit. Please refer to the Additional Information Opportunity section below for details.

5. The surface waters of Rock Creek and tributaries are withdrawn from further appropriation by order of the State Engineer, Volume 7, Page 229, dated August 13, 1951.

6. The application is subject to Section 4(d) of the Endangered Species Act.
7. The Department has determined that Well 2 (CLAC 2555/CLAC 2556) does not meet current minimum well construction standards. There is no indication of an annular seal. In order to meet minimum well construction standards, the owner must choose one aquifer and seal off the other. This means that either a seal can be placed to 101 feet below ground surface in order to shut off the upper water or the bottom of the well can be abandoned from the bottom up to a depth of 275 feet below ground surface.

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 Allowable Water Use

Because not all items above are favorable, the appropriation of 1.11 CFS of water from Well 1 (CLAC 56198) and Well 2 (CLAC 2555/CLAC 2556) in Rock Creek Basin for year-round nursery use on 44.2 acres is not allowable, and it appears unlikely that you will be issued a permit.

However, if you would like to pursue a limited permit allowing year-round nursery use on 44.2 acres at a rate less than 1.11 CFS, you may wish to amend your application by reducing the rate. Please see the Additional Information Opportunity section below for details.

At this time, you must decide whether to proceed or to withdraw your application as described below.

Additional Information Opportunity

If the proposed rate is reduced to no more than 0.35 CFS, the potential for substantial interference may be avoided.

Please submit this information no later than Thursday, December 5, 2013. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

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 \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, November 15, 2013**. 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. 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.

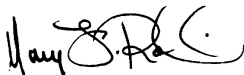
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. You should be aware that, 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 503-986-0859 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: Mary Rohling, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in black ink, appearing to read "Mary Rohling". The signature is fluid and cursive, with a large initial "M" and "R".

Mary Rohling
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17680
WAB 2-psi 151
POU 2-psi 151
GW

APPLICATION FACT SHEET

Application File Number: G-17680

Applicant: BARLOW OAKS LLC

County: Clackamas

Watermaster: 16

Priority Date: June 4, 2013

Source: WELL 1 (CLAC 56198) AND WELL 2 (CLAC 2555; CLAC 2556) IN ROCK CREEK BASIN

Use: NURSERY USE ON 44.2 ACRES

Quantity: 1.11 CUBIC FEET PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 15A BEAR CR

Well Location(s):

WELL 1 (CLAC 56198) - NWNE, SECTION 18, T5S, R1E, W.M.; 400 FEET SOUTH AND 2125 FEET WEST FROM NE CORNER, SECTION 18

WELL 2 (CLAC 2555; CLAC 2556) - SWNE, SECTION 18, T5S, R1E, W.M.; 40 FEET NORTH AND 2820 FEET EAST FROM W1/4 CORNER, SECTION 18

Place of Use:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 1.2 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 2.8 ACRES
SECTION 7

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 17.7 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 2.7 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 10.1 ACRES
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 9.7 ACRES
SECTION 18

TOWNSHIP 5 SOUTH, RANGE 1 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, November 15, 2013

PUBLIC NOTICE DATE: Tuesday, November 5, 2013

30 DAY COMMENT DEADLINE DATE: Thursday, December 5, 2013

Mailing List for IR Copies

Application #G-17680

IR Date: November 1, 2013

Original **emailed** to applicant:

BARLOW OAKS LLC
25571 S BARLOW RD
CANBY, OR 97013

Copies Mailed

By: _____
(SUPPORT STAFF)

on: _____
(DATE)

SENT VIA EMAIL:

1. WRD - Watermaster # 16
2. Applicant - willamette@canby.com
3. Agent - steve@skookumwater.com
4. ODFW
5. DEQ

Copies sent to:

1. WRD - File # G-17680
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

3. Department of Agriculture
4. Kim Kratz, Director, Oregon State Habitat Office
National Marine Fisheries Service, 1201 NE Lloyd Blvd, Portland OR 97232
5. Paul Henson, USFWS, Oregon Fish & Wildlife Office,
2600 SE 98th Avenue, Suite 100, Portland, OR 97266

Caseworker: Mary Rohling

**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

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