



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

TYLER SPURGEON
DOW AGROSCIENCES
32905 S MORCOM ST
WOODBURN, OR 97071

December 27, 2013

Reference: File G-17713

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 1.0 cubic foot per second (CFS) of water from High Cap Well (CLAC 69525/L111239) and Site Well (CLAC 2123/L111238) in Butte Creek Basin for year-round nursery use on 15.0 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 High Cap Well (CLAC 69525/L111239) and Site Well (CLAC 2123/L111238) in Butte Creek Basin for year-round nursery is allowable under the Willamette Basin Program.
4. The Department has determined that the proposed groundwater use will have the potential for substantial interference with Butte Creek. Therefore, in accordance with Oregon Administrative Rules 690-410-0070(1) and 690-400-0010(11)(a)(A), surface water availability must also be considered. Surface water **is not available** June 1 through November 30, and the amount that would be available December 1 through May 31 would be significantly less than requested, therefore the use is not allowable.
5. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
6. Hi Cap Well (CLAC 69525/L111239) does not have an associated well log, therefore there is no way for the Department to determine if the well construction meets the current minimum construction standards. Prior to the issuance of any permit, if one is issued, evidence demonstrating compliance with well construction standards must be submitted

and approved by the Department. In determining the well construction compliance, you should work closely with the Department and/or a licensed well constructor to ensure that any repairs needed 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 note that repair of the well(s) will not necessarily overcome the potential for substantial interference with surface water and might not result in the issuance of a permit.

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 1.0 CFS of water from High Cap Well (CLAC 69525/L111239) and Site Well (CLAC 2123/L111238) in Butte Creek Basin for nursery use on 15.0 acres 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. At this time, you must decide whether to proceed or to withdraw your application as described below.

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, January 10, 2014**. 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 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 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.

3. 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 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: Kim French-Gorski, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French-Gorski
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17713
WAB 2-69799
POU 2-69799
GW

APPLICATION FACT SHEET

Application File Number: G-17713

Applicant: TYLER SPURGEON; DOW AGROSCIENCES

County: Clackamas

Watermaster: 16

Priority Date: August 15, 2013

Source: HIGH CAP WELL (CLAC 69525/L111239) AND SITE WELL (CLAC 2123/L111238)
IN BUTTE CREEK BASIN

Use: NURSERY USE ON 15.0 ACRES

Quantity: 1.0 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 15 BUTTE CR MISC

Point of Diversion or Well Location(s):

HI CAP WELL (CLAC 69525/L111239): SWSE, SECTION 14, T5S, R1W, W.M.;715 FEET
NORTH AND 2255 FEET WEST FROM SE CORNER, SECTION 14

SITE WELL (CLAC 2123/L111238): SESE, SECTION 14, T5S, R1W, W.M.;550 FEET
NORTH AND 1265 FEET WEST FROM SE CORNER, SECTION 14

Place of Use:

SW $\frac{1}{4}$ SE $\frac{1}{4}$ 9.9 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 5.1 ACRES
SECTION 14
TOWNSHIP 5 SOUTH, RANGE 1 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, January 10, 2014

PUBLIC NOTICE DATE: Tuesday, December 31, 2013

30 DAY COMMENT DEADLINE DATE: Thursday, January 30, 2014

Mailing List for IR Copies

Application #G-17713

IR Date: December 27, 2013

Original e-mailed to applicant:

~~TYLER SPURGEON; DOW AGROSCIENCES, 32905 S MORCOM ST, WOODBURN, OR 97071~~

SENT VIA EMAIL:

1. Spurgeon@dow.com
2. WRD - Watermaster # 16

Copies sent to:

1. WRD - File # G-17713
2. WRD - Water Availability: Shawn Turner

IR, Map, and Fact Sheet Copies sent to:

3. Department of Agriculture

<p>Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)</p>

Caseworker: Kim French-Gorski

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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