

**Oregon Water Resources Department  
Water Right Services Division**

Water Rights Application  
Number G-17651

**Final Order**

*Appeal Rights*

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

*Application History*

On April 15, 2013, Kim McCreary and Rise & Shine, LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on February 4, 2014. The protest period closed March 21, 2014, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest.

**Order**

Application G-17651 is therefore approved as proposed by the Proposed Final Order. **Upon submittal of documentation that Rise & Shine Well 1 (MALH 1072) complies with current minimum well construction standards, a permit shall be issued authorizing the proposed water use.**

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

*If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.*

DATED April 17, 2014

*E. Timothy Wallin*

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

*This document was prepared by Kim French-Gorski. 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 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 MALHEUR

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

KIM MCCREARY	RISE & SHINE, LLC
1272 HIGHWAY 20-26	1626 RAY CT
VALE, OR 97918	FERNLEY, NV 89408

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

APPLICATION FILE NUMBER: G-17651

SOURCE OF WATER: RISE & SHINE WELL 1 (MALH 1072) AND RISE & SHINE WELL 2 IN MALHEUR RIVER BASIN

PURPOSE OR USE: PRIMARY IRRIGATION OF 40.2 ACRES AND SUPPLEMENTAL IRRIGATION OF 199.3 ACRES

MAXIMUM RATE: 1.827 CUBIC FEET PER SECOND (CFS), BEING 1.627 CFS FROM RISE & SHINE WELL 1 (MALH 1072) AND 0.2 CFS FROM RISE & SHINE WELL 2 IN MALHEUR RIVER BASIN, LIMITED TO 0.5 CFS FOR PRIMARY IRRIGATION OF 40.2 ACRES

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: APRIL 15, 2013

WELL LOCATIONS:

RISE & SHINE WELL 1 (MALH 1072) - NE  $\frac{1}{4}$  SE  $\frac{1}{4}$ , SECTION 23, T18S, R45E, W.M.; 2640 FEET SOUTH AND 5280 FEET WEST FROM NE CORNER, SECTION 24

RISE & SHINE WELL 2 - NW  $\frac{1}{4}$  NW  $\frac{1}{4}$ , SECTION 24, T18S, R45E, W.M.; 180 FEET SOUTH AND 5160 FEET EAST FROM NE CORNER, SECTION 24

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 3.0 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>
SE ¼ NE ¼	9.3 ACRES	7.2 ACRES
NE ¼ SE ¼		15.2 ACRES
SE ¼ SE ¼		16.0 ACRES

SECTION 23

NW ¼ NW ¼	27.6 ACRES	
SW ¼ NW ¼	3.3 ACRES	30.7 ACRES
NE ¼ SW ¼		30.8 ACRES
NW ¼ SW ¼		32.8 ACRES
SW ¼ SW ¼		33.8 ACRES
SE ¼ SW ¼		32.8 ACRES

SECTION 24

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

Measurement devices, and recording/reporting of annual water use 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 device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes 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.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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.

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.

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 and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port 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