



# 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

January 30, 2015

PRODUCTIVE TIMBERLAND LLC AND NBCC LLC  
ROGER NICHOLSON  
PO BOX 458  
FORT KLAMATH, OR 97626

Reference: File G-17942

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 Well 1 (KLAM 57662/L105253) in Crooked Creek Basin for supplemental irrigation of 587.4 acres during the irrigation season of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Under ORS 536.340(1)(a), the Water Resources Commission may establish a basin program to classify sources of water supply as to the highest and best use and quantities of use, and that classification of sources of water supply has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification. The Commission has not established a basin program for the Klamath River Basin. Therefore, neither the proposed use nor the quantity of water is restricted as a result of this consideration.
4. 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 proposed use is located above the Klamath Scenic Waterway, as designated under ORS 390.826. The Department has determined, based upon OAR 690-310-0260, that there is a preponderance of evidence that the proposed use of groundwater will

measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife; however, mitigation to offset the proposed use will be provided in the amount of 1.0 CFS and 240 acre-feet (AF) of instream flow approved under T-11375 per the terms of Settlement Agreement WR-13-008.

6. The Department has determined that the mitigation provided will ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife in accordance with provisions of ORS 390.835(9).
7. The application indicated supplemental irrigation of 570.0 acres, but the map indicated 587.4 acres. Please clarify the total number of acres, and provide a revised map if appropriate by **Thursday, March 5, 2015**. If you need additional time, you may send a written request for up to 180 days. **If we do not receive clarification and/or a revised map or a hold request by this date, the Department will proceed with the acreage shown on the map.**
8. The application proposed supplemental irrigation of 40.1 acres in the NWNW, 40.0 acres in the SENW, 40.1 acres in the NESW, 39.9 acres in the NENW, 40.2 acres in the SESW, and 40.0 acres in the SWSE, Section 19, however the existing primary Certificates 10900 and 36069 only allow irrigation of 40.0 acres, 39.3 acres, 39.3 acres, 38.1 acres, 39.3 acres and 39.3 acres, respectively. If a permit is issued, acreage for supplemental irrigation in Section 19 would be limited to match that of underlying Certificates 10900 and 36069.
9. The application proposed supplemental irrigation of 40.0 acres in the NWNE, Section 30, however the existing primary Certificate 10926 only allows irrigation of 39.9 acres, in the NWNE, Section 30. If a permit is issued, acreage for supplemental irrigation would be limited to 39.9 acres in the NWNE, Section 30.
10. The Department has interpreted the irrigation season for supplemental irrigation described in the application to match that of the underlying Certificates, being April 1 through October 1 for acreage under Certificates 10900 and 10926 and July 21 through October 1 for acreage under Certificate 36069.

### Summary of Initial Determinations

**The appropriation of 1.0 CFS from Well 1 (KLAM 57662/1105253) in Crooked Creek Basin for supplemental irrigation of 475.2 acres is allowable April 1 through October 1 of each year.**

**The appropriation of 1.0 CFS from Well 1 (KLAM 57662/1105253) in Crooked Creek Basin for supplemental irrigation 107.1 acres is allowable July 21 through October 1 of each year.**

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, February 13, 2015**. 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 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.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

2. Static Water Level Conditions

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 Department may require the discontinuance of groundwater use, 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. Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.
4. Dedicated Measuring Tube: Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200.

If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

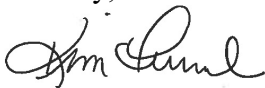
5. Groundwater production shall occur from the predominantly basalt unit below the predominantly basin-fill unit by casing and sealing through the basin-fill unit into the basalt unit.
6. The annual maximum duty allowed shall be 240 acre-feet total volume.
7. Prior to using water from any well listed 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17942  
WAB 14-No PSI  
POU 14-No PSI  
GW

# APPLICATION FACT SHEET

Application File Number: G-17942

Applicant: PRODUCTIVE TIMBERLAND LLC AND NBCC LLC, ROGER NICHOLSON

County: Klamath

Watermaster: 17

Priority Date: October 15, 2014

Source: WELL 1 (KLAM 57662/L105253) IN CROOKED CREEK BASIN

Use: SUPPLEMENTAL IRRIGATION OF 587.4 ACRES

Quantity: 1.0 CUBIC FOOT PER SECOND, FURTHER LIMITED TO AN ANNUAL TOTAL VOLUME OF 240.0 ACRE-FEET

Basin Name & Number: Klamath, #14

Stream Index Reference: Volume 2 CROOKED CR & MISC

Well Location: NWE, SECTION 19, T33S, R7.5E, W.M.; 20 FEET SOUTH AND 200 FEET EAST OF N1/4 CORNER, SECTION 19

Place of Use:

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  19.6 ACRES  
SE  $\frac{1}{4}$  NE  $\frac{1}{4}$  20.0 ACRES  
NE  $\frac{1}{4}$  SE  $\frac{1}{4}$  20.0 ACRES  
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  20.0 ACRES

SECTION 24

TOWNSHIP 33 SOUTH, RANGE 6 EAST, W.M.

NE  $\frac{1}{4}$  NW  $\frac{1}{4}$  39.9 ACRES  
NW  $\frac{1}{4}$  NW  $\frac{1}{4}$  40.1 ACRES  
SW  $\frac{1}{4}$  NW  $\frac{1}{4}$  40.0 ACRES  
SE  $\frac{1}{4}$  NW  $\frac{1}{4}$  40.0 ACRES  
NE  $\frac{1}{4}$  SW  $\frac{1}{4}$  40.1 ACRES  
NW  $\frac{1}{4}$  SW  $\frac{1}{4}$  39.9 ACRES  
SW  $\frac{1}{4}$  SW  $\frac{1}{4}$  39.8 ACRES  
SE  $\frac{1}{4}$  SW  $\frac{1}{4}$  40.2 ACRES  
NW  $\frac{1}{4}$  SE  $\frac{1}{4}$  27.8 ACRES  
SW  $\frac{1}{4}$  SE  $\frac{1}{4}$  40.0 ACRES  
SE  $\frac{1}{4}$  SE  $\frac{1}{4}$  40.0 ACRES

SECTION 19

NE  $\frac{1}{4}$  NE  $\frac{1}{4}$  40.0 ACRES  
NW  $\frac{1}{4}$  NE  $\frac{1}{4}$  40.0 ACRES

SECTION 30

TOWNSHIP 33 SOUTH, RANGE 7.5 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, February 13, 2015**

**PUBLIC NOTICE DATE: Tuesday, February 3, 2015**

**30 DAY COMMENT DEADLINE DATE: Thursday, March 5, 2015**

# Mailing List for IR Copies

Application #G-17942

IR Date: January 30, 2015

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**Original and map mailed to applicant:**

PRODUCTIVE TIMBERLAND LLC AND NBCC LLC, ROGER NICHOLSON, PO BOX 458,  
FORT KLAMATH, OR 97626

**SENT VIA EMAIL:**

1. WRD -Watermaster # 17
2. Applicant - [roger@fortklamath.net](mailto:roger@fortklamath.net)
3. Agent - [mpagel@schwabe.com](mailto:mpagel@schwabe.com)

**Copies to:**

1. ODFW
2. DEQ

**IR, Map, and Fact Sheet Copies sent to:**

4. WRD - File # G-17942
5. Department of Agriculture

Caseworker: Kim French

COPYSHT.IR

**REMINDER:** Copy **all** IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)



## 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