



July 3, 2015

JR LAND AND LIVESTOCK
PO BOX 800
HARPER, OR 97906

Reference: File G-17974

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 4.54 cubic feet per second (CFS) of water from Well 1 (MALH 54108/L108947) and Well 3 (MALH538671/L101316) in Bully Creek Basin and Well 2 (MALH 54113/L108948) in Swede Flat Creek Basin for irrigation of 166.7 acres and supplemental irrigation of 196.8 acres April 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from Well 1 (MALH 54108/L108947) and Well 3 (MALH538671/L101316) in Bully Creek Basin and Well 2 (MALH 54113/L108948) in Swede Flat Creek Basin for irrigation is allowable under the Malheur Basin Program (OAR 690-510-0010).
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.
5. The Department has determined, based upon OAR 690-009, that the proposed ground water use from Well 1 (MALH 54108/L108947) and Well 3 (MALH538671/L101316) in Bully Creek Basin will not have the potential for substantial interference.
6. The Department has determined, based upon OAR 690-009, that the proposed ground water use from Well 2 (MALH 54113/L108948) will have the potential for substantial interference with Swede Flat Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. Surface water is not available at any time of year.
7. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year from Well 2 (MALH 54113/L108948) only.

8. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
9. The application proposed supplemental irrigation of 2.8 acres in the NE 1/4 of the SW 1/4, Section 4, however the existing Certificate 34552 allows irrigation of only 2.4 acres. Therefore, the acreage for supplemental irrigation would be limited to 2.4 acres in the NE 1/4 of the SW 1/4, Section 4. Additionally, the application requested supplemental irrigation of 196.4 acres, however the map indicated 196.8 acres. Please clarify the total number of acres, and provide a revised map if appropriate by Thursday, May 14, 2015.
10. Please refer to the **Additional Information Required** section below for specific information regarding pursuing a limited permit.

Summary of Allowable Water Use

The appropriation of 2.38 CFS of water from Well 1 (MALH 54108/L108947) and Well 3 (MALH538671/L101316) in Bully Creek Basin may be allowable during the full period requested, April 1 through October 31 of each year, however acreage will have to be limited to a total of 186.4 acres.

Due to findings #5 and #7, the appropriation of 2.10 CFS of water from Well 2 (MALH 54113/L108948) in Swede Flat Creek Basin for irrigation is not allowable, and it appears unlikely that you will be issued a permit that would include this well.

Additional Information Opportunity

If you would like to use water from Well 1 (MALH 54108/L108947) and Well 3 (L101316) in Bully Creek Basin for irrigation during the full period requested, April 1 through October 31 of each year, you may amend your application as follows:

1. Reduce the rate to a total of 2.38 CFS from Well 1 (MALH 54108/L108947) and Well 3 (MALH538671/L101316).
2. Reduce the acreage to a total of 186.4 acres. Please specify the acreage for primary irrigation and supplemental irrigation, and submit a revised map to reflect the changes.

Please submit this information no later than Thursday, August 6, 2015. 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.

If we do not receive additional information or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the application.

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, July 17, 2015**. 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 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.

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. 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.

- 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.

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/programs/NaturalResources/Pages/AgWaterQuality.aspx> 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 503-986-0806 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: Kerri H. Cope, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kerri H. Cope
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-17974
WAB 10-31011802
POU 10-31011802
GW

APPLICATION FACT SHEET

Application File Number: G-17974

Applicant: JR LAND AND LIVESTOCK

County: Malheur

Watermaster: 9

Priority Date: December 8, 2014

Source: WELL 1 (MALH 54108/L108947) AND WELL 3 (MALH538671/L101316) IN BULLY CREEK BASIN AND WELL 2 (MALH 54113/L108948) IN SWEDE FLAT CREEK BASIN

Use: IRRIGATION OF 166.7 ACRES AND SUPPLEMENTAL IRRIGATION OF 196.8 ACRES

Quantity: 4.54 CUBIC FEET PER SECOND

Basin Name & Number: Malheur, #10

Stream Index Reference: Volume 2A BULLY CR

Well Location(s):

WELL 1: NENW, SECTION 28, T18S, R42E, W.M.; 775 FEET SOUTH AND 2225 FEET EAST FROM NW CORNER, SECTION 28

WELL 2: SESW, SECTION 4, T18S, R42E, W.M.; 4340 FEET SOUTH AND 1560 FEET EAST FROM NW CORNER, SECTION 4

WELL 3: SESE, SECTION 7, T18S, R43E, W.M.; 250 FEET SOUTH AND 1800 FEET WEST FROM E1/4 CORNER, SECTION 7

Place of Use:

	<u>Primary</u>	<u>Supplemental</u>
SW ¼ NW ¼	19.2 ACRES	20.8 ACRES
SE ¼ NW ¼	20.0 ACRES	
NE ¼ SW ¼	17.2 ACRES	2.8 ACRES
NW ¼ SW ¼	2.6 ACRES	37.4 ACRES
SW ¼ SW ¼	1.0 ACRES	15.1 ACRES
SE ¼ SW ¼	24.0 ACRES	8.7 ACRES
SW ¼ SE ¼	2.0 ACRES	
	SECTION 4	
SW ¼ SW ¼		3.0 ACRES
SE ¼ SW ¼	5.5 ACRES	
	SECTION 21	
NW ¼ NE ¼	2.0 ACRES	
NE ¼ NW ¼	7.0 ACRES	16.5 ACRES
NW ¼ NW ¼		36.5 ACRES
SW ¼ NW ¼		33.0 ACRES
SE ¼ NW ¼	5.5 ACRES	5.5 ACRES
	SECTION 28	

	<u>Primary</u>	<u>Supplemental</u>
SE ¼ NE ¼		17.5 ACRES
	SECTION 29	
	TOWNSHIP 18 SOUTH, RANGE 42 EAST, W.M.	
SE ¼ NE ¼	4.2 ACRES	
NE ¼ SE ¼	20.0 ACRES	
	SECTION 7	
NW ¼ NW ¼	0.4 ACRES	
SW ¼ NW ¼	26.1 ACRES	
SE ¼ NW ¼	10.0 ACRES	
	SECTION 8	
	TOWNSHIP 18 SOUTH, RANGE 43 EAST, W.M.	

14 DAY STOP PROCESSING DEADLINE DATE: Friday, July 17, 2015

PUBLIC NOTICE DATE: Tuesday, July 7, 2015

30 DAY COMMENT DEADLINE DATE: Thursday, August 6, 2015

Mailing List for IR Copies

Application #G-17974

IR Date: July 3, 2015

Original and map mailed to applicant:

JR LAND AND LIVESTOCK, PO BOX 800, HARPER, OR 97906

SENT VIA EMAIL:

1. WRD - Watermaster # 9
2. ODFW
3. DEQ

Copies sent to:

1. WRD - Water Availability: Shawn Ortiz-Turner

IR, Map, and Fact Sheet Copies sent to:

2. WRD - File # G-17974
3. Department of Agriculture
4. Columbia River Intertribal Fish Commission, Julie Carter,
729 NE Oregon St, Ste 200, Portland OR 97232
5. US Fish & Wildlife Service, Gary Miller, 3502 Hwy 30, La Grande, OR 97850
6. NW Power Planning Council, Fish & Wildlife Division, Karl Weist
851 SW Sixth Ave, Ste 1020, Portland OR 97204
7. Confederated Tribes of the Umatilla Indian Reservation, Carl Merkle or Jennifer Hudson
Nixyaawii Governance Center, 46411 Timine Way, Pendleton OR 97801
8. National Marine Fisheries Service, Spencer Hovekamp
3502 Hwy 30, La Grande, OR 97850

Copies Mailed
By: _____ (SUPPORT STAFF)
on: _____ (DATE)

Caseworker: Kerri H. Cope

\\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

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