



September 25, 2015

LOUIS MARKS  
47740 ANTHONY LAKES HWY  
NORTH POWDER, OR 97867

Reference: File G-18063

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 the water-use permit application and to describe the 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 supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

1. The application proposed the appropriation of 5.0 cubic feet per second (CFS) of water from Well #1 G-16155 (BAKE 51643/L75772), Well #1 G-16263 (BAKE 52274/L109667) and Well #2 G-16263 for primary irrigation of 6.1 acres and supplemental irrigation of 1131.2 acres March 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 G-16155 (BAKE 51643/L75772), Well #1 G-16263 (BAKE 52274/L109667), and Well #2 G-16263 for irrigation is allowable under the Powder Basin Program (OAR 690-509-0000).
4. Groundwater will likely be available within the capacity of the resource, and if properly conditioned, the proposed use of groundwater will avoid injury to existing groundwater rights.

The Department has determined, based upon OAR 690-009, that the proposed groundwater use will have the potential for substantial interference with North Powder River. 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.

5. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 of each year.
6. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.

7. Although it is unlikely a permit will be issued, should the Department's findings change, the proposed supplemental use shall be limited to match that of the primary water rights. The Powder River Decree and North Powder River Decree allow the use of water for irrigation at a limit of 1/40th CFS per acre from March 1 to July 1, and at a limit of 1/80th CFS per acre from July 1 to October 1. If the application is approved, the limit and season allowed for supplemental irrigation will be 1/40 CFS per acre from March 1 to July 1 and 1/80 CFS per acre from July 1 to October 1.

### Summary of Allowable Water Use

**Because not all items above are favorable, the appropriation of 3.0 CFS of water from Well #1 G-16155 (BAKE 51643/L75772), Well #1 G-16263 (BAKE 52274/L109667), and Well #2 G-16263 for primary irrigation of 6.1 acres and supplemental irrigation of 1131.2 acres is not allowable, and it appears unlikely that a permit will be issued 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 the 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 the application and receive a refund (minus a \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, October 9, 2015**. For your convenience you may use the enclosed "STOP PROCESSING" form.

#### To Proceed With The Application:

If you choose to proceed with the application, you do not have to notify the Department. The 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 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

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 Static Water Level 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 Static Water Level 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;
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface;
- 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 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 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.

3. **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.
4. Groundwater production shall be from no shallower than 50 feet below land surface.
5. 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. Be aware that, if significant public interest issues are found to exist, such a finding could have an impact on the eventual outcome of the application.

The water source identified in the 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 contact me at [Barbara.J.Park@wrdd.state.or.us](mailto:Barbara.J.Park@wrdd.state.or.us) or 503-986-0859 if you have any questions regarding the contents of this letter or the application. Please have the 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: Barbara Park, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Barbara Park  
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-18063  
WAB 9-72191  
POU 9-72191  
GW

# APPLICATION FACT SHEET

Application File Number: G-18063

Applicant: LOUIS MARKS

County: Baker

Watermaster: 8

Priority Date: April 16, 2015

Source: WELL #1 G-16155 (BAKE 51643/L75772), WELL #1 G-16263 (BAKE 52274/L109667), AND WELL #2 G-16263

Use: PRIMARY IRRIGATION OF 6.1 ACRES; SUPPLEMENTAL IRRIGATION OF 1131.2 ACRES

Quantity: 5.0 CUBIC FEET PER SECOND

Basin Name & Number: Powder, #9

Stream Index Reference: Volume 01 HOT CR & MISC

Point of Diversion or Well Location(s):

WELL #1 G-16155 (BAKE 51643/L75772): NENE SECTION 2, T7S, R38E, W.M.; 1044 FEET SOUTH AND 70 FEET EAST FROM NW CORNER, NENE, SECTION 2

WELL #1 G-16263 (BAKE 52274/L109667) : SENE SECTION 2, T7S, R38E, W.M.; 475 FEET NORTH AND 30 FEET EAST FROM SW CORNER, SENE, SECTION 2

WELL #2 G-16263: NWNW SECTION 1, T7S, R38E, W.M.; 31 FEET SOUTH AND 1271 FEET EAST FROM NW CORNER, SECTION 1

Place of Use:

<u>QQ</u>	<u>PRIMARY</u>	<u>SUPPLEMENTAL</u>
NE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		36.7 ACRES
SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		2.5 ACRES
NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		18.0 ACRES
SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		39.0 ACRES
SECTION 35		
SW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		29.3 ACRES
SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		16.9 ACRES
SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		15.5 ACRES
SE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		6.0 ACRES
SECTION 36		
TOWNSHIP 6 SOUTH, RANGE 38 EAST, W.M.		
NE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SW <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SECTION 1		

SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SW <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SE <sup>1</sup> / <sub>4</sub> NW <sup>1</sup> / <sub>4</sub>	3.6 ACRES	36.4 ACRES
NE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SW <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		36.1 ACRES
SE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>	2.5 ACRES	36.0 ACRES

SECTION 1

NE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		38.9 ACRES
SE <sup>1</sup> / <sub>4</sub> NE <sup>1</sup> / <sub>4</sub>		39.9 ACRES
NE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		10.0 ACRES
SE <sup>1</sup> / <sub>4</sub> SW <sup>1</sup> / <sub>4</sub>		10.0 ACRES
NE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
NW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SW <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES
SE <sup>1</sup> / <sub>4</sub> SE <sup>1</sup> / <sub>4</sub>		40.0 ACRES

SECTION 2

TOWNSHIP 7 SOUTH, RANGE 38 EAST, W.M.

**14 DAY STOP PROCESSING DEADLINE DATE: Friday, October 9, 2015**

**PUBLIC NOTICE DATE: Tuesday, September 29, 2015**

**30 DAY COMMENT DEADLINE DATE: Thursday, October 29, 2015**

# Mailing List for IR Copies

Application #G-18063

IR Date: September 25, 2015

## **Original and map mailed to applicant:**

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LOUIS MARKS, 47740 ANTHONY LAKES HWY, NORTH POWDER, OR 97867

## **SENT VIA EMAIL:**

1. WRD - Watermaster # 8
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-18063
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)
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## **Affected District (include "Notice of Initial Review--Affected District")**

1. Powder Valley Water Control District, PO Box 189, North Powder OR 97867

Caseworker: Barbara Park

VCOPYSHT.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](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 Customer Service Group 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
- four 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