



Oregon
Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

(503) 986-0900

Fax (503) 986-0904

October 23, 2015

FORT BOISE PRODUCE
JAMES FARMER
CHARLES WARREN FARMER
MARGARET FARMER
PO BOX 1585
NYSSA, OR 97913

Reference: File S-88126

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 diversion of 4.73 cubic feet per second (CFS) of water from an unnamed spring and an unnamed stream, tributaries of Locket Gulch, and Locket Gulch, a tributary of Snake River, for primary irrigation of 533.1 acres February 1 through March 31 and October 16 through October 31 of each year and supplemental irrigation of 533.1 acres April 1 through April 14 and October 1 through October 15 of each year .
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The diversion of water from an unnamed spring and an unnamed stream, tributaries of Locket Gulch and Locket Gulch, a tributary of Snake River, is allowable under the Malheur Basin Program (OAR 690-510-0010).
4. Based on a preliminary review, an analysis of water availability using the Department's Water Availability Reporting System is not possible for the proposed point(s) of diversion. However, **all** surrounding areas show **no** surface water available at any time of year. Therefore, a site-specific determination was made by the Watermaster. The results of that determination stated that the amount of water requested is not available during the periods requested.
5. The application is subject to Section 4(d) of the Endangered Species Act.

Summary of Initial Determination

Because not all items above are favorable, the use of 4.73 CFS of water from an unnamed spring and an unnamed stream, tributaries of Locket Gulch and Locket Gulch, a tributary of Snake River, for irrigation of 533.1 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, November 6, 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 diversion. 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. You may be required to install fish screens at the point of diversion to meet Oregon Department of Fish and Wildlife specifications for adequate protection of aquatic life.

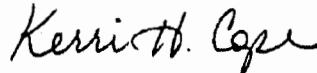
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. Be aware that, if significant 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 the 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 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: 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

S-88126
WAB 10- No WAB
POU 10- No WAB
GW

APPLICATION FACT SHEET

Application File Number: S-88126

Applicant: FORT BOISE PRODUCE / JAMES FARMER, CHARLES WARREN FARMER, MARGARET FARMER

County: Malheur

Watermaster: 9

Priority Date: August 28, 2015

Source: AN UNNAMED SPRING AND AN UNNAMED STREAM, TRIBUTARIES OF LOCKET GULCH AND LOCKET GULCH, A TRIBUTARY OF SNAKE RIVER

Use: PRIMARY AND SUPPLEMENTAL IRRIGATION OF 533.1 ACRES

Quantity: 4.73 CUBIC FEET PER SECOND

Basin Name & Number: Malheur, #10

Stream Index Reference: Volume 2A SNAKE R MISC

Points of Diversion:

POD 1: NWNW, SECTION 11, T20S, R46E, W.M.; 710 FEET SOUTH AND 1310 FEET EAST FROM NW CORNER, SECTION 11

POD 2: SWNE, SECTION 11, T20S, R46E, W.M.; 1490 FEET SOUTH AND 140 FEET EAST FROM N1/4 CORNER, SECTION 11

POD 3: SENW, SECTION 12, T20S, R46E, W.M.; 1880 FEET SOUTH AND 2550 FEET EAST FROM NW CORNER, SECTION 12

Place of Use:

SW ¼ NE ¼ 27.7 ACRES
SE ¼ NE ¼ 20.4 ACRES
NW ¼ NW ¼ 37.5 ACRES
SW ¼ NW ¼ 36.9 ACRES
NE ¼ SW ¼ 37.5 ACRES
NW ¼ SW ¼ 37.4 ACRES
SW ¼ SW ¼ 38.4 ACRES
SE ¼ SW ¼ 36.3 ACRES
NW ¼ SE ¼ 38.1 ACRES
SW ¼ SE ¼ 32.5 ACRES
SE ¼ SE ¼ 11.9 ACRES
SECTION 11

NE ¼ NE ¼ 37.9 ACRES
NW ¼ NE ¼ 9.5 ACRES
SW ¼ NE ¼ 5.8 ACRES
SE ¼ NE ¼ 36.6 ACRES
NW ¼ NW ¼ 18.3 ACRES

SW ¼ NW ¼ 34.0 ACRES
SE ¼ NW ¼ 26.4 ACRES
NE ¼ SE ¼ 10.0 ACRES
SECTION 12
TOWNSHIP 20 SOUTH, RANGE 46 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, November 6, 2015

PUBLIC NOTICE DATE: Tuesday, October 27, 2015

30 DAY COMMENT DEADLINE DATE: Thursday, November 26, 2015

Mailing List for IR Copies

Application #S-88126

IR Date: October 23, 2015

Original and map mailed to applicant:

FORT BOISE PRODUCE / JAMES FARMER, CHARLES WARREN FARMER, MARGARET FARMER, PO BOX 1585, NYSSA, OR 97913

SENT VIA EMAIL:

1. WRD - Watermaster # 9
2. ODFW
3. DEQ
4. Agent - NRORICK@YAHOO.COM

Copies sent to:

1. WRD - Water Availability: Shawn Ortiz-Turner

IR, Map, and Fact Sheet Copies sent to:

2. WRD - File # S-88126
3. Department of Agriculture

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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Affected District (include "Notice of Initial Review--Affected District")

1. Owyhee Irrigation District - 17 S 1st St., Nyssa, OR 97913
2. Old Owyhee Ditch Improvement District - PO Box 280, Ontario, OR 97914

Caseworker: Kerri H. Cope

\\COPYSHT.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 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