



May 20, 2016

PAUL KESLER
KESLER FARMS INC
3331 GREY BLVD
NYSSA, OR 97913

Reference: File G-18206

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 3.56 cubic feet per second (CFS) of water, being 1.78 CFS from Scott 1 Well (MALH 54160/L114803) and 1.78 from CFS Kessler H Well (MALH 54229/L114816) in Snake River Basin, for supplemental irrigation of 447.2 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 Scott 1 Well (MALH 54160/L114803) and Kessler H Well (MALH 54229/L114816) in Snake River Basin for irrigation is allowable under the Malheur Basin Program (OAR 690-510-0000).
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.
5. The Department has determined, based upon OAR 690-009, that the proposed groundwater use will not have the potential for substantial interference with any surface water source.
6. The application proposed supplemental irrigation of 16.3 acres in the SE 1/4 of the SW 1/4, Section 15, however the existing primary Permit S-54398 only allows irrigation of

16.1 acres. Therefore the acreage is limited to 16.1 acres in the SE 1/4 of the SW 1/4, Section 15.

7. The proposed duty for supplemental use shall be limited to match that of the primary water right. Certificate 75691 is limited to a duty of 3.0 acre-feet per acre therefore, supplemental irrigation of 447.0 acres will be limited to an annual volume of 1341.0 acre-feet of water.

Summary of Initial Determinations

The appropriation of 3.56 CFS of water, being 1.78 CFS from Scott 1 Well (MALH 54160/I114803) and 1.78 CFS from Kessler H Well (MALH 54229/L114816) in Snake River Basin, for supplemental irrigation of 447.0 acres is allowable during the full period requested, March 1 through October 31 of each year.

Because of these favorable determinations, the Department can now move the 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 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.

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, June 3, 2016**. 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 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.

3. Well Identification Tag Condition

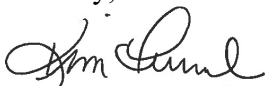
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

The water source identified in 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 503-986-0816 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: 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-18206
WAB 10-No PSI
POU 10-No PSI
GW

APPLICATION FACT SHEET

Application File Number: G-18206

Applicant: PAUL KESLER AND KESLER FARMS INC

County: Malheur

Watermaster: 9

Priority Date: March 3, 2016

Source: SCOTT 1 WELL (MALH 54160/L114803) AND KESSLER H WELL (MALH 54229/L114816) IN SNAKE RIVER BASIN

Use: SUPPLEMENTAL IRRIGATION OF 447.2 ACRES

Quantity: 3.56 CUBIC FEET PER SECOND

Basin Name & Number: Malheur, #10

Stream Index Reference: Volume 2A SNAKE R MISC

Well Location(s):

SCOTT 1 WELL (MALH 54160/L114803): SWNE, SECTION 14, T19S, R46E, W.M.;
2600 FEET SOUTH AND 3160 FEET EAST FROM NW CORNER, SECTION 14

KESSLER H WELL (MALH 54229/L114816): NWSW, SECTION 14, T19S, R46E, W.M.;
1380 FEET NORTH AND 300 FEET EAST FROM SW CORNER, SECTION 14

Place of Use:

NE $\frac{1}{4}$ SW $\frac{1}{4}$ 36.2 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 19.4 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 37.4 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 21.0 ACRES
SECTION 13

NE $\frac{1}{4}$ NE $\frac{1}{4}$ 2.1 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 24.4 ACRES
SE $\frac{1}{4}$ NE $\frac{1}{4}$ 30.5 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 28.8 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 38.1 ACRES
NW $\frac{1}{4}$ SW $\frac{1}{4}$ 33.7 ACRES
SW $\frac{1}{4}$ SW $\frac{1}{4}$ 35.5 ACRES
SECTION 14

SE $\frac{1}{4}$ NE $\frac{1}{4}$ 11.6 ACRES
SE $\frac{1}{4}$ SW $\frac{1}{4}$ 16.3 ACRES
NE $\frac{1}{4}$ SE $\frac{1}{4}$ 32.3 ACRES
NW $\frac{1}{4}$ SE $\frac{1}{4}$ 11.4 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 32.3 ACRES

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 36.2 ACRES
SECTION 15
TOWNSHIP 19 SOUTH, RANGE 46 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, June 3, 2016

PUBLIC NOTICE DATE: Tuesday, May 24, 2016

30 DAY COMMENT DEADLINE DATE: Thursday, June 23, 2016

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