



Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

December 30, 2016

JAN H ENTERPRISES
19774 GRADE RD SE
SILVERTON, OR 97381

Reference: File G-18321

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 0.27 cubic foot per second (CFS) of water from Leo's West Well (MARI 66235) in Silver Creek Basin for year-round nursery use on 35.3 acres and to make up deficiencies in rate for year-round nursery use on 114.85 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are fully included in irrigation and agriculture uses, both of which are allowed under the Willamette Basin Program (OAR 690-502). Therefore, the appropriation of water from Leo's West Well (MARI 66235) in Silver Creek Basin for nursery use is allowable.
4. Groundwater is over-appropriated will **not** likely be available within the capacity of the resource and/or without injury to existing groundwater rights.
5. The Department has determined, based upon OAR 690-009, that the proposed groundwater use will have the potential for substantial interference with a tributary to Silver Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.

Surface water is not available during the period June 1 through October 31 of each year.

6. The application is subject to Section 4(d) of the Endangered Species Act and as such subject to review under OAR 690-033.
7. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.

8. The application indicated new year-round nursery use on 35.3 acres but the map indicated 33.2 acres. Please clarify the total number of acres, and provide a revised map if appropriate by Thursday, February 2, 2017. 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.**

Summary of Initial Determination

Because not all items above are favorable, the appropriation of 0.27 CFS of water from Leo's West Well (MARI 66235) in Silver Creek Basin for year-round nursery use on 33.2 acres and to make up deficiencies in rate for year-round nursery use on 114.85 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, January 13, 2017**. 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 (A)

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. Static Water Level Conditions (B)

Use of water from any well, as allowed herein, shall be controlled or shut off if the well displays:

- A. An average water-level decline of three or more feet per year for five consecutive years; or
- B. A total water-level decline of 15 or more feet; or
- C. A hydraulic interference decline of 15 or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.

The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well(s).

- A. Use of water from a new well shall not begin until an initial static water level in the well has been measured and reported to the Department.
- B. In addition to the measurement required in subsection (A) of this section, a water-level measurement shall be made each year during the period March 1 through March 31.
- C. All water-level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructor, or licensed pump installer.
- D. Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment is available from the Department.
- E. The permittee/appropriator shall report the record of measurement to the Department on a form available from the Department. The record of measurement shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements, and shall be submitted to the Department within 90 days from the date of measurement. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (2).

4. 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.

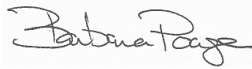
This initial review does not attempt to address various public interest issues such as sensitive, threatened, or endangered fish species. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. Be aware that, if significant 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 503-986-0859 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 Poage, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

A handwritten signature in cursive script that reads "Barbara Poage". The signature is written in dark ink on a light-colored background.

Barbara Poage
Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form
G-18321
WAB 2-169
POU 2-169
GW

APPLICATION FACT SHEET

Application File Number: G-18321

Applicant: JAN H ENTERPRISES

County: MARION

Watermaster: 16

Priority Date: JUNE 22, 2016

Source: LEOS WEST WELL (MARI 66235) IN SILVER CREEK BASIN

Use: NURSERY USE ON 33.2 ACRES; DEFICIENCIES IN RATE INCREASE FOR YEAR-ROUND NURSERY USE ON 114.85 ACRES

Quantity: 0.27 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 14 SILVER CR MISC

Point of Diversion or Well Location(s): NENW SECTION 21, T7S, R1E, W.M.; 1095 FEET SOUTH AND 1815 FEET EAST FROM NW CORNER, SECTION 21

Place of Use:

SE $\frac{1}{4}$ SW $\frac{1}{4}$ 12.30 ACRES
SW $\frac{1}{4}$ SE $\frac{1}{4}$ 19.60 ACRES
SE $\frac{1}{4}$ SE $\frac{1}{4}$ 9.20 ACRES
SECTION 16

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 38.20 ACRES
SW $\frac{1}{4}$ NE $\frac{1}{4}$ 29.30 ACRES
NE $\frac{1}{4}$ NW $\frac{1}{4}$ 18.21 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 3.81 ACRES
SW $\frac{1}{4}$ NW $\frac{1}{4}$ 0.53 ACRE
SE $\frac{1}{4}$ NW $\frac{1}{4}$ 16.90 ACRES

SECTION 21

TOWNSHIP 7 SOUTH, RANGE 1 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, January 13, 2017

PUBLIC NOTICE DATE: Tuesday, January 3, 2017

30 DAY COMMENT DEADLINE DATE: Thursday, February 2, 2017

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