



June 23, 2017

TSW NURSERY SALES
22291 BOONES FERRY RD NE
AURORA, OR 97002

Reference: File G-18369

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 1.0 cubic foot per second (CFS) of water from Well 1 (MARI 414) and Well 2 in Deer Creek Basin for year-round nursery use on 13.41 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 Well 1 (MARI 414) and Well 2 in Deer Creek Basin for nursery use is allowable.
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 have the potential for substantial interference with Deer Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered.
6. Surface water is not available during the period June 1 through November 30.

7. Surface water is not available for the entire period requested, therefore, the appropriation of 1.0 CFS of water from Well 1 (MARI 414) and Well 2 in Deer Creek Basin for nursery use on 13.41 acres is not allowable.
8. Because this application will have an impact on surface water flows where the Oregon Department of Fish and Wildlife (ODFW) has identified that sensitive, threatened or endangered fish are present, this application will be reviewed by at least ODFW and the Department of Environmental Quality in accordance with OAR 690-033 rules. This review could have an impact on the eventual outcome of your application. This review could cause your application to be proposed for denial, the season of use to be shortened or impacted in some other way when the Department issues a proposed final order at the next stage of processing.
9. The proposed diversion falls within a high priority area for streamflow restoration under the Oregon Plan for Salmon & Watersheds.
10. Although it is unlikely that a permit will be issued, if the Department's findings change, the standard allowable rate for nursery use is 1/40 CFS per acre. If the application is approved, the rate allowed will be limited to 0.34 CFS for nursery use on 13.41 acres.

Summary of Initial Determination

Because not all items above are favorable, the appropriation of 1.0 CFS of water from Well 1 (MARI 414) and Well 2 in Deer Creek Basin for year-round nursery use on 13.41 acres is not allowable, and it appears unlikely that a permit will be issued unless a suitable mitigation proposal, in the amount of 67.05 acre-feet, is provided prior to issuance of the Proposed Final Order. The mitigation obligation is calculated using a consumptive use factor of 100% of total volume. 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, July 7, 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

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. Irrigation allowed under this permit shall be by drip irrigation or by an equally efficient method.
- 4. Groundwater production shall be only from the alluvial groundwater reservoir.
- 5. 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 503-986-0816 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,

A handwritten signature in cursive script, appearing to read "Kim French".

Kim French
Water Right Application Specialist

enclosures: Application Process Description and Stop Processing Request Form

G-18369
WAB 2-30200901
POU 2-30200901
GW

APPLICATION FACT SHEET

Application File Number: G-18369

Applicant: TSW NURSERY SALES

County: MARION

Watermaster: 16

Priority Date: AUGUST 17, 2016

Source: WELL 1 (MARI 414) AND WELL 2 IN DEER CREEK BASIN

Use: NURSERY USE ON 13.41 ACRES

Quantity: 1.0 CUBIC FOOT PER SECOND

Basin Name & Number: Willamette, #2

Stream Index Reference: Volume 15A DEER CR & MISC

Well Location(s):

WELL 1 (MARI 414): NENW, SECTION 11, T4S, R1W, W.M.; 300 FEET NORTH AND 245 FEET WEST FROM SE CORNER, NENW, SECTION 11

WELL 2: NENW, SECTION 11, T4S, R1W, W.M.; 500 FEET NORTH AND 755 FEET WEST FROM SE CORNER, NENW, SECTION 11

Place of Use:

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 13.41 ACRES
SECTION 11
TOWNSHIP 4 SOUTH, RANGE 1 WEST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, July 7, 2017

PUBLIC NOTICE DATE: Tuesday, June 27, 2017

30 DAY COMMENT DEADLINE DATE: Thursday, July 27, 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

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Oregon Water Resources Department Attribute Report

Report Date: Jun 7, 2017

General:

TRSQQ:	WM4.00S1.00W11NENW
DLC:	-
Latitude:	45.2429567775
Longitude:	-122.7778346442
Buffer (ft):	1
Elevation (ft):	204
Basin Name:	Willamette
Basin Plan:	2B (7)-Middle Willamette (Pudding)
County:	Marion
WM District:	16
WM Region:	NORTHWEST
ODFW Region, District:	Northwest Region, NWWD-Cascade Unit
Irrigation District AOI:	-
Irrigation District, Other:	-
Dams (Permit):	-
Water Rights:	Platcard for WM4.00S1.00W11
Well Logs:	Logs for WM4.00S1.00W11

Rules:

Withdrawn Authority:	-
Groundwater Retriected:	-
GW Retriected Subunit:	-
GW ODEQ Management Area:	-
GW Umatilla Muni Wells (5mile):	-
Rule 4D:	Rules apply
Division 33 (Area, Watershed, species):	LOWER COLUMBIA , <i>Senecal Creek-Pudding River</i> , Pacific Lamprey, Chinook Salmon, Steelhead

Irrigation Season of Use:	(unajudicated, west side) Adj. Status: Unadjudicated Subarea: undefined Irr. Season: Mar 1 to Oct 31 Duty: 2.5 Rate: 1/80
Water Quality Limited Pollutant 2012:	-
Fish Habitat 2014:	-
Is in Deschutes Study Area:	-
Deschutes Zone Impact:	-
Deschutes Zone Overlay:	-
Scenic Water Way:	-

Hydrography:

OWRD Streamcode:	-
Waterbody Name:	-
HUC 10:	1709000905
HUC Watershed:	Senecal Creek-Pudding River
WAB Wshed Order:	6
WAB Analysis:	MILL CR > PUDDING R - AT MOUTH
Streamflow:	OWRD Opportunities: Good ODFW Needs: Moderate Combined Priority: Not a priority
Gaging Station Data:	-

Sources:

General
<i>Oregon Public Land Survey Quarter-quarters.</i> Bureau of Land Management, Oregon Water Resources Department.. n.d. 1:24,000.
<i>Donated Land Claims.</i> Oregon Water Resources Department. January 1, 1995. 1:100,000.
<i>Elevation.</i> ESRI World Elevation. February 2000. 1:121,000.

OWRD Administrative Basins. Oregon Water Resources Department. January 1, 1995.

Oregon Counties. Bureau of Land Management (BLM), Oregon State Office.. January 1, 2008.

OWRD Watermaster Districts. Oregon Water Resources Department. March 31, 2014.

OWRD Regions. Oregon Water Resources Department. January 1, 1995.

ODFW Districts and Regions. Oregon Department of Fish and Wildlife. August 28, 2012.

Water Organizations Oregon Water Resources Department. April 1, 2013. 1:24,000.

Large Dams Inventory. Oregon Water Resources Department. August 12, 2014. 1:24,000.

Rules

Withdrawn Authority Areas. Oregon Water Resources Commission. January 1, 2007.

OWRD Groundwater Restricted Areas. Oregon Water Resources Department. October 5, 2016.

OWRD Groundwater Restricted Areas - Subunits. Oregon Water Resources Department. April 1, 2009.

ODEQ Groundwater Management Areas (GWMAs). Oregon Department of Environmental Quality. April 21, 2008.

Groundwater Umatilla Municipal Wells 5-mile buffer. Oregon Water Resources Department. June 28, 2012.

National Marine Fisheries Service (NMFS) 4(d) Rule. National Marine Fisheries Service. January 1, 2007.

OAR Chapter 690, Division 33 - HUC 10 . Oregon Department of Fish & Wildlife. January 1, 2003.

Irrigation Season of Use. Oregon Water Resources Department, 2017.. March 24, 2017.

Oregon Water Quality Assessment 2012. This data set was assembled by the Oregon Department of Environmental Quality, Water Quality Division, Standards and Assessments Section.. December 4, 2014. 1:2,500,000.

Oregon Fish Habitat 2014. Oregon Department of Fish and Wildlife. Numerous fisheries biologists from ODFW as well as other natural resource agencies and tribes have contributed toward the development of these data. Data originator names are attributed at the feature level.. n.d. 1:24,000.

Deschutes USGS Groundwater Study Area. Water Resources Commission, U.S. Geological Survey (USGS) Water Resources Division (Portland, OR), Oregon Water Resources

Department.. January 1, 2001. 1:100,000.

Deschutes Zones of Impact. Oregon Water Resources Department.. October 25, 2007.

Deschutes Zones Overlay. Oregon Water Resources Department. October 25, 2007.

Oregon State Scenic Waterway areas. Oregon Water Resources Department, Oregon Parks and Recreation Department.. January 1, 2007.

Hydrography

Routed OWRD Streamcodes (conflated to the NHD). Oregon Water Resources Dept.. August 11, 2014.

. Unknown. n.d.

Watershed Boundary Dataset (WBD), 10-digit (watershed). Pacific Northwest Hydrography Framework, U.S. Geological Survey (USGS), National Resources Conservation Service (NRCS).. June 11, 2014. 1:24,000.

Water Availability Basins. Oregon Water Resources Department.. n.d. 1:100,000.

Priority Watersheds for Streamflow Restoration. Oregon Water Resources Dept. and the Oregon Dept. of Fish & Wildlife.. January 15, 2004.

Stream Gage Stations. Oregon Water Resources Department and US Geological Survey. n.d.

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