



Oregon

Kate Brown, Governor

Water Resources Department

725 Summer St NE, Suite A

Salem, OR 97301

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Water Right Application Initial Review

March 23, 2018

CARLTON NURSERY CO. LLC
C/O ALLAN ELLIOTT
PO BOX 398
DAYTON OR 97114

Reference: G-18502

Application G-18502 proposes the appropriation of 2.66 cubic feet per second (CFS) of water from Well 1 (YAMH 557), Well 2 (YAMH 6409), Well 3 (MARI 2888), and Holbrook Well 2 (YAMH 6439) in Warner Creek Basin for year-round nursery use on 106.5 acres.

Summary

Not all determinations herein are favorable, therefore **it is unlikely that Application G-18502 will be approved.**

This initial review does not address various public interest issues or public comments. These issues will be addressed as the Department reviews comments from the public and other agencies, and prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

At this time, you must decide whether to proceed or to withdraw the application.

Proceed

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

Withdraw

You may withdraw the application and receive a refund (minus a \$260 processing charge per application). You must notify the Department in writing by **April 6, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Initial Review Preliminary Determinations (OAR 690-310-0080)

1. The application proposed the appropriation of 2.66 CFS of water from Well 1 (YAMH 557), Well 2 (YAMH 6409), Well 3 (MARI 2888), and Holbrook Well 2 (YAMH 6439) in Warner Creek Basin for year-round nursery use on 106.5 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The points of appropriation are located within the Amity Hills/Walnut Hill Groundwater Limited Area. This was established to ensure that groundwater is appropriated within the capacity of the resource and to prevent depletion of the groundwater resource. OAR 690-502-0210
4. Pursuant to OAR 690-502-0210, groundwater use in the Amity Hills/Walnut Hill Ground Water Limited Area is classified for exempt uses only. Irrigation use is allowable, however it shall be limited to use under a limited license pursuant to ORS 537.143. Therefore, use under this application is not allowable.
5. Groundwater will likely be available within the capacity of the resource, and if properly conditioned (and if authorized), the proposed use of groundwater will avoid injury to existing groundwater rights.
6. The proposed use is not located within or above any state or federal scenic waterway.
7. 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.
8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. 537.621(3)(b); 690-310-0150(2)(b)

If a Permit is Issued it will Likely Include the Following Conditions:

1. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may not be valid, unless the Department authorizes the change in writing.

3. 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 used each month, and shall submit an annual report which includes the recorded 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.

4. Annual Measurement Condition:

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 water user shall discontinue use of, 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.

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.

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 contact me at Elisabeth.A.Graham@oregon.gov or 503-986-0808 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. 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: Lisa Graham, 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 black ink, appearing to be 'L.A. Graham', with a long horizontal line extending to the right.

Lisa Graham
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-18502
WAB: 30200801

APPLICATION FACT SHEET

Application File Number: G-18502

Applicant: CARLTON NURSERY CO. LLC

County: YAMHILL

Watermaster: JOEL PLAHN, 16, NWR

Priority Date: MAY 5, 2017

Source: WELL 1 (YAMH 557), WELL 2 (YAMH 6409), WELL 3 (MARI 2888), AND HOLBROOK WELL 2 (YAMH 6439) IN WARNER CREEK BASIN

Use: NURSERY USE ON 106.5 ACRES

Quantity: 2.66 CUBIC FEET PER SECOND

Basin Name & Number: WILLAMETTE, #2

Well Locations:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1 (YAMH 557)	5 S	3 W	WM	16	NW NW	60 FEET NORTH AND 60 FEET EAST FROM NW CORNER, DLC 56
WELL 2 (YAMH 6409)	5 S	3 W	WM	17	NE NE	210 FEET NORTH AND 360 FEET WEST FROM NW CORNER, DLC 56
WELL 3 (YAMH 6449)	5 S	3 W	WM	9	SE SW	330 FEET SOUTH AND 790 FEET EAST FROM SE CORNER, DLC 51
HOLBROOK WELL 2 (YAMH 6439)	5 S	3 W	WM	9	NW SW	2120 FEET NORTH AND 675 FEET EAST FROM NW CORNER, DLC 56

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	3 W	WM	8	SW SE	21.40
5 S	3 W	WM	8	SE SE	27.60
5 S	3 W	WM	9	SW SW	12.80
5 S	3 W	WM	9	SE SW	16.50
5 S	3 W	WM	9	SW SE	9.90
5 S	3 W	WM	16	NW NE	2.80
5 S	3 W	WM	16	NE NW	4.60
5 S	3 W	WM	16	NW NW	1.30
5 S	3 W	WM	17	NE NE	5.30
5 S	3 W	WM	17	NW NE	4.30

PUBLIC NOTICE DATE: March 27, 2018

14 DAY STOP PROCESSING DEADLINE DATE: April 6, 2018

30 DAY COMMENT DEADLINE DATE: April 26, 2018

APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information 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.
- An 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.
- **An 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.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is 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 the 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.

STOP PROCESSING REQUEST FORM
FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR
APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.
- Applicant may request no further action and fee refund of all but \$260.
- Applicant notification to withdraw Water Right Application **G-18502**.
- After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$260 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 \$260 examination fee) be returned.
- This notice must be received at Water Resources Department by:

April 6, 2018

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A,
Salem OR, 97301-1271
