



Water Right Application Initial Review

August 24, 2018

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621 DATE PALM RD
VERO BEACH FL 32963

Reference: Application G-18504

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your 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 Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. Application G-18504 proposes the appropriation of 0.185 cubic foot per second (CFS) of water from Well 1 (JACK 62965/L125241), Well 2, Well 3, Well 4, Well 5 and Well 6 in Sterling Creek Basin for year-round nursery use on 20.13 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Rogue Basin Program (OAR 690-515-0030). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)
4. 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.
5. The Department has determined, based upon OAR 690-009, that the proposed groundwater use will have the potential for substantial interference with Sterling Creek and Griffin Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. Surface water is **not** available January 1 through December 31, however by providing additional information you may be able to pursue a limited permit. See **Additional Information Opportunity** section below for more details.

6. The proposed use is located above the Rogue Scenic Waterway, as designated under Oregon Revised Statute 390.826. The Department has determined, based upon OAR 690-310-0260, that there is a preponderance of evidence that the proposed use of groundwater will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife.
7. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.
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. Documentation has been submitted acknowledging the land use information request was received by the local Planning Department.

Summary

The appropriation of 0.185 CFS of water from Well 1 (JACK 62965/L125241), Well 2, Well 3, Well 4, Well 5 and Well 6 in Sterling Creek Basin for nursery use on 20.13 acres is not allowable January 1 through December 31 of each year.

Not all determinations herein are favorable; therefore it is unlikely that Application G-18504 will be approved unless a suitable mitigation proposal is provided prior to issuance of the Proposed Final Order.

Public interest issues and/or public comments will be addressed as the Department prepares a Proposed Final Order. If significant public interest issues are identified, they could have an impact on the eventual outcome of the application.

The Department has rules (OAR 690-033) that establish additional procedures and standards to aid the Department in determining whether a proposed use will impair or be detrimental to the public interest with regard to sensitive, threatened, or endangered fish species. This Initial Review does not address the potential impact that your proposed use may have on these species.

Your application will undergo additional review from numerous federal, state, local, and tribal governmental entities. This review may cause your application to be limited, conditioned, or denied. Depending on the proposed use, you may be able to mitigate for potential impacts identified in the review.

Mitigation is often complicated, time consuming, and expensive, and may include, but is not limited to, actions such as replacing the proposed amount of water within the impacted reach through purchasing or transferring another water right. If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options.

Additional Information Opportunity

If you would like to use water for year-round nursery use on 7.4 acres, you may amend your application to reduce the proposed rate to 0.0011 CFS. By reducing the rate 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. Please be aware that the reduced rate may be insufficient to meet your needs; if so, you may wish to either withdraw the application or submit an amended map with depicting less acreage as the place-of-use.

Please submit this information no later than Friday, September 7, 2018. If you are unable to submit the information listed above, you may request an administrative hold for up to an additional 180 days. You must submit the request in writing, stating how much more time you will need and why you need additional time. If an administrative hold is granted, your application will not be processed further until the requested information is received or the extended deadline has passed.

If we do not receive additional information or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial 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 fee per application). You must notify the Department **in writing** by **September 7, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

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. Static Water Level Conditions:

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to obtain, from a qualified individual (see below), and report annual static water level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to report an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall report seven consecutive annual static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require the user to obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- A. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well 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 non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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. Scenic Water Way Condition:

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced.

6. Well Identification Tag Condition:

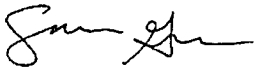
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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 scott.a.grew@oregon.gov or 503-986-0899 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: Scott Grew, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Scott Grew
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-18504
WAB: 70982

APPLICATION FACT SHEET

Application File Number: G-18504

Applicant: ANTHONY TINGHITELLA; ANTHONY TINGHITELLA REVOCABLE TRUST
JOHN FULCHER; JOHN FULCHER REVOCABLE TRUST

County: JACKSON

Watermaster: SHAVON HAYNES, 13, SWR

Priority Date: MAY 8, 2017

Source: WELL 1 (JACK 62965/L125241), WELL 2, WELL 3, WELL 4, WELL 5 AND WELL 6 IN
STERLING CREEK BASIN

Use: NURSERY USE ON 20.13 ACRES

Quantity: 0.185 CUBIC FOOT PER SECOND

Basin Name & Number: Rogue, #15

WAB: LITTLE APPLGATE R > APPLGATE R - AT MOUTH

Well Location(s):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1 (JACK 62965/L125241)	38 S	2 W	WM	27	SW NE	945 FEET NORTH AND 1856 FEET WEST FROM E1/4 CORNER, SECTION 27
WELL 2	38 S	2 W	WM	27	SW NE	1103 FEET NORTH AND 1793 FEET WEST FROM E1/4 CORNER, SECTION 27
WELL 3	38 S	2 W	WM	27	SW NE	1220 FEET NORTH AND 1787 FEET WEST FROM E1/4 CORNER, SECTION 27
WELL 4	38 S	2 W	WM	27	SW NE	862 FEET NORTH AND 2017 FEET WEST FROM E1/4 CORNER, SECTION 27
WELL 5	38 S	2 W	WM	27	SW NE	553 FEET NORTH AND 2181 FEET WEST FROM E1/4 CORNER, SECTION 27
WELL 6	38 S	2 W	WM	27	SW NE	716 FEET NORTH AND 2327 FEET WEST FROM E1/4 CORNER, SECTION 27

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	ACRES
38 S	2 W	WM	27	SW NE	20.13

PUBLIC NOTICE DATE: August 28, 2018

14 DAY STOP PROCESSING DEADLINE DATE: September 7, 2018

30 DAY COMMENT DEADLINE DATE: September 27, 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 notification to withdraw Water Right Application **G-18504**.
- After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$260 processing 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:

September 7, 2018

- Return the notice to:

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