



Water Right Application Superseding Initial Review

March 15, 2019

JON BARRY KRAXBERGER LIVING TRUST
PO BOX 2073
BEAVERTON OR 97075

Reference: Application G-18596

This Superseding Initial Review is based on a request by the applicant for a Groundwater re-review along with an additional finding regarding allowable uses in the Chehalem Mountain Groundwater Limited Area.

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-18596 proposes the appropriation of 0.019 cubic foot per second (CFS) of water from Well 1 (WASH 52339/WASH 53693/L14736) in McFee Creek Basin for nursery use on 11.1 acres January 1 through December 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The well is located within the Chehalem Mountain Limited Groundwater Limited Area and produces water from a basalt aquifer; therefore the proposed use is also subject to the rules under OAR 690-502-0200, Groundwater in the basalt aquifers in the Chehalem Mountain, Eola Hills and South Salem Hills Groundwater Limited Areas is classified for exempt uses, irrigation and rural residential fire protection systems only. Therefore, nursery use is not allowed.
4. Groundwater will likely be available within the capacity of the resource, and /or 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 proposed use is not located within or above any state or federal scenic waterway.

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. See **Additional Information Required** section below for deficiencies with the application.

Summary

Because not all items above are favorable, the appropriation of 0.05 CFS of water from Well 1 (WASH 52339/WASH 53693/L14736) in McFee Creek Basin for year-round nursery use on 11.1 acre is not allowable, and it appears unlikely that a permit will be issued.

Not all determinations herein are favorable; therefore **it is unlikely that Application G-18596 will be approved.**

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.

Additional Information Required

Although it is unlikely that a permit will be issued, if the Department's findings change, additional information will be required prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following item(s):

- **Please send an updated map with a correction to the transposed NWSE and NESE quarter quarters.**

Please submit the requested information listed above no later than **March 28, 2019**. If the Department does not receive the items listed above by **March 28, 2019**, the Department may reject the application and may refund fees.

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 **March 8, 2019**. 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. Irrigation allowed under this permit shall be by drip irrigation or by an equally efficient method.
5. The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of one-eightieth of one cubic foot per second and 1.0 acre foot for each acre irrigated during the irrigation season of each year.
6. This permit expires September 30, 2021. This permit may be renewed for additional periods of time, not to exceed five years, if the Director finds the groundwater resource can likely support the continued use. The following conditions shall have been met by the permittee in order for the Department to consider renewal:
 - A. Within two years of permit issuance, the permittee shall prepare a plan for the Director which shall indicate the steps for obtaining a long term water supply.
 - B. Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

7. Static Water Level Conditions:

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 3.0 or more feet per year for five consecutive years; or

- B. A total water-level decline of 15.0 or more feet; or
- C. A hydraulic interference decline of 15.0 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 the subsection above, 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, licensed pump installer, or the permittee/appropriator.
- 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.

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 herein are evidenced by the well measurement required in the static water level condition.

8. 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-18596
WAB: no psi

APPLICATION FACT SHEET

Application File Number: G-18596

Applicant: JON BARRY KRAXBERGER LIVING TRUST

County: WASHINGTON

Watermaster: JAKE CONSTANS, 18, NWR

Priority Date: JANUARY 5, 2018

Source: WELL 1 (WASH 52339/WASH 53693/L14736) IN MCFEE CREEK BASIN

Use: NURSERY USE ON 11.1 ACRES

Quantity: 0.019 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, #2

WAB: MCFEE CR > TUALATIN R - AT MOUTH

Well Location(s):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 W	WM	17	SW SE	900 FEET NORTH AND 1600 FEET WEST FROM SE CORNER, SECTION 17

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	2 W	WM	17	NE SE	0.30
2 S	2 W	WM	17	NW SE	0.20
2 S	2 W	WM	17	SW SE	7.50
2 S	2 W	WM	17	SE SE	3.10

PUBLIC NOTICE DATE: February 26, 2019

14 DAY STOP PROCESSING DEADLINE DATE: March 8, 2019

30 DAY COMMENT DEADLINE DATE: March 28, 2019

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-18596**.
- 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:

March 8, 2019

- Return the notice to:

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