



Water Right Application Initial Review

March 29, 2019

C & E BRENTANO FAMILY LP
5009 DAVIDSON ROAD NE
ST PAUL OR 97137

Reference: Application G-18690

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-18690 proposes the appropriation of 9.73 cubic feet per second (CFS) of water, being 9.22 CFS from POA 3 (MARI 1243), POA 4 (MARI 1336), and POA 7 (MARI 1221); and 0.51 CFS from POA 8 (MARI 1441) in Mission Creek Basin for primary irrigation of 76.2 acres and primary irrigation to make up a deficiency in rate (DIR) on 363.3 acres March 1 through October 31, and year-round nursery use on 295.2 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Uses included in nursery use are included in irrigation and agriculture use, both of which are allowed under the Willamette Basin Program (OAR 690-502-0160).
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 from POA 8 (MARI 1441) will not have the potential for substantial interference with any surface water source.
6. The Department has determined, based upon OAR 690-009, that the proposed groundwater use from POA 3 (MARI 1243), POA 4 (MARI 1336), and POA 7 (MARI 1221) **will** have the potential for substantial interference with Mission Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. Surface water is available October 1 through May 31.
7. The proposed use is not located within or above any state or federal scenic waterway.

8. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.
9. 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 Oregon 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.
10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
11. The Department has determined that POA 3 (MARI 1243), POA 4 (MARI 1336), and POA 7 (MARI 1221) do not meet current minimum well construction standards.

The well report for POA3 (MARI 1243) indicates that the top terminal height of the well casing is at land surface. To comply with minimum construction standards, the top terminal height of the well must be at least one foot above land surface, the pump house floor, or the local surface run off level.

The well report for POA 4 (MARI 1336) indicates that the top terminal height of the well casing is at land surface. To comply with minimum construction standards, the top terminal height of the well must be at least one foot above land surface, the pump house floor, or the local surface runoff level. In addition, the well report does not describe an annular seal for the 8-inch diameter gravel feed tube lace two feet west of the 12-inch diameter casing.

The well report for POA 7 (MARI 1221) indicates that the top terminal height of the well casing is at land surface. To comply with minimum construction standards, the top terminal height of the well must be at least one foot above land surface, the pump house floor, or the local surface runoff level. The report also indicates that the constructor received approval from the Department for the sealing method, so that portion of the construction will not be reviewed.

Prior to the issuance of a permit, evidence demonstrating compliance with well construction standards must be submitted and approved by the Department. In repairing the well(s), you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Joel Jeffery of the Department's Well Construction and Compliance Section at 503-986-0852 to determine how to proceed.

Please note that repair of the well(s) will not necessarily overcome the potential for substantial interference with surface water and may not result in the issuance of a permit.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's groundwater supply (OAR 690-200).

Summary

The appropriation of 0.51 CFS from POA 8 (MARI 1441) in Mission Creek Basin for primary irrigation of 76.2 acres and primary irrigation to make up a deficiency in rate on 363.3 acres March 1 through October 31; and nursery use on 295.2 acres January 1 through December 31 of each year is allowable.

The appropriation of 9.22 CFS of water from POA 3 (MARI 1243), POA 4 (MARI 1336), and POA 7 (MARI 1221) in Mission Creek Basin for irrigation, nursery use, and irrigation to make up a deficiency in rate for primary irrigation of 76.2 acres and primary irrigation to make up a deficiency in rate on 363.3 acres March 1 through October 31; and nursery use on 295.2 acres January 1 through December 31 of each year is not allowable.

Not all determinations herein are favorable; therefore **it is likely that Application G-18690 will be limited unless evidence demonstrating compliance with well construction standards is submitted and approved by the Department.**

Please submit this information no later than May 2, 2019. 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 the items requested above or a request for an administrative hold by this date, the Department will likely proceed with a Proposed Final Order recommending denial of the use of POA 3, POA 4, and POA 7.

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. Following the Initial Review, you will be notified if mitigation is required. If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options.

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 **April 12, 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. **Static Water Level 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. Groundwater production shall only be from the alluvial groundwater reservoir.

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

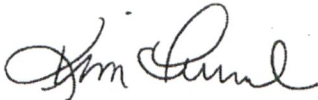
attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

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 Kim.R.French@oregon.gov or 503-986-0816 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: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-18690
WAB: 2-30200708

APPLICATION FACT SHEET

Application File Number: G-18690

Applicant: C & E BRENTANO FAMILY LP

County: MARION

Watermaster: JOEL PLAHN, 16, NWR

Priority Date: MAY 23, 2018

Source: POA 3 (MARI 1243), POA 4 (MARI 1336), POA 7 (MARI 1221), AND POA 8 (MARI 1441) IN MISSION CREEK BASIN

Use: PRIMARY IRRIGATION OF 76.2 ACRES, PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE ON 363.3 ACRES, AND NURSERY USE ON 295.2 ACRES

Quantity: 9.73 CUBIC FEET PER SECOND, BEING 9.22 CFS FROM POA 3 (MARI 1243), POA 4 (MARI 1336), POA 7 (MARI 1221), AND 0.51 CFS FROM POA 8 (MARI 1441)

Basin Name & Number: WILLAMETTE, #2

WAB: WILLAMETTE R > COLUMBIA R - AB MOLALLA R

Well Locations:

| POD Name | Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|-------------------|-----|-----|-----|-----|-------|---|
| POA 3 (MARI 1243) | 4 S | 2 W | WM | 20 | SW SE | 490 FEET SOUTH AND 2230 FEET WEST FROM NW CORNER, LEARD DLC 95 |
| POA 4 (MARI 1336) | 4 S | 2 W | WM | 29 | NW NE | 1840 FEET SOUTH AND 3270 FEET EAST FROM NW CORNER, SERVANT DLC 94 |
| POA 7 (MARI 1221) | 4 S | 2 W | WM | 19 | SE SE | 1070 FEET SOUTH AND 30 FEET WEST FROM NE CORNER, SAUVE DLC 62 |
| POA 8 (MARI 1441) | 4 S | 3 W | WM | 24 | SW NW | 1060 FEET NORTH AND 30 FEET EAST FROM W1/4 CORNER, SECTION 24 |

Place of Use:

| PRIMARY IRRIGATION | | | | | |
|--------------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 2 W | WM | 19 | SE SW | 0.6 |
| 4 S | 2 W | WM | 19 | NE SE | 2.6 |
| 4 S | 2 W | WM | 19 | SW SE | 2.8 |
| 4 S | 2 W | WM | 19 | SE SE | 5.5 |
| 4 S | 2 W | WM | 28 | NW NW | 9.8 |
| 4 S | 2 W | WM | 28 | SW NW | 3.0 |
| 4 S | 2 W | WM | 29 | NE NE | 18.6 |
| 4 S | 2 W | WM | 29 | SE NE | 7.7 |
| -4 S | 2 W | WM | 30 | NE NE | 1.6 |
| 4 S | 2 W | WM | 30 | NW NE | 8.9 |
| 4 S | 2 W | WM | 30 | SW NE | 0.7 |
| 4 S | 2 W | WM | 30 | NE NW | 0.6 |
| 4 S | 2 W | WM | 30 | SE NW | 1.4 |
| 4 S | 3 W | WM | 23 | SE NE | 2.7 |

| | | | | | |
|-----|-----|----|----|-------|-----|
| 4 S | 3 W | WM | 23 | NE SE | 2.3 |
| 4 S | 3 W | WM | 23 | NW SE | 0.5 |
| 4 S | 3 W | WM | 24 | SE NW | 1.2 |
| 4 S | 3 W | WM | 24 | SW NW | 0.9 |
| 4 S | 3 W | WM | 24 | NW SW | 0.3 |
| 4 S | 3 W | WM | 24 | NE SW | 4.5 |

| PRIMARY IRRIGATION TO MAKE UP A DEFICIENCY IN RATE | | | | | |
|--|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 2 W | WM | 19 | SE SE | 10.4 |
| 4 S | 2 W | WM | 20 | SW SW | 23.4 |
| 4 S | 2 W | WM | 20 | SE SW | 24.2 |
| 4 S | 2 W | WM | 20 | NE SE | 34.4 |
| 4 S | 2 W | WM | 20 | NW SE | 4.0 |
| 4 S | 2 W | WM | 20 | SW SE | 26.6 |
| 4 S | 2 W | WM | 20 | SE SE | 35.0 |
| 4 S | 2 W | WM | 29 | NE NE | 8.6 |
| 4 S | 2 W | WM | 29 | NW NE | 11.0 |
| 4 S | 2 W | WM | 29 | NE NW | 13.0 |
| 4 S | 2 W | WM | 29 | NW NW | 10.8 |
| 4 S | 2 W | WM | 29 | SE NW | 1.7 |
| 4 S | 2 W | WM | 30 | NE NE | 24.2 |
| 4 S | 2 W | WM | 30 | NW NE | 33.8 |
| 4 S | 2 W | WM | 30 | SW NE | 8.0 |
| 4 S | 2 W | WM | 30 | SE NE | 2.0 |
| 4 S | 2 W | WM | 30 | NE NW | 17.8 |
| 4 S | 2 W | WM | 30 | SE NW | 0.4 |
| 4 S | 3 W | WM | 23 | SE NE | 0.7 |
| 4 S | 3 W | WM | 23 | NE SE | 24.0 |
| 4 S | 3 W | WM | 24 | SW NW | 7.0 |

| NURSERY USE | | | | | |
|-------------|-----|-----|-----|-------|-------|
| Twp | Rng | Mer | Sec | Q-Q | Acres |
| 4 S | 2 W | WM | 19 | SE SE | 9.1 |
| 4 S | 2 W | WM | 20 | SW SW | 23.4 |
| 4 S | 2 W | WM | 20 | SE SW | 24.2 |
| 4 S | 2 W | WM | 20 | NE SE | 34.4 |
| 4 S | 2 W | WM | 20 | NW SE | 4.0 |
| 4 S | 2 W | WM | 20 | SW SE | 26.6 |
| 4 S | 2 W | WM | 20 | SE SE | 35.0 |
| 4 S | 2 W | WM | 29 | NE NE | 28.5 |
| 4 S | 2 W | WM | 29 | NW NE | 32.8 |
| 4 S | 2 W | WM | 29 | SW NE | 9.8 |
| 4 S | 2 W | WM | 29 | SE NE | 6.7 |
| 4 S | 2 W | WM | 29 | NE NW | 28.4 |
| 4 S | 2 W | WM | 29 | NW NW | 26.3 |
| 4 S | 2 W | WM | 29 | SE NW | 2.0 |
| 4 S | 2 W | WM | 30 | NE NE | 4.0 |

PUBLIC NOTICE DATE: April 2, 2019

14 DAY STOP PROCESSING DEADLINE DATE: April 12, 2019

30 DAY COMMENT DEADLINE DATE: May 2, 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-18690**.
- 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:

April 12, 2019

- Return the notice to:

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

Mailing List for IR Copies

Application G-18690

IR Date: March 29, 2019

Original and map mailed to applicant:

C & E BRENTANO FAMILY LP
5009 DAVIDSON ROAD NE
ST PAUL OR 97137

SENT VIA AUTO EMAIL:

1. WRD – Watermaster Joel Plahn # 16
2. ODFW
3. DEQ
4. Agent – Will McGill – willmcgill.surveying@gmail.com

Copies sent to:

1. ALO – Harold Brentano, 3217 Horseshoe Lake Rd NE, St Paul OR 97137
2. ALO – Joanne M. Van de Wiele, c/o Richard Kirk, PO Box 456, St Paul OR 97137
3. ALO – Horseshoe Lake Hop Harvesters Inc. c/o Monte Smith, 2218 Horseshoe Lake Rd NE, St Paul OR 97137

IR, Map, and Fact Sheet Copies sent to:

1. WRD - File G-18690
2. WRD – SW Section

Application Specialist: Kim French

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)