



## Water Right Application Initial Review

July 5, 2019

BGE PROPERTIES LLC  
1 W MAIN ST 401  
MEDFORD OR 97501

Reference: Application G-18648

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:

### **Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:**

1. Application G-18648 proposes the appropriation of 0.06 cubic foot per second (CFS) of water from BGE 2 (JACK 62237/L118366) in Bear Creek Basin for supplemental irrigation of 21.7 acres April 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Based on the application materials, the Department understands that groundwater will be pumped into a pond for *temporary storage*, and will ultimately be used for irrigation. Temporary storage in a reservoir that does not exceed 10 days between irrigation sets, temperature control applications, or agriculture spray applications is considered a bulge-in-the-system, and does not require a permit for storage.
4. The use of water from a well in Bear Creek Basin for irrigation use **is not allowable** under OAR 690-515-0020(1)(a), the Rogue Basin Program. However, because the Bear Creek subbasin classifications were intended to address surface water only, this alone does not prevent the Department from approving your application.
5. The application materials described the proposed uses as "supplemental irrigation". The use of this term in the application is not entirely consistent with how the Department defines them.

Supplemental irrigation indicates lands that have an existing irrigation right(s) and another water authorization *from a different source* is being sought. The Department has determined that supplemental irrigation for this application is not allowable because the source is the same as the underlying right.

Primary irrigation to make up a deficiency in rate indicates lands that have an existing irrigation right that is not at the maximum limit (e.g. 1/80 cubic foot per second per acre), and another water authorization *from the same source* is being sought. The Department is interpreting the proposed use for the acreage described in the application materials as “primary irrigation to make up a deficiency in rate” because the points of appropriation for the underlying right (Permit G-17310) are the same as proposed in this groundwater application.

6. 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.
7. 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.
8. 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 not 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.
9. The point of appropriation is not located within a critical, limited, or withdrawn groundwater area.
10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
11. See **Additional Information Required** section below for deficiencies with the application.

<b>Summary of Preliminary Determinations</b>
<b>The appropriation of 0.06 CFS of water to make up a deficiency in rate from BGE 2 (JACK 62237/L118366) in Bear Creek Basin for irrigation on 21.71 acres is allowable April 1 through October 31 of each year, contingent on the submission of additional required information. See <b><u>Additional Information Required</u></b> section below.</b>

Because of the favorable determinations described herein, Application G-18648 can move to the next phase of the water-rights application review process, which includes a public interest review.

**Public Comment & Further Review:**

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.

Division 33 Review – The Department’s Division 33 administrative rules (OAR 690-033) 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 now undergo an 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 required to mitigate for potential impacts identified in the review.

Mitigation for impacts to STE Species – 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 an existing water right. Following the Initial Review, you will be notified if mitigation is required, due to impacts to sensitive, threatened, or endangered fish species.

If you choose to pursue mitigation, you will likely need to place your application on administrative hold in order to explore options. There will be an additional fee of \$670 required with any mitigation proposal submitted.

### **Additional Information Required**

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following items:

1. The application map indicated irrigation of 21.71 acres, however it does not clearly describe the acreage in each quarter quarter. If for irrigation, the area to be irrigated in each quarter-quarter of a section shall be indicated by shading or hatchuring and the number of acres in each quarter-quarter section, donation land claim, government lot or other recognized public land survey lines indicated OAR 690-310-0050(4)(c). Please clarify the total number of acres, and provide a revised map if appropriate.
2. The application map indicates 0.01 acre in the NENW Section 4, 38 South 2 West as supplemental irrigation, however there is no an underlying right for this land. If you would like to include this 0.01 acre as primary irrigation please submit a revised map and application pages.

Please submit the requested information listed above no later than **August 8, 2019**. If the Department does not receive the items listed above by **August 8, 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.**

- To 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.
- To 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 **July 19, 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. **Water Use Measurement, Recording, and Reporting Condition:**
  - 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 Director may require the permittee to keep and maintain a record of the volume of water diverted, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and 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 website at <https://www.oregon.gov/ODA/programs/NaturalResources/AgWQ/Pages/AgWQPlans.aspx> to learn more about the plans and how they may affect the proposed water use.

**For Further Information:**

Feel free to contact me at [Elisabeth.A.Graham@oregon.gov](mailto: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 503-986-0900. 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,



Lisa Graham  
Water Right Application Specialist  
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-18648  
WAB: No PSI

# APPLICATION FACT SHEET

Application File Number: G-18648

Applicant: BGE PROPERTIES LLC

County: JACKSON

Watermaster: SHAVON HAYNES, 13, SWR

Priority Date: APRIL 11, 2018

Source: BGE 2 (JACK 62237/L118366) IN BEAR CREEK BASIN

Use: SUPPLEMENTAL IRRIGATION OF 21.7 ACRES

Quantity: 0.06 CUBIC FOOT PER SECOND

Basin Name & Number: ROGUE, #15

WAB: GRIFFIN CR > BEAR CR - AT MOUTH

Well Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
37 S	2 W	WM	33	NW SW	SOUTH 82 DEGREES 38 MINUTES 27 SECONDS EAST, 1323 FEET FROM NW CORNER

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
37 S	2 W	WM	33	NE SW	
37 S	2 W	WM	33	SW SW	
37 S	2 W	WM	33	SE SW	
38 S	2 W	WM	4	NE NW	21.71

**PUBLIC NOTICE DATE: July 9, 2019**

**14 DAY STOP PROCESSING DEADLINE DATE: July 19, 2019**

**30 DAY COMMENT DEADLINE DATE: August 8, 2019**

# Mailing List for IR Copies

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Application G-18648

IR Date: July 5, 2019

**Original and map mailed to applicant:**

## **Mail Certified**

BGE PROPERTIES LLC  
1 W MAIN ST 401  
MEDFORD OR 97501

### **Sent via auto email:**

1. WRD – Watermaster Shavon Haynes # 13
2. Agent – Mike Montero: [Montero-Associates@charter.net](mailto:Montero-Associates@charter.net)

### **Copies sent to:**

1. WRD - File G-18648
2. WRD - SW Region
3. WRD - SW Section (INCLUDE COPY OF YELLOW SHEET)
4. District - Talent Irrigation District: 104 West Valley View Road; Turner OR 97540

Application Specialist: Lisa Graham

Copies Mailed

By: \_\_\_\_\_  
(SUPPORT STAFF)

On: \_\_\_\_\_  
(DATE)



## 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.oregon.gov/OWRD](http://www.oregon.gov/OWRD)

### *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) 986-0900.

### *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**

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- Stop processing deadline is within 14 days of Initial Review.
- Applicant notification to withdraw Water Right Application **G-18648**.
- 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:

**July 19, 2019**

- Return the notice to:

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

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