



## Water Right Application Initial Review

July 5, 2019

DAVID LEE  
2565 ROCKYDALE RD.  
CAVE JUNCTION OR 97523

D TIGER FARM LLC  
17148 WILLIAMS HWY  
WILLIAMS OR 97544

Reference: Application G-18812

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-18812 proposes the appropriation of 1.0 cubic foot per second (CFS) of water from Well 1 (JOSE 60100/L125272) and Well 2 in Brushy Gulch Basin for nursery use on 17.3 acres January 1 to December 31 of each year.
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(1)(a)) (OAR 690-500-0020(4)). ORS 537.621(3)(b); OAR 690-310-0150(2)(b)
4. Groundwater will **not likely be available** within the capacity of the resource, and the proposed use of groundwater **will cause 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 Williams Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. Surface water is **not** available at any time of year.
6. According to OAR 690-515-0030(1)(a)(A), the waters of Williams Creek are classified for domestic, livestock, power development, irrigation of non-commercial gardens not to exceed ½ acre, and instream use for recreation, fish life and wildlife, except for the use of stored water. Irrigation including nursery use on 17.3 acres is **not** allowable using groundwater with the potential for substantial interference with Williams Creek.

7. 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.
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.

### **Summary**

**The appropriation of 1.0 CFS of water from Well 1 (JOSE 60100/L125272) and Well 2 in Brushy Gulch Basin for irrigation including nursery use on 17.3 acres January 1 to December 31 of each year is not allowable.**

Not all determinations herein are favorable; therefore **it is unlikely that Application G-18812 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.

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 **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 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. **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.

**5. Well Identification Tag Condition:**

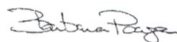
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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 [Barbara.J.Poage@oregon.gov](mailto:Barbara.J.Poage@oregon.gov) or 503-986-0859 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: Barbara Poage, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Barbara Poage  
Water Right Application Specialist  
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-18812  
WAB:70981

# APPLICATION FACT SHEET

Application File Number: G-18812

Applicant: DAVID LEE AND D TIGER FARM LLC

County: JOSEPHINE

Watermaster: VACANT, 14, SWR

Priority Date: April 8, 2019

Source: WELL 1 (JOSE 60100/L125272) AND WELL 2 IN BRUSHY GULCH BASIN

Use: NURSERY USE ON 17.3 ACRES

Quantity: 1.0 CUBIC FOOT PER SECOND

Basin Name & Number: Rogue, #15

WAB: WILLIAMS CR > APPLGATE R - AT MOUTH

Well Location(s):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1 (JOSE 60100/L125272)	38 S	5 W	WM	24	NW NW	840 FEET SOUTH AND 6 FEET EAST FROM NE CORNER, SECTION 23
WELL 2	38 S	5 W	WM	23	NE NE	900 FEET SOUTH AND 500 FEET WEST FROM NE CORNER, SECTION 23

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
38 S	5 W	WM	23	NE NE	17.30

**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-18812

IR Date: July 5, 2019

**Original and map mailed to applicant:**

DAVID LEE  
2565 ROCKYDALE RD  
CAVE JUNCTION OR 97523

D TIGER FARM LLC  
17148 WILLIAMS HWY  
WILLIAMS OR 97544

**Sent via auto email:**

1. WRD – Watermaster VACANT # 14
2. ODFW
3. DEQ

**Copies sent to:**

1. WRD - File G-18812
2. WRD - SWR
3. WRD – SW Section (Only if PSI or SWW - IF SWW, INCLUDE COPY OF YELLOW SHEET)

Copies Mailed

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

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

Application Specialist: Barbara Park Poage

## 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-18812**.
- 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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