



## Water Right Application Initial Review

December 20, 2019

BRANDON WAGNER  
7385 CLOW CORNER RD  
INDEPENDENCE OR 97351

Reference: Application G-18826

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-18826 proposes the appropriation of 0.05 cubic foot per second (CFS) of water from Well 1 (POLK 2809) and Well 2 (POLK 2817) in Oak Point Creek Basin for year-round nursery use on 4.75 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(2)).
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 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. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.
8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

9. The Department has determined that Well 1 (POLK 2809) and Well 2 (POLK 2817) do not meet current minimum well construction standards.

The annular seal in Well 1 (POLK 2809) is not adequate. The annular space does not meet requirements and only one sack of concrete was used for the casing and seal. To meet minimum construction standards, the well must be resealed with an approved grout to a minimum depth of 18 feet below land surface.

The casing depth and sealing depth in Well 2 (POLK 2817) are inadequate. To meet minimum well construction standards, the well must be continuously cased and continuously sealed to a minimum depth of 45 feet below land surface.

Prior to the issuance of a Proposed Final Order recommending approval, 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 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 of Preliminary Determinations
<b>The appropriation of 0.05 CFS of water from Well 1 (POLK 2809) and Well 2 (POLK 2817) in Oak Point Creek Basin for nursery use (irrigation and agriculture use) on 4.75 acres is not allowable.</b>

Not all determinations herein are favorable; therefore **it is unlikely that Application G-18826 will be approved unless evidence demonstrating compliance with well construction standards is submitted and approved by the Department.**

**Please submit this information no later than January 23, 2020.** 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 application.**

**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.



**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 examination fee per application). You must notify the Department **in writing** by **January 3, 2020**. 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 Condition:**

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. **Groundwater production shall be only from the alluvial groundwater reservoir between 20 feet and 85 feet below land surface.**
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 [Kim.R.French@oregon.gov](mailto: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 503-986-0900. 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-18826  
WAB: No PSI

# APPLICATION FACT SHEET

Application File Number: G-18826

Applicant: BRANDON WAGNER

County: POLK

Watermaster: JOEL M. PLAHN, 16, NWR

Priority Date: MAY 31, 2019

Source: WELL 1 (POLK 2809) AND WELL 2 (POLK 2817) IN OAK POINT CREEK BASIN

Use: NURSERY USE ON 4.75 ACRES

Quantity: 0.05 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, #2

WAB: RICKREAL CR > WILLAMETTE R - AT MOUTH

Well Location(s):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	8 S	4 W	WM	4	SW SE	200 FEET NORTH AND 1900 FEET WEST FROM SE CORNER, SECTION 4
WELL 2	8 S	4 W	WM	4	SW SE	110 FEET NORTH AND 1860 FEET WEST FROM SE CORNER, SECTION 4

Place of Use:

Twtp	Rng	Mer	Sec	Q-Q	Acres
8 S	4 W	WM	4	SW SE	4.75

**PUBLIC NOTICE DATE: December 24, 2019**

**14 DAY STOP PROCESSING DEADLINE DATE: January 3, 2020**

**30 DAY COMMENT DEADLINE DATE: January 23, 2020**

## 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-18826**.

After reviewing the Initial Review for my application, I request that processing be stopped and fees be refunded (minus a \$260 examination 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 by the Water Resources Department no later than:

**January 3, 2020**

- 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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# Mailing List for IR Copies

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Application G-18826

IR Date: December 20, 2019

**Original and map mailed to applicant:**

BRANDON WAGNER  
7385 CLOW CORNER RD  
INDEPENDENCE OR 97351

**Sent via auto email:**

1. Applicant - quailflatsfarm@gmail.com
2. WRD – Watermaster #16, Joel M. Plahn
3. WRD - Mike McCord NWR

**Copies sent to:**

1. WRD - File G-18826

Application Specialist: Kim French

Copies Mailed

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

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