



Water Right Application Initial Review

June 12, 2020

CHRISTOPHER BRYAN
WAG HOLDINGS LLC
18505 NE JAQUINTH RD
NEWBERG OR 97132

Reference: Application G-18843

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-18843 proposes the appropriation of 0.019 cubic foot per second (CFS) of water from Well 1 in an Chehalem Creek Basin for irrigation of 21.0 acres March 1 through October 31 and nursery use on 21.0 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 Groundwater Limited Area and produces water from a basalt aquifer, therefore it is also subject to the rules under OAR 690-502-0200(1), which states, "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 under the Willamette Basin Program rules.
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 have the potential for substantial interference with three unnamed tributaries to Chehalem 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 June 30.
6. Because the well is located within the Chehalem Mountain Groundwater Limited Area, the application is subject to the rules under OAR 690-502-0200 as follows:

- A. Permits may be issued for a period not to exceed five years.
 - B. The amount of water used for irrigation is limited to an appropriation of 1.0 acre-foot (AF) for each acre irrigated during the irrigation season of each year.
 - C. Irrigation allowed under a permit shall be by drip irrigation or by an equally efficient method.
7. The proposed use is not located within or above any state or federal scenic waterway.
 8. 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 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.
 9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
 10. Several public comments were received for this application and will be evaluated following the close of the public comment period.

Summary of Preliminary Determinations
<p>The appropriation of 0.019 CFS of water from Well 1 in Chehalem Creek Basin for irrigation of 21.0 acres <u>may be allowable</u> March 1 through June 30 and October 1 through October 31, if limited to drip or equally efficient irrigation; 1.0 AF per acre per year; for a period not to exceed five years; and also contingent upon the submission of additional required information. See <u>Additional Information Required</u> section below.</p> <p>The appropriation of 0.019 CFS of water from Well 1 in Chehalem Creek Basin for nursery use on 21.0 acres is not allowable.</p>

Additional Information Required

Surface water is not available during the entire period of time requested. Pursuant to OAR 690-300-0010(57), the following information is required to allow the proposed use, as summarized above:

- Justification that the proposed use requires water only during the period of time when water is available, being March 1 through June 30 and October 1 through October 31 of each year; or
- Demonstrate that you can obtain water from an alternate source during the period when water is not available, being July 1 through September 30.

Please submit this information no later than July 26, 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 is needed 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.

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 STE 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 STE 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.

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 **June 26, 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 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 shall expire **October 31, 2025**. 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 or more feet per year for five consecutive years; or
- B. A total water-level decline of 15 or more feet; or
- C. A hydraulic interference decline of 15 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 Construction Conditions:

- A. Each basalt well shall be open to a single aquifer of the Columbia River Basalt Group and shall meet the applicable well construction standards (OAR 690-200 and OAR 690-210). In addition, the open interval in each well shall be no greater than 100 feet. However, an open interval of greater than 100 feet may be allowed if substantial evidence of a single aquifer completion can be demonstrated to the satisfaction of the Department Hydrogeologists, using information from a video log, downhole flowmeter, water chemistry and temperature, or other downhole geophysical methods. These methods shall characterize the nature of the basalt rock and assess whether water is moving in the borehole. Any discernable movement of water within the well bore when the well is not being pumped shall be assumed as evidence of the presence of multiple aquifers in the open interval.
- B. If during well construction it becomes apparent that the well can be constructed to eliminate commingling between aquifers in a manner other than specified in this permit, the permittee can contact the Department Hydrogeologist for this permit or the Groundwater Hydrology Section Manager to request approval of such construction. The request shall be in writing, and shall include a rough well log and a proposed construction design for approval by the Department. The request can be approved only if it is received and reviewed prior to placement of any permanent casing and sealing material. If the request is made after casing and seal are placed, the requested modification will not be approved. If approved, the new well depth and construction specifications will be incorporated into any certificate issued for this permit.

- C. The permittee shall coordinate with the driller to ensure that drill cuttings are collected at 10-ft intervals and at changes in formation in each well. A split of each sampled interval shall be provided to the Department.
- D. Copies of all geologic and hydrogeologic reports completed for the permittee during the development of the wells, including geophysical well logs and borehole video logs, shall be provided to the Department. Except for borehole video logs, two paper copies, or a single electronic copy, shall be provided of each report. Digital tables of any data shall be provided upon request.

9. Well Identification Tag Condition:

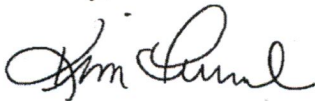
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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 503-986-0900. 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-18843
WAB: 30200707

APPLICATION FACT SHEET

Application File Number: G-18843

Applicant: CHRISTOPHER BRYAN AND WAG HOLDINGS LLC

County: YAMHILL

Watermaster: JAKE CONSTANS, 18, NWR

Priority Date: OCTOBER 21, 2019

Source: WELL 1 IN CHEHALEM CREEK BASIN

Use: IRRIGATION OF 21.0 ACRES AND NURSERY USE ON 21.0 ACRES

Quantity: 0.019 CUBIC FOOT PER SECOND

Basin Name & Number: WILLAMETTE, #2

WAB: WILLAMETTE R > COLUMBIA R - AB MOLALLA R

Well Location(s):

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
2 S	2 W	WM	31	SE SE	1150 FEET NORTH AND 640 FEET WEST FROM SE CORNER, SECTION 31

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
2 S	2 W	WM	31	NE SE	15.0
2 S	2 W	WM	31	SE SE	5.0

PUBLIC NOTICE DATE: June 16, 2020

14 DAY STOP PROCESSING DEADLINE DATE: June 26, 2020

30 DAY COMMENT DEADLINE DATE: July 26, 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.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-18843**.
- 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:

June 26, 2020

- 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-18843

IR Date: June 12, 2020

Original and map mailed to applicant:

CHRISTOPHER BRYAN
WAG HOLDINGS LLC
18505 NE JAQUINTH RD
NEWBERG OR 97132

Copies Mailed
By: _____ (SUPPORT STAFF)
On: _____ (DATE)

Sent via auto email:

1. Applicant - chrisbryan16@hotmail.com
2. Agent – phg@bctonline.com
3. WRD - Jake Constans - # 18
4. WRD - Mike McCord NWR
5. ODFW
6. DEQ

Copies sent to:

1. WRD - File G-18843
2. WRD – SW Section
3. Tami Kerr – Oregon Dairy Farms Assoc, 1320 Capitol St NE, Ste 160, Salem OR 97301

Kim will send email to these Commenters:

4. Charlie Harris – charris1@frontier.com
5. Lance Woods – woods1@co.yamhill.or.us
6. Jill Anderson – jill.anderson977@gmail.com
7. Michael Wert – mwert@teleport.com
8. Bill Sheets – sheetsb@coho.net
9. Manfred Wiesel – Manfred_wiesel@msn.com
10. Larry Nelson – larry@chehalemmountainpottery.com
11. Laura Cochran – lauracochran@juno.com
12. Dancil Strickland – Dancil.strickland@gmail.com
13. Joe Navarro – 80sguitarplayer@comcast.net
14. Jenny Backstrand – kiddlekrazy@gmail.com
15. Jennifer Allender – jallender@taipt.com
16. Peter Jacoby – pfjacoby@gmail.com
17. Rich Thompson – rich@kathykellydesign.com
18. Richard & Leann Jacobson – leannjacobson@onlinenw.com
19. Bud Clapper – budclapper@gmail.com
20. Trevor Solander – trspdx@gmail.com
21. Viorica Tudoran – vio.tudoran@yahoo.com
22. Hunter DeWolf Tintera – htintera@coho.net

Application Specialist: Kim French