



Water Right Application Initial Review

July 24, 2020

FIVE MILE RANCH LLC
3827 MARSHALL AVE
CARMICHAEL CA 95608

Reference: Application G-18851

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-18851 proposes the appropriation of 3.94 cubic feet per second (CFS) of water, being 2.45 CFS from Well 1 and 1.49 CFS from Well 2 in Five Mile Creek Basin, for primary irrigation of 243.11 acres and supplemental irrigation of 72.2 acres March 1 through October 31 of each year.
2. The application indicated supplemental irrigation of 72.6 acres but the map indicated 72.2 acres. Please clarify the total number of acres proposed for supplemental irrigation, and provide a revised map by **August 27, 2020**. If you need additional time, you may send a written request for up to 180 days. **If we do not receive clarification and/or a revised map or a hold request by this date, the Department will proceed with the acreage shown on the map.**
3. The proposed use is not prohibited by law or rule except where otherwise noted below.
4. Under Oregon Revised Statute (ORS) 536.340(1)(a), the Water Resources Commission may establish a basin program to classify sources of water supply as to the highest and best use and quantities of use, and that classification of sources of water supply has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification. The Commission has not established a basin program for the Klamath River Basin. Therefore, neither the proposed use nor the quantity of water is restricted as a result of this consideration.
5. 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.
6. 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.

7. The proposed use is located above the Klamath 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. The one CFS limit prescribed in OAR 690-310-0260(5) has been exceeded. Therefore, water is not available for the proposed use as requested. Please refer to the **Additional Information Required** section below for details
8. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.
9. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations
The appropriation of 3.94 CFS of water, being 2.45 CFS from Well 1 and 1.49 CFS from Well 2 in Five Mile Creek Basin, for primary irrigation of 243.11 acres and supplemental irrigation of 72.2 acres may be allowable March 1 through October 31 of each year, contingent on the submission of additional required information.

Additional Information Required

As noted above, the Department has determined 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. When the Department makes this finding, the Department must deny the application unless:

- (a) mitigation is provided in accordance with provisions of ORS 390.835(9); or
- (b) evidence to overcome the finding is submitted.

If you would like to pursue a permit under this application, you may submit a mitigation proposal or evidence to overcome the finding. The Department will consider the information and determine if the proposal will ensure the maintenance of the free-flowing character of the scenic waterway in quantities necessary for recreation, fish and wildlife.

Please submit the information no later than August 27, 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 **August 7, 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. **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. Dedicated Measuring Tube Condition:

Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to Figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

6. Groundwater production shall be allowed from no shallower than 300.0 feet below land surface.

7. 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.

8. Well Identification Tag Condition:

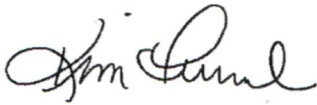
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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> 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 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-18851
WAB: NO PSI
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: G-18851

Applicant: FIVE MILE RANCH LLC

County: KLAMATH

Watermaster: DANETTE M. WATSON, 17, SCR

Priority Date: AUGUST 8, 2019

Source: WELL 1 AND WELL 2 IN FIVE MILE CREEK BASIN

Use: PRIMARY IRRIGATION OF 243.11 ACRES AND SUPPLEMENTAL IRRIGATION OF 72.2 ACRES

Quantity: 3.94 CUBIC FEET PER SECOND, BEING 2.45 CFS FROM WELL 1 AND 1.49 CFS FROM WELL 2

Basin Name & Number: KLAMATH, #14

WAB: N FK SPRAGUE R > SPRAGUE R - AT MOUTH

Well Location(s):

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	35 S	13 E	WM	28	NW SE	2139 FEET NORTH AND 1401 FEET WEST FROM SE CORNER, SECTION 28
WELL 2	35 S	13 E	WM	28	NE SE	1728 FEET NORTH AND 1071 FEET WEST FROM SE CORNER, SECTION 28

Place of Use:

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	13 E	WM	27	NW NW	0.58
35 S	13 E	WM	27	SW NW	26.29
35 S	13 E	WM	27	NE SW	8.26
35 S	13 E	WM	27	NW SW	12.58
35 S	13 E	WM	27	SW SW	39.80
35 S	13 E	WM	27	SE SW	30.50
35 S	13 E	WM	27	SW SE	0.37
35 S	13 E	WM	28	NE NE	2.46
35 S	13 E	WM	28	SW NE	4.58
35 S	13 E	WM	28	SE NE	38.57
35 S	13 E	WM	28	NE SE	28.00
35 S	13 E	WM	28	NW SE	3.35
35 S	13 E	WM	28	SW SE	1.45
35 S	13 E	WM	28	SE SE	40.00

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	13 E	WM	34	NW/NE	0.57
35 S	13 E	WM	34	SW/NE	3.20
35 S	13 E	WM	34	NE/NW	2.55

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
35 S	13 E	WM	27	NE SW	1.30
35 S	13 E	WM	27	NW SW	26.70
35 S	13 E	WM	27	SW SW	0.20
35 S	13 E	WM	27	SE SW	6.30
35 S	13 E	WM	27	SW/SE	3.30
35 S	13 E	WM	28	NE SE	8.90
35 S	13 E	WM	34	NW/NE	20.40
35 S	13 E	WM	34	SW/NE	2.20
35 S	13 E	WM	34	NE/NW	2.90

PUBLIC NOTICE DATE: July 28, 2020

14 DAY STOP PROCESSING DEADLINE DATE: August 7, 2020

30 DAY COMMENT DEADLINE DATE: August 27, 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

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

- Stop processing deadline is within 14 days of Initial Review.

Applicant notification to withdraw Water Right Application **G-18851**.

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:

August 7, 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-18851

IR Date: July 24, 2020

Original and map mailed to applicant:

FIVE MILE RANCH LLC
3827 MARSHALL AVE
CARMICHAEL CA 95608

<p>Copies Mailed</p> <p>By: _____ (SUPPORT STAFF)</p> <p>On: _____ (DATE)</p>

Sent via auto email:

1. Agent – Darryl Anderson - darryla@andersonengineering.com
2. WRD – Watermaster #17, Danette M. Watson
3. WRD - Kyle Gorman SCR
4. WRD – SW Section

Copies sent to:

1. WRD - File G-18851

Application Specialist: Kim French