



Water Right Application Initial Review

November 9, 2018

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

Reference: Application S-88653

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. The application proposes the diversion of 4.0 cubic feet per second (CFS) of water from Columbia River, tributary to Pacific Ocean, for irrigation of 160.0 acres March 1 through April 14 and October 1 through October 31 of each year and raising the soil moisture content on 160.0 acres November 1 through February 28/29 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is an allowable use under the Columbia Basin Program (690-519-0000). Soil preparation (raising the soil moisture content) is a use defined under nursery use. As defined in OAR 690-500, nursery use is included in irrigation, which is allowed under the Columbia Basin Program (690-519-0000). Therefore, soil preparation (raising the soil moisture content) is allowed.
4. An assessment of water availability at 80% exceedance for the proposed use was completed. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). The assessment established surface water is available for the full period requested. Oregon Revised Statute (ORS) 537.153(3)(b); OAR 690-310-0080(1)(b)
5. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
6. The proposed use is not located within or above any state scenic waterway.

7. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
8. The area proposed to be irrigated (including raising the soil moisture) under this application is currently covered by an existing irrigation water right evidenced by Permit S-55114 during the period March 1 through April 14 and October 1 through October 31, which conflicts with the application. See **Conflict Resolution Information** section below for more information.

Summary

The diversion of 4.0 CFS of water from Columbia River, tributary to Pacific Ocean, to raise soil moisture content on 160.0 acres November 1 through February 28/29 is allowable.

Because of the favorable determinations described herein, Application S-88653 can move to the next phase of the water-rights application review process, which includes a public interest 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.

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.

Conflict Resolution Information:

The area proposed to be irrigated under this application is currently covered by an existing irrigation water right evidenced by Permit S-55114, authorizing primary irrigation from the Columbia River March 1 through October 31, which conflicts with the application.

If you would like this application be the primary right during the conflicting periods, the Department must receive:

- A completed affidavit authorizing cancellation of the conflicting portions of the existing right, along with property ownership information and a map describing those portions; or
- A transfer application addressing the conflicting portion of the existing right; or

- Other means of dealing with the conflict between the existing right and the use proposed under this application.

Please submit the requested information listed above no later than **December 13, 2018**. If we do not receive the items listed above by **December 13, 2018**, the Department will proceed with the limited season for irrigation.

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 **November 23, 2018**. For your convenience you may use the enclosed "STOP PROCESSING" form.

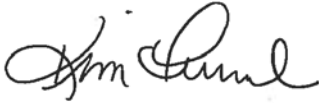
If a Permit is Issued it will Likely Include the Following Conditions:

1. Construction of the water system shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. A permit is subject to cancellation proceedings if the begin construction deadline is missed.
2. **Measurement Devices and Recording/Reporting of Annual Water Use Conditions:**
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of diversion. 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 diverted each month, and shall submit a report which includes 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.
3. The permittee may be required in the future to install, maintain, and operate fish screening and bypass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.

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 503-986-0801. 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,

A handwritten signature in cursive script, appearing to read "Kim French".

Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
S-88653
WAB: Columbia River

APPLICATION FACT SHEET

Application File Number: S-88653

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: AUGUST 2, 2018

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: IRRIGATION OF 160.0 ACRES, RAISING SOIL MOISTURE CONTENT ON 160.0 ACRES

Rate: 4.0 CUBIC FEET PER SECOND

Basin Name & Number: UMATILLA, # 7

WAB: COLUMBIA RIVER

Point of Diversion:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	30 E	WM	8	SW NW	2910 FEET NORTH AND 120 FEET EAST FROM SW CORNER, SECTION 8

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
3 N	30 E	WM	20	NE SE	40.00
3 N	30 E	WM	20	NW SE	40.00
3 N	30 E	WM	20	SW SE	40.00
3 N	30 E	WM	20	SE SE	40.00

PUBLIC NOTICE DATE: November 13, 2018

14 DAY STOP PROCESSING DEADLINE DATE: November 23, 2018

30 DAY COMMENT DEADLINE DATE: December 13, 2018

Mailing List for IR Copies

Application S-88653

IR Date: November 9, 2018

Original and map mailed to applicant:

BRIAN AND DUANE LLC
7385 HOWELL PRAIRIE RD NE
SILVERTON OR 97381

SENT VIA AUTO EMAIL:

1. WRD – Watermaster Greg Silbernagel # 5
2. ODFW
3. DEQ
4. Agent – Michael Schultz – michael.schultz@andersonschultz.com

Copies sent to:

5. WRD – SW Section
6. WRD - File S-88648
7. WRD - Mike Ladd NCR
8. East Improvement District – 84186 Hwy 37, Hermiston, OR 97838
9. ALO – Farmland Reserve Inc, 79 S. Main St, Ste 1000, Salt Lake City, UT 84111
10. ALO – Ditchen Land Company, LLC, 7385 Howell Prairie Road NE, Silverton, OR 97381
11. ALO – JJG Farms LLC, PO Box 610, Gresham, OR 97030-0155
12. Department of State Lands
13. National Marine Fisheries Service, 3502 Hwy 30, La Grande, OR 97850
14. US Fish & Wildlife Service, 3502 Hwy 30, La Grande, OR 97850
15. NW Power and Conservation Council, Fish & Wildlife Division, 851 SW Sixth Avenue, Ste 1020
Portland OR 97204
16. Confederated Tribes of Umatilla Reservation, Dept of Natural Resources, 46411 Timíne Way
Pendleton, OR 97801
17. Confederated Tribes of the Warm Springs Reservation of Oregon, Natural Resources, P.O. Box C
Warm Springs, OR 97761

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)

Application Specialist: Kim French

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

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 **S-88653**.
- After reviewing the Initial Review for my application, I request that processing be stopped and the 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 processing fee) be returned.
- This notice must be received at Water Resources Department by:

November 23, 2018

- Return the notice to:

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