



Water Right Application Initial Review

January 22, 2021

BAILEY NURSERIES INC.
ATTN: JON ESTES
PO BOX 398
DAYTON OR 97114

Reference: Application R-88905

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 (Oregon Administrative Rule (OAR) 690-310-0080)

1. The application proposes the diversion of 145.0 acre-feet (AF) of water from North Yamhill River, tributary to Yamhill River, for storage in Bailey Reservoir, for irrigation and agriculture use (nursery use) 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. Uses included in nursery use are included in irrigation and agriculture uses, both of which are allowed under the Willamette Basin Program (OAR 690-502-0100(4)(a)), however the period of use is limited to November 1 through April 30 of each year.
4. An assessment of water availability at 50% exceedance for the proposed use was completed using the Department's Water Availability Reporting System. A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(c). The assessment established surface water is available during the period October 1 through July 31 of each year.
5. The proposed use is not located within or above any state scenic waterway.
6. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
7. See **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations

The diversion of 145.0 AF of water from North Yamhill River, tributary to Yamhill River for storage in Bailey Reservoir, for irrigation and agriculture use (nursery use) is allowable November 1 through April 30 of each year.

Because of the favorable determinations described herein, Application R-88905 can move to the next phase of the water-rights application review process, which includes a public interest review.

Additional Information Required

Additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend permit approval. Please provide the following item(s):

1. Preliminary plans and specifications of the dam/berm, pursuant to OAR 690-020-0028. In addition to what has been submitted, the Department also requires detail of the spillway location added to the drawing, a cross section of the dam/berm, and a brief discussion of the geology or soils submitted by an Engineer, or a certified engineering geologist that is registered in the State of Oregon and is also a Certified Water Rights Examiner.

Please submit the requested information listed above no later than **February 18, 2021**. If we do not receive the items listed above by **February 18, 2021**, the Department may reject the application and may refund fees.

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 sensitive, threatened, or endangered (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.

- 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 processing fee per application). You must notify the Department **in writing** by **February 5, 2021**. 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. **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 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 storage of water allowed herein is subject to the installation and maintenance of an outlet pipe (with a minimum diameter of 8" for any in-channel reservoir). This requirement may be waived if the Department determines other means have been provided to evacuate water when necessary.
4. The permittee shall pass all live flow outside the storage season described above.
5. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that live flow is not impeded outside the storage season. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.
6. The permittee shall not construct, operate or maintain any dam or artificial obstruction to fish passage in the channel of the subject stream without providing a fishway to ensure adequate

upstream and downstream passage for fish, unless the permittee has requested and been granted a fish passage waiver by the Oregon Fish and Wildlife Commission. The permittee is hereby directed to contact an Oregon Department of Fish and Wildlife Fish Passage Coordinator, before beginning construction of any in-channel obstruction.

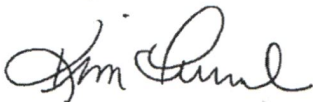
7. The permittee may be required in the future to install, maintain, and operate fish screening and bypass devices to prevent fish from entering the proposed diversion and to provide adequate upstream and downstream passage for fish.
8. This permit allows an annual appropriation (not to exceed the specified volume). This permit does not provide for the appropriation of water for out-of-reservoir uses, the maintenance of the water level or maintaining a suitable freshwater condition. If any water is to be used for out-of-reservoir purposes, a secondary water right is required. If any additional live flow is to be appropriated to maintain either the water level or a suitable freshwater condition, an additional water right is required.

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> 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
R-88905
WAB:
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: R-88905

Applicant: BAILEY NURSERIES INC.

County: YAMHILL

Watermaster: JOEL PLAHN, 22, NWR

Priority Date: DECEMBER 21, 2020

Source: NORTH YAMHILL RIVER, TRIBUTARY TO YAMHILL RIVER

Purpose or Use of the stored water: IRRIGATION AND AGRICULTURE USE (NURSERY USE)

Storage Facility Name: BAILEY RESERVOIR

Volume/ Rate: 145.0 ACRE-FEET

Basin Name & Number: WILLAMETTE, # 2

WAB: N YAMHILL R > YAMHILL R - AT MOUTH

Points of Diversion:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
POD 1	2 S	4 W	WM	31	SE SW	2180 FEET SOUTH AND 4280 FEET WEST FROM SE CORNER, DLC 55
POD 2	2 S	4 W	WM	31	SE SE	1305 FEET NORTH AND 1195 FEET WEST FROM SE CORNER, SECTION 31

Reservoir Location:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height
BAILEY RESERVOIR	2 S	4 W	WM	32	SW SW	700 FEET NORTH AND 830 FEET EAST FROM SE CORNER, SECTION 31	28.5

The Area to be submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
2 S	4 W	WM	32	SW SW

PUBLIC NOTICE DATE: January 26, 2021

14 DAY STOP PROCESSING DEADLINE DATE: February 5, 2021

30 DAY COMMENT DEADLINE DATE: February 25, 2021

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 **R-88905**.

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:

February 5, 2021

- 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 R-88905

IR Date: January 22, 2021

Original and map mailed to applicant:

BAILEY NURSERIES INC.
ATTN: JON ESTES
PO BOX 398
DAYTON OR 97114

Sent via auto email:

1. Applicant - jon.estes@baileynursery.com tressler@gsiws.com
2. Agent – Ted Ressler – tedressler@gsiws.com
3. WRD – Watermaster District #22, Joel M. Plahn
4. WRD - Mike McCord NWR
5. WRD – SW Section
6. ODFW
7. DEQ

Copies sent to:

1. WRD - File R-88905
2. WRD – Dam Safety, Keith Mills
3. DSL – Wetlands Specialist

Application Specialist: Kim French

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