



Water Right Application Initial Review

March 5, 2021

HEYERLY BROTHERS
C/O JEFF HEYERLY
31958 S. PALMER RD.
MOLALLA OR 97038

Reference: Application G-18967

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-18967 proposes the appropriation of 1.63 cubic feet per second (CFS) of water from Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911) in Bear Creek Basin for irrigation of 130.1 acres March 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Irrigation is allowed under the Willamette Basin Program. (OAR 690-502-0160(2))
4. Groundwater will **not likely be available** within the capacity of the resource without causing 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 Kaiser Creek. Therefore, in accordance with OAR 690-400-0010(11)(a)(B), surface water availability must also be considered. During the period of use requested, surface water is only available March 1 through May 31.
6. Additionally, The Department has determined that Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911) are points of appropriation for groundwater use as evidenced by Certificate 95232. Further review of Certificate 95232 indicates an authorized appropriation rate of 2.3 CFS from Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911).

The rate of appropriation from Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911) Well 1 (MARI 1978) under Certificate 95232, being 2.3 CFS, plus the rate of 1.63 CFS proposed under this application, totaling 3.93 CFS, would exceed 1% of the minimum perennial streamflow.

Per ORS 690-009-0040(1)(4), the total appropriation (current and proposed) from Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911) would further trigger the potential for substantial interference with Kaiser Creek.

7. The proposed use is not located within or above any state or federal scenic waterway.
8. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.
9. Because this application will have an impact on surface water flows where sensitive, threatened, or endangered (STE) fish species may be present, this application will be reviewed by the Oregon Department of Fish and Wildlife and the Oregon Department of Environmental Quality.
10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
11. The Department has determined that there is a discrepancy in the metes and bounds location for Well 2 (CLAC 74503/L120911). The well location, as verified by a field inspection conducted by the Department, identified the location of Well 2 as 1230 feet South and 2600 feet West from the East ¼ corner of Section 12. See **Additional Information Required** section below for more details.

Summary of Preliminary Determinations
The appropriation of 1.63 CFS of water from Well 1 (CLAC 53757/L13590) and Well 2 (CLAC 74503/L120911) in Bear Creek Basin for irrigation of 130.1 acres is not allowable.

Additional Information Required:

Although it is unlikely that a permit will be issued, if the Department's findings change, additional information is required to process your application prior to issuance of any Proposed Final Order that may recommend approval. Please provide the following item:

- A map identifying the correct metes and bounds for Well 2 (CLAC 74503/L120911).

Please submit this information no later than April 8, 2021. 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 information requested above or a request for an administrative hold by **April 8, 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 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 examination fee per application). You must notify the Department **in writing** by **March 19, 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 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. **Groundwater production shall be only from the Troutdale Formation groundwater reservoir between 150.0 feet and 600.0 feet below land surface.**

6. **Well Identification Tag Condition:**

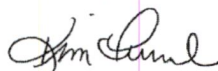
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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> 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-18967
WAB: 151
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: G-18967

Applicant: HEYERLY BROTHERS C/O JEFF HEYERLY

County: CLACKAMAS

Watermaster: GREGORY J. WACKER, 16, NWR

Priority Date: MAY 1, 2020

Source: WELL 1 (CLAC 53757/L13590) AND WELL 2 (CLAC 74503/L120911) IN BEAR CREEK BASIN

Use: IRRIGATION OF 130.1 ACRES

Quantity: 1.63 CUBIC FEET PER SECOND

Basin Name & Number: WILLAMETTE, #2

WAB: PUDDING R > MOLALLA R - AB MILL CR

Well Location(s):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	5 S	1 E	WM	12	NE SE	420 FEET SOUTH AND 690 FEET WEST FROM E1/4 CORNER, SECTION 12
WELL 2	5 S	1 E	WM	12	NW SE	1025 FEET SOUTH AND 2520 FEET WEST FROM E1/4 CORNER, SECTION 12

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 S	1 E	WM	13	SW NW	19.6
5 S	1 E	WM	13	SE NW	37.8
5 S	1 E	WM	13	NE SW	19.4
5 S	2 E	WM	7	NE NW	14.6
5 S	2 E	WM	7	NW NW	9.8
5 S	2 E	WM	7	SW NW	12.9
5 S	2 E	WM	7	SE NW	16.0

PUBLIC NOTICE DATE: March 9, 2021

14 DAY STOP PROCESSING DEADLINE DATE: March 19, 2021

30 DAY COMMENT DEADLINE DATE: April 8, 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.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-18967**.

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:

March 19, 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 G-18967

IR Date: March 5, 2021

Original and map mailed to applicant:

HEYERLY BROTHERS
C/O JEFF HEYERLY
31958 S. PALMER RD.
MOLALLA OR 97038

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)

Sent via auto email:

1. Applicant - jrheyerly@canby.com
2. Agent – Doann Hamilton - phgdmh@gmail.com
3. WRD – Watermaster #16, Gregory J. Wacker
4. WRD - Mike McCord NWR
5. WRD – SW Section
6. ODFW
7. DEQ

Copies sent to:

1. WRD - File G-18967
2. ALO – Martin and Antionette Schultz, 13098 S. Hwy 211, Molalla OR 97038
3. ALO – Charles and Christin Bovey, PO Box 612, Molalla OR 97038
4. ALO – Ronald and Judith Heyerly, 31958 S. Palmer Rd, Molalla OR 97038
5. ALO – Ronald L. and Sheeree D. Stephens, 12305 S. Hwy 211, Molalla OR 97038
6. ALO – Joseph E. Weber, Trustee, PO Box 1229, Molalla OR 97038
7. ALO – Oregon Dept of Transportation, 355 Capitol St NE, MS 11, Salem OR 97301-3781

Application Specialist: Kim French