



## Water Right Application Initial Review

June 17, 2022

ROBERT JOHN WIRTH  
JANICE M. WIRTH  
45324 HOUGHTON CREEK RD  
BAKER CITY OR 97814

Reference: Application G-19144

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-19144 proposes the appropriation of 8.0 cubic feet per second (CFS) of water from Wirth Well #1, Wirth Well #2 and Wirth Well #3 in Big Creek Basin for primary irrigation of 111.8 acres and supplemental irrigation of 667.0 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 Powder Basin Program. (OAR 690-509-0000(1))
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 and to the groundwater resource.
5. The Department has determined, based upon OAR 690-009, that the proposed groundwater use will have the potential for substantial interference with four springs. 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 not available**.
6. The proposed use is not located within or above any state or federal scenic waterway.
7. The points of appropriation are not located within a critical, limited, or withdrawn groundwater area.

8. 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. 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. See the **Division 33 Review** section below for more information.
9. OAR 690-033-0120(2) prohibits the diversion of water from April 15 through September 30 each year.
10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
11. The standard basin-wide allowable rate for irrigation from groundwater is 1/80th of one CFS per acre. In the absence of other information, if the application is approved, the rate allowed for primary irrigation of 111.8 acres will be limited to 1.4 CFS. However, Oregon Revised Statute 537.621(4) allows the Department to consider and authorize a rate that is higher than the general basin-wide standard. If you would like to provide additional information for the Department to consider, please do so by **July 21, 2022**. If you need additional time, you may send a written request for up to 180 days. If we do not receive additional information to consider or a hold request by this date, if a permit is issued, the Department will limit the rate to 1.4 CFS for primary irrigation of 111.8 acres.

Summary of Preliminary Determinations
<b>The appropriation of 8.0 CFS of water from Wirth Well #1, Wirth Well #2 and Wirth Well #3 in Big Creek Basin for supplemental irrigation of 667.0 acres, further limited to 1.4 CFS for primary irrigation of 111.8 acres is not allowable.</b>

**Public Comment:**

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.

You may be required to mitigate for potential impacts identified in the Division 33 review process. 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 \$790 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 \$310 examination fee per application). You must notify the Department **in writing by July 1, 2022**. 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:**
  - 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 Measurement:

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. Well Identification Tag:**

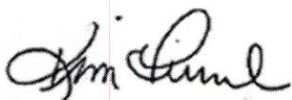
Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including 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@water.oregon.gov](mailto:Kim.R.French@water.oregon.gov) or 503-979-3168 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 Program Analyst  
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form

G-19144  
WAB:  
Proposed to Deny

# APPLICATION FACT SHEET

Application File Number: G-19144

Applicant: ROBERT JOHN WIRTH AND JANICE M. WIRTH

County: BAKER

Watermaster: MARCY J. OSBORN, 8, ER

Priority Date: MAY 26, 2021

Source: WIRTH WELL #1, WIRTH WELL #2 AND WIRTH WELL #3 IN BIG CREEK BASIN

Use: SUPPLEMENTAL IRRIGATION OF 667.0 ACRES AND PRIMARY IRRIGATION OF 111.8 ACRES

Quantity: 8.0 CUBIC FEET PER SECOND

Period of Use: MARCH 1 THROUGH OCTOBER 31

Basin Name & Number: POWDER, #9

WAB: POWDER R > SNAKE R - AB GOOSE CR

Well Location(s):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WIRTH 1	7 S	41 E	WM	13	SW SE	795 FEET NORTH AND 1425 FEET WEST FROM SE CORNER, SECTION 13
WIRTH 2	7 S	41 E	WM	13	SW SE	885 FEET NORTH AND 1508 FEET WEST FROM SE CORNER, SECTION 13
WIRTH 3	7 S	41 E	WM	13	SE SE	700 FEET NORTH AND 1340 FEET WEST FROM SE CORNER, SECTION 13

Place of Use:

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	41 E	WM	13	NE NE	11.8
7 S	41 E	WM	13	NW NE	33.9
7 S	41 E	WM	13	SW NE	36.1
7 S	41 E	WM	13	SE NE	38.1
7 S	41 E	WM	13	NE NW	23.0
7 S	41 E	WM	13	SE NW	31.8
7 S	41 E	WM	13	NE SW	40.0
7 S	41 E	WM	13	NW SW	24.4
7 S	41 E	WM	13	SW SW	29.6
7 S	41 E	WM	13	SE SW	40.0

SUPPLEMENTAL IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	41 E	WM	13	NE SE	39.2
7 S	41 E	WM	13	NW SE	40.0
7 S	41 E	WM	13	SW SE	39.2
7 S	41 E	WM	13	SE SE	37.8
7 S	41 E	WM	14	NE SE	15.3
7 S	41 E	WM	14	SE SE	7.1
7 S	42 E	WM	18	NE NW	39.1
7 S	42 E	WM	18	NW NW	35.4
7 S	42 E	WM	18	SW NW	39.0
7 S	42 E	WM	18	SE NW	25.0
7 S	42 E	WM	18	NE SW	7.7
7 S	42 E	WM	18	NW SW	33.5

PRIMARY IRRIGATION					
Twp	Rng	Mer	Sec	Q-Q	Acres
7 S	41 E	WM	13	NE NE	24.2
7 S	41 E	WM	13	NW NE	5.5
7 S	41 E	WM	13	SW NE	4.9
7 S	41 E	WM	13	NE NW	17.0
7 S	41 E	WM	13	SE NW	8.2
7 S	41 E	WM	13	NW SW	15.6
7 S	41 E	WM	13	SW SW	12.9
7 S	41 E	WM	14	SE SE	17.9
7 S	42 E	WM	18	NW NW	4.6
7 S	42 E	WM	18	NW SW	1.0

**PUBLIC NOTICE DATE: June 21, 2022**

**14 DAY STOP PROCESSING DEADLINE DATE: July 1, 2022**

**30 DAY COMMENT DEADLINE DATE: July 21, 2022**

**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](http://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) 986-0900.

**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.
- 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.

**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**

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

Applicant notification to withdraw Water Right Application **G-19144**.

After reviewing the Initial Review for my application, I request that processing be stopped and fees be refunded (minus a \$310 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 \$310 examination fee) be returned.

- This notice must be received by the Water Resources Department no later than:

**July 1, 2022**

- Return the notice to:

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

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