



## **Water Right Application Superseding Initial Review**

August 19, 2022

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

Reference: Application S-89171

**Issuance of this Superseding Initial Review is being done to clarify the use, to correct the determination regarding allowable use and to ask for more information regarding beneficial use. Please refer to determination #3 below and the Additional Required Information section.**

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 4.9 cubic feet per second (CFS) of water from Columbia River, tributary to Pacific Ocean, for irrigation of 947.3 acres October 1 through April 14 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 Columbia Basin Program (OAR 690-519-0000(1)).
4. An assessment of water availability utilizing discharge data produced by the U.S. Geological Survey, A copy of this assessment is in the application file. This review is done consistent with OAR 690-410-0070(2)(a). During the period of use requested, the assessment established that water surface water is available.
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. See **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
The diversion of 4.9 CFS of water from Columbia River, tributary to Pacific Ocean, for irrigation of 947.3 acres is not allowable October 1 through April 14 of each year, unless additional required information is submitted. See below for more details.

### **Additional Required Information**

The application proposes irrigation during the non-irrigation season. It is unclear if beneficial use of water can be made during the period of use requested, being October 1 through April 14.

Please provide information no later than **September 22, 2022**, that indicates how water can be used beneficially October 1 through April 14, and the Department will take this into consideration.

If we do not receive additional information to evaluate by September 22, 2022, 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.

*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 \$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 processing fee per application). You must notify the Department **in writing** by **September 2, 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 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:**
  - 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.

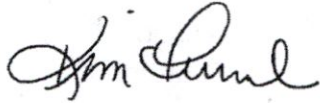
The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and 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.

**For Further Information:**

Feel free to contact me at [Kim.R.French@oregon.gov](mailto:Kim.R.French@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,

A handwritten signature in black ink, appearing to read "Kim French". The signature is fluid and cursive, with the first name "Kim" and last name "French" clearly distinguishable.

Kim French  
Water Right Program Analyst  
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form  
S-89171  
WAB: No WAB  
Proposed to Deny

# APPLICATION FACT SHEET

Application File Number: S-89171

Applicant: BRIAN AND DUANE LLC

County: UMATILLA

Watermaster: GREG SILBERNAGEL, 5, NCR

Priority Date: OCTOBER 14, 2021

Source: COLUMBIA RIVER, TRIBUTARY TO PACIFIC OCEAN

Purpose or Use: IRRIGATION OF 947.4 ACRES

Rate: 4.9 CUBIC FEET PER SECOND

Basin Name & Number: Umatilla, # 7

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
4 N	29 E	WM	35	NE NE	40.3
4 N	29 E	WM	35	NW NE	40.3
4 N	29 E	WM	35	SW NE	40.3
4 N	29 E	WM	35	SE NE	40.3
4 N	29 E	WM	35	NE NW	40.4
4 N	29 E	WM	35	NW NW	40.4
4 N	29 E	WM	35	SW NW	40.5
4 N	29 E	WM	35	SE NW	40.4
4 N	29 E	WM	35	NE SW	40.4
4 N	29 E	WM	35	NW SW	39.7
4 N	29 E	WM	35	SW SW	25.2
4 N	29 E	WM	35	SE SW	40.5

Twp	Rng	Mer	Sec	Q-Q	Acres
4 N	29 E	WM	35	NE SE	40.3
4 N	29 E	WM	35	NW SE	40.4
4 N	29 E	WM	35	SW SE	34.4
4 N	29 E	WM	35	SE SE	40.4
4 N	29 E	WM	36	SW NW	40.5
4 N	29 E	WM	36	SE NW	40.5
4 N	29 E	WM	36	NE SW	40.4
4 N	29 E	WM	36	NW SW	40.4
4 N	29 E	WM	36	SW SW	40.3
4 N	29 E	WM	36	SE SW	40.3
4 N	29 E	WM	36	NW SE	40.4
4 N	29 E	WM	36	SW SE	40.3

**PUBLIC NOTICE DATE: August 23, 2022**

**14 DAY STOP PROCESSING DEADLINE DATE: September 2, 2022**

**30 DAY COMMENT DEADLINE DATE: September 22, 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) 986-0801.

### **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

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

Applicant notification to withdraw Water Right Application **S-89171**.

After reviewing the Initial Review for my application, I request that processing be stopped and the 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 processing fee) be returned.

- This notice must be received at Water Resources Department by:

**September 2, 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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