



Oregon

Tina Kotek, Governor

Water Resources Department

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www.oregon.gov/owrd

Water Right Application Initial Review

January 26, 2024

NICKEL BUSH ENTERPRISES, LLC
142 VALLEY CHAPEL RD
WALLA WALLA WA 99362

Reference: Application R-89424

Due to inclement weather, the Department was unable to give public notice of the Initial Review issued on January 12, 2024, in a weekly notice as required in OAR 690-310-0090(1). Therefore, the Department is issuing this Superseding Initial Review, which will be included in the January 30, 2024, weekly public notice.

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 Water Resources Department (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 Department has made the following preliminary determinations:

Preliminary Determinations under Oregon Administrative Rule (OAR) 690-310-0080:

1. The application proposes the diversion of 7.3 acre-feet (AF) of water from Spring 1 and Spring 2, tributaries to Camp Creek, for storage in WCR Pond, for aesthetics, fire protection, fish life, livestock, recreation, domestic, irrigation, and wildlife uses, 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. Storage for fire protection, fish life, livestock, recreation, domestic, irrigation, and wildlife use is allowable under the John Day Basin Program (OAR 690-506-0080 and 690-506-0040).
4. The Department has determined that aesthetics is not a classified use under OAR 690-506-0040(2); therefore, it will not be included as a use under this application.
5. 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 January 1 through June 30 of each year.

6. OAR 690-033-0120(2)(a) prohibits the diversion of water from April 15 through September 30 each year.
7. The proposed use is located above the John Day Scenic Waterway, as designated under Oregon Revised Statute 390.826.
8. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
9. See the **Additional Information Required** section below for deficiencies with the application.

Summary of Preliminary Determinations
The diversion of 7.3 AF of water from Spring 1 and Spring 2, tributaries to Camp Creek, for storage in WCR Pond, for fire protection, fish life, livestock, recreation, domestic, irrigation, and wildlife uses from January 1 through April 14 of each year, may be allowable, contingent upon the submittal of additional information.

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. The map submitted does not meet the requirements of OAR 690-310-0050(4)(a). Please provide a map that shows the location of the points of diversion (Spring 1 and Spring 2) by reference to a recognized public land survey corner. The location may be shown by distance and bearing or by coordinates (distance north or south and distance east or west from the corner).

Please submit the requested information listed above no later than **February 29, 2024**. If you need more time, 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 you will need 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 item requested above or a request for an administrative hold by this date, the Department will likely reject 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 **February 9, 2024**. 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. The Director may require the permittee to install a staff gage that measures the entire range and stage between full reservoir level and dead-pool level in the reservoir. If no dead-pool, the gage must measure the full depth of the reservoir. The watermaster may determine an alternate measuring device is suitable.
 - B. If the Director notifies the permittee to install a measuring device, the permittee shall install such device within the period stated in the notice. Once installed, the permittee shall maintain the device in good working order and shall allow the watermaster access to the device.
 - C. The Director may require the permittee to keep and maintain a record of the volume of water stored, and may require the permittee to report water-storage on a periodic schedule as

established by the Director. In addition, the Director may require the permittee to report general water-use information, the periods of water use and 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.

RESERVOIR CONDITIONS

1. The permittee shall pass all live flow outside the storage season described above.
2. 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.
3. 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.
4. 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.
5. 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 website at 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 Adam.M.Frederick@water.oregon.gov or 971-707-8400 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: Adam Frederick, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,

Adam Frederick

Adam Frederick
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description and Stop Processing Request Form
R-89424
WAB: 69946
Proposed to Approve

APPLICATION FACT SHEET

Application File Number: R-89424

Applicant: NICKEL BUSH ENTERPRISES, LLC

County: GRANT

Watermaster: ERIC JULSRUD, #4, NCR

Priority Date: DECEMBER 7, 2023

Source: SPRING 1 AND SPRING 2, TRIBUTARIES TO CAMP CREEK

Purpose or Use of the stored water: AESTHETICS, FIRE PROTECTION, FISH LIFE, LIVESTOCK, RECREATION, DOMESTIC, IRRIGATION, AND WILDLIFE USES

Storage Facility Name: WCR POND

Maximum Dam Height: 12.0 FEET

Volume: 7.3 ACRE-FEET

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: JOHN DAY, #6

WAB: COTTONWOOD CR > N FK JOHN DAY R - AT MOUTH

Points of Diversion:

POD Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
SPRING 1	10 S	27 E	WM	26	SW NW	NONE GIVEN
SPRING 2	10 S	27 E	WM	26	SW NW	NONE GIVEN

Dam Location:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	Dam Height (feet)	Area (acres)
10 S	27 E	WM	26	SE NW	2170 FEET SOUTH AND 1065 FEET WEST FROM N1/4 CORNER, SECTION 26	12.0	0.73

The Area to be submerged by the Reservoir:

Twp	Rng	Mer	Sec	Q-Q
10 S	27 E	WM	26	SE NW

PUBLIC NOTICE DATE: January 30, 2024

14 DAY STOP PROCESSING DEADLINE DATE: February 9, 2024

30 DAY COMMENT DEADLINE DATE: February 29, 2024

Application R-89424

Application Fact Sheet

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 website 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.
- 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

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

Applicant notification to withdraw Water Right Application **R-89424**.

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

February 9, 2024

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A
Salem OR, 97301-1266
