



Water Right Application Initial Review

October 25, 2024

OLIN SMITH IV
VIRGINIA PARRAMORE SMITH
17330 SERENITY WAY
BEND OR 97703

Reference: Application G-19245

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. Application G-19245 proposes the appropriation of 0.045 cubic foot per second (CFS), further limited to 12.0 acre-feet (AF) annually, of water from Well 1 (DESC 3370) in Whychus Creek Basin for nursery use on 9.75 acres from 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. Nursery use is an allowable use under the Deschutes Basin Program (OAR 690-505-0400).
4. An assessment of groundwater availability has been completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater for the proposed use is not over-appropriated.
5. If properly conditioned (and if authorized), the proposed use of groundwater will not injure other water rights.

Please note: Applications are evaluated using the rules in effect at the time the application is accepted as complete. To view the rules relevant for this application, please visit: <https://secure.sos.state.or.us/oard/displayCompilations> and navigate to Chapter 690 (Water Resources Department).

6. The proposed use is located within/above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute (ORS) 390.826, and within the Deschutes Ground Water Study Area (DGWSA). Groundwater appropriations within the DGWSA have the potential for substantial interference with surface water rights as described in OAR 690, Division 9, and will measurably reduce Scenic Waterway flows. Without mitigation, the Department is required by law to deny groundwater permit applications in the DGWSA. Mitigation may be provided to offset impacts to Scenic Waterway flows and senior surface water rights. OAR 690-505-0600(1)-(3).
7. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS cap on the amount of new groundwater use that may be allocated within the Deschutes Ground Water Study Area. Under the current rules, once the cap is reached, the Department will not be able to propose issuance on any new permits.
8. The Department has determined the mitigation obligation is 24.375 AF annually. The required mitigation is based on nursery use on 9.75 acres. The mitigation obligation is calculated based on a consumptive-use factor of 2.5 AF per acre.
9. The Department has determined that mitigation for the proposed use must be located in the Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125).
10. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.

Summary of Preliminary Determinations
The appropriation of 0.045 CFS, further limited to 12.0 AF annually, of water from Well 1 (DESC 3370) in Whychus Creek Basin for nursery use on 9.75 acres from January 1 through December 31 is not allowable. However, if you provide sufficient mitigation water to satisfy the mitigation obligation of the proposed use, it may be allowed under OAR 690-505-0610.

Mitigation Obligation Options:

To satisfy the mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 24.375 qualifying mitigation credits from an individual or mitigation bank. If you are interested in obtaining mitigation credits, you may want to contact Sarah Henderson, Flow Restoration Program Coordinator, at 503-979-9872 for a list of mitigation credit holders.

If you decide to purchase mitigation credits, you must submit a documentary evidence form demonstrating that you have obtained mitigation credits. The mitigation bank or the individual you have obtained credits from should provide you with a completed form. Blank forms may be obtained from the Department at the address above, or from the Bend Regional office.

If you are proposing to implement a mitigation project, you must identify and describe the project in sufficient detail so that the Department can make a preliminary determination as to whether the proposed project will likely meet the mitigation obligation. Please contact Sarah Henderson, Flow

Restoration Program Coordinator, at 503-979-9872 for further information on mitigation projects, forms, and specific requirements to be included in the proposal.

Mitigation credits must be obtained and/or a mitigation project must be completed before a permit can be issued.

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.

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, **however, you will need to submit a completed Response to Notice of Mitigation Obligation (NOMO) form (attached) prior to the issuance of a Proposed Final Order.** The application will be placed on the Department's Public Notice to allow others the opportunity to comment. After the comment period and receipt of the NOMO form, 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). You must notify the Department **in writing** by **November 8, 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 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. Groundwater Level Measurement, Reporting, and Shut-Off Condition:

For each well on this authorization, beginning on the permit signature date for existing wells or in the year well construction is completed for new wells, and each year thereafter, the permit holder must report a static water-level measurement (“measurement”) taken in March. The measurement is required whether the well is used or not. If pumping is to commence following completion of the well and prior to the next March, then a measurement must be made at least one week following well completion and before pumping commences.

Measurements must be properly reported within 30 days of measurement using forms specified by the Department. A measurement will be properly reported if the submission includes all required information as listed in the document attached. Measurements must be made with equipment that is accurate to the standards specified in Oregon Administrative Rule (OAR) 690-217-0045.

Measurements must be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed land surveyor, licensed well constructor, pump installer licensed by the Construction Contractors Board, or Department staff. The Department is not responsible for regular measurement of the static water level, but Department staff may measure the well during the normal course of groundwater level monitoring or to confirm the submitted measurement(s).

For each well on this permit, the Department has established a reference groundwater level using the best available data (see table below). In case the permit is amended or the subsequent certificate is transferred, the Department may establish a new reference level for any new or additional wells under new permits or certificates issued under this right. The reference level for a new or additional well should reflect the highest static water level in that well or, if that measurement occurred after the time represented by the original reference level, then the water level that would have been measured in that well, if the well existed and was measured at the time represented by the original reference level.

The Department established the following reference levels for the following wells on this permit:

POA Number	Well Name	Well Log ID	Water Level Depth (feet below land surface)	Measurement Date (if applicable)
1	Well 1	DESC 3370	256	6/24/1987

All water use authorized under this permit must immediately stop if any of the following occur:

- A. Any annual high elevation static groundwater level in any well on this permit declines 25 or more feet below the reference level for that well, or
- B. Groundwater levels are not measured and properly reported as specified above for any completed well that is authorized on the permit for two consecutive years, or
- C. Hydraulic interference contributes to a decline of 25 or more feet in any neighboring well with senior priority, at any time during the year.

The Department will determine when any of the above conditions have occurred and may order the permit holder to stop all water use under this permit. The permit holder is also responsible for stopping all water use if they become aware that any of the conditions have occurred, even without notice from the Department. Following such a stop, water use under this permit will not be allowed and may only resume once the permit holder receives notice from the Department. If the permit holder fails to stop use, then the Department may take control of the controlling works of any wells authorized under this permit and may reduce the amount of groundwater pumped until the unlawful use is eliminated.

The permit holder acknowledges that that one or more of the conditions requiring stoppage of use may occur prior to any use of any well on this permit.

The Department may allow the permit holder to pause annual water level measurement and reporting requirements from some of the permitted wells if measurements from those wells are redundant with other data being collected by the Department. The permit holder must receive written notification of such an allowance before stopping measurements. If this happens, the Department may reinstate the measurement requirements at any time.

5. Scenic Waterway:

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation will measurably reduce the surface water flows necessary to maintain the free-flowing character of a scenic waterway in quantities necessary for recreation, fish and wildlife in effect as of the priority date of the right or as those quantities may be subsequently reduced. However, the use of groundwater allowed under the terms of this permit will not be subject to regulation for Scenic Water Way flows, provided the required mitigation is maintained.

6. 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.

7. Groundwater Mitigation Conditions:

- A. Mitigation Obligation: 24.375 AF of mitigation water in the Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125).
- B. Mitigation Source: obtain 24.375 AF of mitigation water or equivalent mitigation credits that meet the requirements of OAR 690-505-0610(2)-(5).
- C. Mitigation water must be legally protected instream in the Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125) for the life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.
- D. The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.
- E. If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the maintenance and terms and conditions of a valid contract or satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department.
- F. Failure to comply with these mitigation conditions shall result in the Department regulating the groundwater permit, or subsequent certificate(s), proposing to deny any permit extension application for the groundwater permit, and proposing to cancel the groundwater permit, or subsequent certificate(s).

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 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

Enclosure: Response to Notice of Mitigation Obligation
 Application Process Description
 Stop Processing Request Form

G-19245
Proposed to Deny

APPLICATION FACT SHEET

Application File Number: G-19245

Applicant: OLIN SMITH IV AND VIRGINIA PARRAMORE SMITH

County: DESCHUTES

Watermaster: JEREMY GIFFIN, #11, SCR

Priority Date: FEBRUARY 8, 2022

Source: WELL 1 (DESC 3370) IN WHYCHUS CREEK BASIN

Use: NURSERY USE ON 9.75 ACRES

Quantity: 0.045 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 12.0 ACRE-FEET ANNUALLY

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Basin Name & Number: DESCHUTES, #5

WAB: DESCHUTES R > COLUMBIA R - AB SHITIKE CR

WELL LOCATION(S):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1 (DESC 3370)	15 S	11 E	WM	31	SE NW	1780 FEET SOUTH AND 1360 FEET EAST FROM NW CORNER, SECTION 31

PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	11 E	WM	31	SE NW	9.75

PUBLIC NOTICE DATE: October 29, 2024

14 DAY STOP PROCESSING DEADLINE DATE: November 8, 2024

30 DAY COMMENT DEADLINE DATE: November 28, 2024

**RESPONSE TO NOTICE OF MITIGATION OBLIGATION
CREDIT OR PROJECT OPTION**

A mitigation obligation may be satisfied by obtaining mitigation credits, providing for implementation of a mitigation project, or both (OAR 690-505-0610(2)). Please read and complete this acknowledgment of mitigation obligation and return it to the Department.

Applicant(s): OLIN SMITH IV AND VIRGINIA PARRAMORE SMITH

Applicant's agent (*if applicable*): WATER RIGHT SERVICES, LLC / JOHN A. SHORT

Application number: G-19245

Proposed Use: NURSERY USE ON 9.75 ACRES

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Rate requested: 0.045 CUBIC FOOT PER SECOND

Volume requested: 12.0 ACRE-FEET

Mitigation Obligation: 24.375 ACRE-FEET

Zone of Impact: Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125)

Please read and initial the following statements:

_____ I / We intend to provide mitigation in the amounts noted above and in the appropriate zone of impact.

_____ I / We understand that mitigation must be provided within five years of issuance of the final order.

The source of mitigation water will be (please check):

_____ Purchase mitigation credits and / or _____ A mitigation project resulting in credits

Please describe the type of project (e.g., transfer, etc.) and any associated water-right certificate, if known:

I understand that I must provide mitigation credits in the amount noted, or a suitable replacement mitigation, that meets the requirements of OAR 690-505-0610(2)-(5) in the appropriate zone of impact.

Applicant(s):

or

Applicant's agent:

Date: _____

Telephone Number: _____

Mail to: Attn: Adam Frederick
 Oregon Water Resources Department
 725 Summer St NE Suite A
 Salem OR 97301-1266

OR

Email to: Adam.M.Frederick@water.oregon.gov

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 **G-19245**.

After reviewing the Initial Review for my application, I request that processing be stopped, and 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 by the Water Resources Department no later than:

November 8, 2024

- Return the notice to:

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