



If the Department determines that the presumption is established and not overcome, the Department shall issue a proposed final order recommending issuance of the permit, subject to any appropriate modifications or conditions.

### **FINDINGS OF FACT**

#### **Application History**

1. On January 10, 2023, the City of Redmond filed a complete application for the following water use:

**Source:** WELL 6 (DESC 55853), WELL 7 (DESC 57788), WELL 8 (DESC 62721), WELL 9 (DESC 64783), WELL 10, AND WELL 11 IN THE DESCHUTES RIVER BASIN

**Use:** MUNICIPAL USE

**Rate:** 5.12 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 1,828.0 ACRE-FEET (AF) ANNUALLY

**Period of Use:** JANUARY 1 THROUGH DECEMBER 31

**County:** DESCHUTES COUNTY

**Place of Use:** SECTION 33, TOWNSHIP 14 SOUTH, RANGE 13 EAST, W.M., SECTION 24, TOWNSHIP 15 SOUTH, RANGE 12 EAST, W.M., AND SECTIONS 3, 4, 5, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 29, 30, AND 32, TOWNSHIP 15 SOUTH, RANGE 13 EAST, W.M.

2. On February 23, 2024, the Department mailed the applicant notice of its Initial Review, determining that the appropriation of 5.12 CFS, further limited to 1,828 AF annually, of water from Well 6 (DESC 55853), Well 7 (DESC 57788), Well 8 (DESC 62721), Well 9, Well 10, and Well 11 in the Deschutes River Basin for municipal use from January 1 through December 31, is not allowable. The applicant did not notify the Department to stop processing the application within 14 days of that date. The Initial Review included the Notice of Mitigation Obligation for the proposed groundwater use, pursuant to the Deschutes Groundwater Mitigation Rules (OAR 690-505).
3. On February 27, 2024, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.
4. On June 26, 2024, the applicant requested to place the application on a 60-day administrative hold.
5. On November 14, 2024, the applicant requested to amend the application to limit the volume to only the amount authorized under their currently issued permits and certificates, and remove the requested annual volume of 1,828 AF, thus reducing the annual volume of this application to 0.0 AF. As a result of the application amendments, the mitigation obligation calculated for annual volume, has also been reduced to 0.0 AF. The requested rate of 5.12 CFS remains unchanged.
6. Mitigation for year-round municipal use is estimated using an average of varying monthly consumptive use coefficients. The Department anticipates the proposed water use may be concentrated to months with a higher consumptive use coefficient. This may result in an increase in average annual consumptive water use from an average of 40% typically estimated for year-

round municipal use, to a seasonally based estimate of 50%. Due to this, the Department calculated a mitigation requirement of 121.78 AF. This results from increasing the pumping rate by 5.12 CFS over a period of 120 days during a season with a higher (additional 10%) consumptive use coefficient. The Department has added the following condition to the draft permit to make this clear:

Mitigation Requirement: 121.78 acre-feet (AF) of mitigation water in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook).

7. On November 22, 2024, the Department's groundwater section issued a re-review of the amended application, which states that because this application does not request additional annual volumes of water from the Deschutes regional aquifer, there is no need to determine whether the source is over-appropriated or whether the proposed use is within the capacity of the resource.
8. On November 25, 2024, the Department notified the applicant of the required mitigation calculated for an increase in average annual consumptive water use.
9. The applicant has proposed to use the rate under this application, 5.12 CFS, in conjunction with its existing groundwater rights. This will allow the applicant to pump water from its wells at a higher rate than would otherwise be allowed while being limited to the volume allowed by its existing groundwater rights. The Department has added the following condition to the draft permit to make this clear:

MAXIMUM RATE/VOLUME: 5.12 CUBIC FEET PER SECOND (CFS). THE ANNUAL VOLUME OF WATER APPROPRIATED UNDER THIS PERMIT SHALL BE COMBINED WITH AND LIMITED TO THE COMBINED ANNUAL VOLUME AUTHORIZED FOR USE UNDER INCHOATE TRANSFER T-13391, CERTIFICATE 82751 (OR ANY SUBSEQUENT WATER RIGHT, INCLUDING TRANSFERS OR CERTIFICATES), AND PERMIT G-18157 (OR ANY SUPERSEDING PERMIT OR CERTIFICATE), **BEING A TOTAL OF 17,877.2 ACRE-FEET**, OR LESS SHOULD ONE OF THESE RIGHTS BE CANCELLED OR OTHERWISE CHANGED TO A LESSER VOLUME IN THE FUTURE.

10. On November 26, 2024, the Department received the applicant's Response to Notice of Mitigation Requirements for Annual Consumptive Use Increase - Credit or Project Option, wherein the applicant acknowledged that they intend to provide mitigation in the amount of 121.78 acre-feet (AF) within the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook). Additionally, the applicant requested additional reporting terms and conditions similar to those in Permit G-18157 (Application G-14908).

**Presumption Criterion (a) - Consistency with Basin Program**

11. The proposed groundwater use is located within the Deschutes Ground Water Study Area and is subject to the Deschutes Groundwater Mitigation Rules (OAR 690-505-0500 – 0630).
12. Municipal use is allowed under the Deschutes Basin Program (OAR 690-505-0400). ORS 537.621(3)(b); OAR 690-310-0150(2)(b).

13. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS limit on the amount of new groundwater use that may be allocated within the Deschutes Ground Water Study Area. Any water allocated under this application may not exceed the limit.
14. The mitigation required for the proposed use is 121.78 AF, as explained in Finding of Fact #6. Each mitigation credit is equivalent to 1.0 AF of mitigation water. OAR 690-505-0610(5).
15. If the Department later determines additional mitigation must be provided, it shall be provided in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook). OAR 690-505-0605; OAR 690-505-0610(4).

**Presumption Criterion (b) - Water Availability**

16. An assessment of groundwater availability was completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. The annual volume of this application is 0.0 AF; therefore, groundwater is available for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(c); OAR 690-300-0010(57).

**Presumption Criterion (c) - Injury Determination**

17. The proposed groundwater use is junior to existing water rights downstream in the Deschutes River Basin. Therefore, the proposed use, if properly conditioned and if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e).

**Presumption Criterion (d) - Whether the Use Complies with Rules of the Commission**

18. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b).
19. The proposed use is located within the Deschutes Ground Water Study Area. Without mitigation, the Department is required by law to deny groundwater permit applications in the Deschutes Ground Water Study Area. Mitigation may be provided to offset impacts to Scenic Waterway flows and senior surface water rights. OAR 690-505-0600(1)-(3).
20. The Department requested comments on the applicant's proposed mitigation (response to notice of mitigation requirements for annual consumptive use increase) from the Oregon Departments of Fish and Wildlife, Environmental Quality, State Lands, and Parks and Recreation pursuant to the Deschutes Groundwater Mitigation Rules and from the Confederated Tribes of the Warm Springs Reservation of Oregon. No issues were raised in that review that require additional conditioning of the attached draft permit.
21. The applicant has not provided the Department with documentary evidence that the qualifying mitigation credits have been obtained.
22. In order to obtain a permit, documentary evidence of mitigation credits must be submitted to the Department within five years of the issuance of a Final Order approving the proposed groundwater use.

**Determination of Presumption that a Proposed Groundwater Use will Ensure the Preservation of the Public Welfare, Safety and Health under ORS 537.525**

Based on the review of the presumption criteria (a)-(d) above, the presumption has been established. ORS 537.621(2); OAR 690-310-0150(2)(g).

**Further Evaluation of the Proposed Use**

23. A comment was received by the close of the comment period. OAR 690-310-0140(3)(a).
24. In summary, a comment was received from the applicant with concerns about the assessment of groundwater availability and the groundwater level measurement, reporting, and shut-off condition language presented in the Initial Review. The Department has taken these comments into consideration when developing the conditions on the attached draft permit.
25. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would not ensure the preservation of the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(3).

**Other Criteria and Requirements**

26. The amount of water requested, 5.12 CFS, is necessary for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(d).
27. The applicant proposed measures to prevent waste, measure the amount of water appropriated, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are identified on Sections 6 and 8 of the application. OAR 690-310-0150(2)(j).
28. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

**CONCLUSION OF LAW**

1. The proposed use, as conditioned, would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety and health.

**PROPOSED ORDER**

The Department recommends approval of Application G-19348, as amended, and issuance of a permit consistent with the attached draft permit.

DATED December 10, 2024

A handwritten signature in black ink that reads "Katherine Ratcliffe". The signature is written in a cursive style and is positioned above a solid horizontal line.

Katherine Ratcliffe  
Water Rights Section Manager, for  
Ivan Gall, Director  
Oregon Water Resources Department

## Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **January 24, 2025**.

As provided in ORS 537.621(7), ORS 536.050(1)(j) and OAR 690-002—0025 – 035 protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- To effect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

## Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **January 24, 2025**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;

- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not timely file a protest or timely request a hearing, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default. OAR 137-003-0670.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

**Notice To Active Duty Servicemembers:** Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Lucinda Vranizan at [Lucinda.R.Vranizan@water.oregon.gov](mailto:Lucinda.R.Vranizan@water.oregon.gov) or 971-375-2256.
  - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at [Will.D.Davidson@water.oregon.gov](mailto:Will.D.Davidson@water.oregon.gov) or 503-507-2749.
  - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
  - Address any correspondence to:      Water Right Services Division  
725 Summer St NE, Suite A  
Salem, OR 97301-1266  
Fax: 503-986-0901
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DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CITY OF REDMOND  
411 SW 9TH ST  
REDMOND OR 97756

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-19348

SOURCE OF WATER: WELL 6 (DESC 55853), WELL 7 (DESC 57788), WELL 8 (DESC 62721), WELL 9 (DESC 64783), WELL 10, AND WELL 11 IN THE DESCHUTES RIVER BASIN

PURPOSE OR USE: MUNICIPAL USE

MAXIMUM RATE/VOLUME: 5.12 CUBIC FEET PER SECOND (CFS). THE ANNUAL VOLUME OF WATER APPROPRIATED UNDER THIS PERMIT SHALL BE COMBINED WITH AND LIMITED TO THE COMBINED ANNUAL VOLUME AUTHORIZED FOR USE UNDER INCHOATE TRANSFER T-13391, CERTIFICATE 82751 (OR ANY SUBSEQUENT WATER RIGHT, INCLUDING TRANSFERS OR CERTIFICATES), AND PERMIT G-18157 (OR ANY SUPERSEDING PERMIT OR CERTIFICATE), **BEING A TOTAL OF 17,877.2 ACRE-FEET**, OR LESS SHOULD ONE OF THESE RIGHTS BE CANCELLED OR OTHERWISE CHANGED TO A LESSER VOLUME IN THE FUTURE.

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: JANUARY 10, 2023

WELL LOCATION(S):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 6 (DESC 55853)	15 S	13 E	WM	21	NW SE	NORTH 35 DEGREES 38 MINUTES 4 SECONDS WEST, 2443.94 FEET FROM SE CORNER, SECTION 21
WELL 7 (DESC 57788)	15 S	13 E	WM	10	SW SE	1210 FEET NORTH AND 1640 FEET WEST FROM SE CORNER, SECTION 10
WELL 8 (DESC 62721)	15 S	13 E	WM	19	SE SW	513 FEET NORTH AND 2807 FEET WEST FROM SE CORNER, SECTION 19
WELL 9 (DESC 64783)	15 S	13 E	WM	9	SW SW	185 FEET NORTH AND 1190 FEET EAST FROM SW CORNER, SECTION 9
WELL 10	15 S	13 E	WM	9	SE NW	1332 FEET SOUTH AND 2020 FEET EAST FROM NW CORNER, SECTION 9
WELL 11	15 S	13 E	WM	9	NE SW	2530 FEET NORTH AND 2160 FEET EAST FROM SW CORNER, SECTION 9

**PERMIT SPECIFIC CONDITIONS**

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
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 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.

3. **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.

4. **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.

**5. Groundwater Mitigation:**

- A. Mitigation: 121.78 acre-feet (AF) of mitigation water in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook).
  - B. Mitigation Source: 121.78 AF of suitable mitigation from mitigation credits, or one or more mitigation projects.
  - C. Mitigation water must be legally protected instream in the General Zone of Impact 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 appropriation has increased beyond that used to compute the volume of mitigation water originally.
  - 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. The permittee shall provide a mitigation update report to the Department, with a copy to WaterWatch, every three years until the permit is fully developed. The report may be included as an addendum to the report for Permit G-18157 (or any superseding permit or certificate). The report shall compare actual monthly water use to the estimates used for determining prior mitigation requirements and shall identify whether additional mitigation is required. The report shall also include the total volume of water pumped under Inchoate Transfer T-13391, Certificate 82751 (or any subsequent water right, including transfers or certificates), and permit G-18157 (or any superseding permit or certificate).
  - G. 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).
6. The points of appropriation on this permit are subject to the reference levels and permit decline conditions of the existing water rights utilizing the same points of appropriation.

## STANDARD CONDITIONS

1. 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 be subject to cancellation, unless the Department authorizes the change in writing.
2. If substantial interference with surface water or a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.
3. The well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port adequate to always determine water-level elevation in the well.
4. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
5. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.
6. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

## DEVELOPMENT AND COMPLETION TIMELINE REQUIREMENTS

1. Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.
2. Construction of the well shall begin within twenty 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.
3. Complete application of the water shall be made within twenty years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

4. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

ISSUED \_\_\_\_\_

**DRAFT - THIS IS NOT A PERMIT**

Katherine Ratcliffe  
Water Rights Section Manager, for  
Ivan Gall, Director  
Oregon Water Resources Department