



**Oregon**

Theodore R. Kulongoski, Governor

**Water Resources Department**  
North Mall Office Building  
725 Summer Street NE, Suite A  
Salem, OR 97301-1271  
503-986-0900  
FAX 503-986-0904

January 21, 2011

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

VITESSE, LLC.  
C/O FACEBOOK, INC.  
ATTENTION: TOM FURLONG  
1601 S CALIFORNIA AVE  
PALO ALTO CA 94304

Reference: File [G-17338](#)

**INITIAL REVIEW**

**THIS IS NOT A PERMIT AND IS SUBJECT TO CHANGE DURING PROCESSING**

Dear Applicant:

This letter is to inform you that processing of your water-use permit application has begun, 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 if the proposed use is to be allowed. Based on the information you supplied, the Department has made the following initial determinations:

1. The application requested the appropriation of 340.0 gallons per minute, or 0.758 cubic foot per second (CFS), from Well 1 (CROO 53726/CROO 53886) and Well 2 (CROO 53878) in Crooked River Basin for year-round industrial/manufacturing uses with a total annual volume of 174.0 acre feet.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from Well 1 (CROO 53726/CROO 53886) and Well 2 (CROO 53878) in [Crooked River](#) Basin for industrial/manufacturing uses is allowable under the Deschutes Basin Program.
4. If properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights and the resource.
5. The Department has determined, based upon OAR 690-09, that the proposed ground water source is hydraulically connected to Crooked River, and will have the potential for substantial interference with surface water. Therefore, in accordance with OAR 690-410-0070(1) and 690-400-0010(11)(a), surface water availability and public-interest considerations related to the surface-water source must be considered.
6. Surface water is not available at any time of the year due to senior water rights on Crooked River and downstream waters.

7. The proposed use of hydraulically-connected ground water with the potential for substantial interference is not allowable in the Deschutes Basin from April 15 through September 30 of each year (OAR 690-33-120(2)(b)).
8. The mainstem Deschutes River is a State Scenic Waterway. The proposed use will measurably reduce scenic waterway flows as defined in ORS 390.835.
9. Because the proposed wells, located in the Deschutes Ground Water Study Area, have the potential for substantial interference and will interfere with scenic waterway flows, by law, the Department is required to deny your application unless you provide mitigation. The unfavorable findings of this Initial Review may be overcome if you provide mitigation pursuant to the Deschutes Ground Water Mitigation Rules (OAR 690-505-0500 through 0630). Those rules provide a process under which applicants may mitigate for the impact their proposed use would have on surface water flows.
10. The Department has determined your mitigation obligation is 156.6 acre-feet (AF) annually. The mitigation obligation is calculated based on a consumptive-use factor of 90% of the total estimated annual volume for industrial/manufacturing uses.
11. The Department has determined that mitigation for the proposed use must be located in the Crooked River Zone of Impact.

#### **Summary of Initial Review**

The use of 0.758 CFS of water from Well 1 (CROO 53726/CROO 53886) and Well 2 (CROO 53878) within Crooked River Basin, for year-round industrial/manufacturing uses, is not allowable. However, if you provide sufficient mitigation water to offset the proposed use, it may be allowed under OAR 690-505-0610.

#### **Mitigation Obligation Options:**

To satisfy your mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 156.6 qualifying mitigation credits from an individual or mitigation bank. If you are interested in obtaining mitigation credits, you may want to contact me 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 your mitigation obligation. Please contact Laura Wilke (503.986.0884) for further information on mitigation projects, forms, and specific requirements to be included in your proposal.

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

**Withdrawal Refunds:**

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$200 processing charge per application). To accomplish this you must notify the Department in writing by Friday, February 4, 2011. For your convenience you may use the enclosed "STOP PROCESSING" form.

**To Proceed With Your Application:**

If you choose to proceed with your application, you do not have to do anything at this time. Your application will automatically 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.

If a permit is issued, it will likely include the following conditions:

**Measurement, Recording and Reporting Conditions:**

- 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 meter in good working order.
- B. The permittee shall keep a complete record of the amount of water used each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

If substantial interference with 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.

The Department requires the water user to measure 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 submit 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 measure 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. Identify each well with its associated measurement; and
- B. Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method used to obtain each well measurement; and
- D. Certify the accuracy of all measurements and calculations submitted 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 feet or more in any neighboring well of 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.

Dedicated Measuring Tube: Wells with pumps shall be equipped with an unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200.

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.

Any effluents or return flows from use under this permit shall not interfere with other beneficial uses of water.

### **Ground Water Mitigation Conditions**

1. Mitigation Obligation: 156.6 acre-feet of mitigation water in the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).
2. Mitigation Source: obtain 156.6 acre-feet of mitigation water or equivalent mitigation credits that meet the requirements of OAR 690-505-0610(2)-(5).

3. Mitigation water must be legally protected instream in the Crooked River 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.
4. 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.
5. 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.
6. Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, and proposing to cancel the ground water permit, or subsequent certificate(s).

### **Scenic Waterway Condition**

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 reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained.

### **If you have questions:**

This Initial Review was produced by Kerry Kavanagh. If you have any questions about any of the statements contained in this document, I am probably the best person to answer your questions. You may reach me at 503-986-0816 or Kerry.L.Kavanagh@wrd.state.or.us. Please have your application number available if you call. If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE, Suite A, Salem OR 97301-1266, Fax: 503-986-0901.

Sincerely,



Kerry Kavanagh  
Water Rights Application Caseworker

enclosures: Stop Processing Request Form; Response to Notice of Mitigation Obligation; and  
Deschutes Mitigation Rules

[G-17338](#)

WAB 5-30530507, POU 5-30530507, GW

# Application Fact Sheet

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Mail to: Applicant, Watermaster, District Biologist (ODFW)

Application Number: G-17338

Applicant: VITESSE, LLC. C/O FACEBOOK, INC.

County: CROOK

Watermaster: District 11

Priority Date: MARCH 31, 2010

Source: WELL 1 (CROO 53726/CROO 53886) AND WELL 2 (CROO 53878)

Use: INDUSTRIAL/MANUFACTURING USES

Quantity: 0.758 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Points of Appropriation:

Well	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1 (CROO 53726/CROO 53886)	15 S	15 E	WM	2	SE SE	203 FEET NORTH AND 139 FEET WEST FROM SE CORNER, SECTION 2
WELL 2 (CROO 53878)	15 S	15 E	WM	2	SE SE	128 FEET NORTH AND 139 FEET WEST FROM SE CORNER, SECTION 2

Place of Use:

Twp	Rng	Mer	Sec	Q-Q
15 S	15 E	WM	1	NE SW
15 S	15 E	WM	1	NW SW
15 S	15 E	WM	1	SW SW
15 S	15 E	WM	1	SE SW
15 S	15 E	WM	2	NE SE
15 S	15 E	WM	2	SE SE

Public Notice Date: Tuesday, January 25, 2011

14-day Stop Processing Deadline: Friday, February 4, 2011

End of 30-day Comment Period: Thursday, February 24, 2011

# Mailing List for IR Copies

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Application: [G-17338](#)

IR Date: January 21, 2011

**Original mailed to:**

Applicant: [VITESSE, LLC.](#)  
[C/O FACEBOOK, INC.](#)  
[ATTENTION: TOM FURLONG](#)  
[1601 S CALIFORNIA AVE](#)  
[PALO ALTO CA 94304](#)

Copies Mailed	
by: _____	(STAFF)
on: _____	(DATE)

**Copies sent to:**

1. WRD - File [G-17338](#)
2. WRD - Water Availability: Ken Stahr
3. WRD - Laura Wilke
4. DRC – Genevieve Hubert

**IR, Map, and Fact Sheet Copies sent to:**

*(NOTE: please send only one copy per office, even if there is more than one name on the list)*

1. Watermaster District: #11
2. ODFW District Biologists: Brett Hodgson and Amy Stuart
3. ODFW: Rick Kepler
4. Columbia River Intertribal Fish Commission
5. US Fish & Wildlife
6. NW Power Planning Council
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Jim Johnson & Paul Measeles
9. OPRD: Richard Walkoski and Alex Phillips
10. DSL: Lanny Quackenbush
11. Confederated Tribes of the Umatilla Indian Reservation: Jennifer Hudson and Carl Merkle

**Copies sent to Other Interested Persons** *(CWRE, Agent, Well Driller, Commenter, etc.):*

12. Martha Pagel, Schwabe, Williamson & Wyatt, 530 Center St NE, Suite 400, Salem, OR 97301

Caseworker: Kerry Kavanagh





**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): **VITESSE, LLC. C/O FACEBOOK INC.**

Applicant's agent (*if applicable*): **MARTHA PAGEL, SCHWABE, WILLIAMSON & WYATT**

Application number: **G-17338**

Proposed Use: **INDUSTRIAL/MANUFACTURING USES**

Period of Use: **YEAR ROUND**

Rate requested: **0.758 CUBIC FOOT PER SECOND**

Volume requested: **174.0 acre-feet**

Mitigation Obligation: **156.6 acre-feet**

Zone of Impact: **Crooked River Zone of Impact**

**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:

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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)

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or

Applicant's agent

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Date\_\_\_\_\_

Telephone Number:\_\_\_\_\_

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