



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

March 11, 2011

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

LA PINE WATER DISTRICT
PO BOX 2460
LA PINE OR 97739-2460

Reference: File [G-17422](#)

INITIAL REVIEW

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

Dear [LA PINE WATER DISTRICT](#):

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 proposed the appropriation of 1.4 cubic feet per second (CFS) of water, with a maximum annual volume of 1013.0 acre feet (AF), from Well 1 (DESC 54986) and Well 2 (DESC 55049) in Little Deschutes River Basin for year-round quasi-municipal use.
2. The applicant is a municipality; therefore the Department will consider the use “municipal” rather than “quasi-municipal”.
3. The proposed use is not prohibited by law or rule except where otherwise noted below.
4. The appropriation of water from Well 1 (DESC 54986) and Well 2 (DESC 55049) in Little Deschutes River Basin for year-round municipal use is allowable under the Deschutes Basin Program.
5. If properly conditioned, the proposed use of ground water will avoid injury to existing ground water rights and the resource.
6. The Department has determined, based upon OAR 690-09, that the proposed ground water source is hydraulically connected to Little Deschutes 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.
7. Surface water is not available at any time of the year due to senior water rights on Little Deschutes River and downstream waters.

8. 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)).
9. The mainstem Deschutes River is a State Scenic Waterway. The proposed use will measurably reduce scenic waterway flows as defined in ORS 390.835.
10. 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.
11. The Department has determined your mitigation obligation is 405.2 AF annually. The required mitigation is based on the appropriation of 1013.0 AF per year for municipal uses. Calculation of the mitigation obligation is based on a consumptive-use factor of 40%.
12. The Department has determined that mitigation for the proposed use must be located in the Little Deschutes Zone of Impact.
13. Please refer to the **Additional Information Required** section below for specific information regarding deficiencies with the application.

Summary of Initial Review

The appropriation of 1.4 CFS of water, with a maximum annual volume of 1013.0 AF, from Well 1 (DESC 54986) and Well 2 (DESC 55049) in Little Deschutes River Basin for year-round quasi-municipal use is not allowable. However, if you provide sufficient mitigation water to offset the proposed use, it may be allowed under OAR 690-505-0610.

Additional Information Required:

Additional information will be required prior to issuance of any Proposed Final Order that may recommend permit approval.

Please provide documentation that demonstrates the proposed use complies with the local acknowledged comprehensive land-use plan, or that you are actively pursuing approval from the **City of La Pine** and **Deschutes County Planning Department**. If the use is allowed outright or not regulated, the Department can continue processing the application. In the event that the use involves discretionary land-use approvals, the Department can continue processing the application *if you are actively pursuing approval*. However, before a permit will be issued the Department must receive documentation from the relevant planning jurisdiction that either 1) the proposed use is allowed outright or 2) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.

Please submit this information no later than Thursday, April 14, 2011. If you are unable to submit the information listed above, 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.

Mitigation Obligation Options:

To satisfy your mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 405.2 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 or by fax by **Friday, March 25, 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 meter must be maintained in good working order. 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.

B. The permittee shall allow the watermaster access to the meter; where the meter is located within a private structure, the watermaster shall request access upon reasonable notice.

The Department requires the water user to obtain, from a qualified individual (see below), 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 report 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 obtain 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. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported 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 or more feet in any neighboring well with 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.

Ground Water Mitigation Conditions:

1. Mitigation Obligation: 405.2 acre-feet of mitigation water in the Little Deschutes Zone of Impact (located anywhere in the Little Deschutes River Basin above the mouth).
2. Mitigation Source: Obtain 405.2 mitigation credits, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5).
3. Mitigation water must be legally protected instream in the Little Deschutes 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 mitigation prior to each stage of development under the permit, as described in the incremental development mitigation plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.
5. The permittee shall not increase the rate or amount of water diverted, as described in the incremental development mitigation plan, prior to increasing the corresponding mitigation.
6. The permittee shall seek and receive Departmental approval prior to changing the incremental mitigation development plan and related mitigation obligation for each stage of permit development.
7. The permittee shall report to the Department the progress of implementing the incremental mitigation development plan and related mitigation no later than April 1 of each year. This annual notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.
8. 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.
9. 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.
10. 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 Jeana Eastman. 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 503-986-0859 or Jeana.M.Eastman@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,



Jeana Eastman
Water Rights Application Caseworker

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

[G-17422](#)
WAB 5-70757
POU 5-70757
GW

Application Fact Sheet

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

Application Number: G-17422

Applicant: LA PINE WATER DISTRICT, PO BOX 2460, LA PINE OR 97739-2460

County: DESCHUTES

Watermaster: District 11

Priority Date: SEPTEMBER 13, 2010

Source: Well 1 (DESC 54986) and Well 2 (DESC 55049) in Little Deschutes River Basin

Use: MUNICIPAL USES

Quantity: 1.4 CUBIC FEET PER SECOND, WITH A MAXIMUM ANNUAL VOLUME OF 1013.0 ACRE FEET

Basin Name & Number: Deschutes, #5

Point of Appropriation:

	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
Well 1	22 S	11 E	WM	18	NW SE	1240 SOUTH AND 804 FEET EAST FROM C1/4 CORNER, SECTION 18
Well 2	22 S	11 E	WM	18	NW SE	1143 SOUTH AND 1085 FEET EAST FROM C1/4 CORNER, SECTION 18

Place of Use: WITHIN THE LA PINE WATER DISTRICT SERVICE BOUNDARY

Public Notice Date: Tuesday, March 15, 2011

14-day Stop Processing Deadline: Friday, March 25, 2011

End of 30-day Comment Period: Thursday, April 14, 2011

Mailing List for IR Copies

Application: [G-17422](#)

IR Date: March 11, 2011

Original mailed to:

Applicant: [LA PINE WATER DISTRICT](#)
[PO BOX 2460](#)
[LA PINE OR 97739-2460](#)

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

Copies sent to:

1. WRD - File [G-17422](#)
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: Nancy Gilbert, 20310 Empire Avenue, Suite A100, Bend OR 97701
6. NW Power Planning Council
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Jim Johnson & Paul Measeles
9. OPRD: Richard Walkoski & 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.*):

Newton, James

Newton Consultants, Inc., PO Box 1728, Redmond OR 97756

Caseworker: jme

**RESPONSE TO NOTICE OF MITIGATION OBLIGATION
MUNICIPAL OR QUASI-MUNICIPAL INCREMENTAL DEVELOPMENT PLAN**

Municipal or Quasi-Municipal ground water permit applicants may satisfy a mitigation obligation by incrementally obtaining and providing mitigation to coincide with the incremental development of the permit, provided mitigation is provided prior to each stage of development of the permit, in accordance with the standards under OAR 690-505-0610(2)-(5). 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 at the address above.

Applicant(s): [LA PINE WATER DISTRICT](#)

Applicant's agent (*if applicable*): James Newton, Newton Consultants, Inc., PO Box 1728, Redmond OR 97756

Application number: [G-17422](#)

Proposed Use: MUNICIPAL USES

Period of Use requested: YEAR ROUND

Rate requested: [1.4 CUBIC FEET PER SECOND](#), WITH A MAXIMUM ANNUAL VOLUME OF 1013.0 ACRE FEET

Volume requested: 1013.0 acre-feet

Mitigation Obligation: 405.2 acre-feet

Zone of Impact: Little Deschutes Zone of Impact

Please read and initial the following statements:

_____ We intend to provide incremental mitigation.

_____ We understand that mitigation must be provided prior to each stage of development of the permit and that the mitigation must meet the requirements of OAR 690-505-0610(2)-(5).

_____ We understand that the first increment of mitigation must be obtained, submitted to the Department and legally protected instream prior to a permit being issued.

_____ We understand that after receiving the water right permit, I (we) may not increase water use without providing the corresponding required mitigation.

_____ We understand that we will be required to submit a new or update Water Management and Conservation Plan under OAR Chapter 690, Division 86 within 2 years of the Department issuing a permit.

_____ We understand that may we modify the incremental development plan and related mitigation obligation only with prior written Departmental approval.

(over)

Please estimate the time schedule for development of the water right permit and the proposed source of mitigation that may be obtained and used prior to each stage of development (this proposed development schedule must describe 100% of the requested volume).

For the first increment of permit development we will need approximately _____ acre-feet of the _____ acre-feet requested in the application. The first increment of mitigation will be required by _____ (date).

The proposed source of mitigation water for this increment of use 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:

By _____(approximate year), for the second increment of permit development, I (we) will need approximately _____ additional acre-feet of the _____ total volume requested in the application.

The proposed mitigation source for this increment of use 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:

Please complete a section for each subsequent stage of Incremental Development beyond the first two using the additional page below.

Applicant _____ or Applicant's Agent _____

Date _____

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

Incremental Development beyond increments one and two:

Application _____

Applicant: _____

By _____(approximate year), for the _____ increment of permit development, we will need approximately _____ additional acre-feet of the _____ total volume requested in the application.

The proposed mitigation source for this increment of use 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:

By _____(approximate year), for the _____ increment of permit development, I (we) will need approximately _____ additional acre-feet of the _____ total volume requested in the application.

The proposed mitigation source for this increment of use 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:

ATTACH ADDITIONAL PAGES AS NECESSARY

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