



# Oregon

John A. Kitzhaber, MD, 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

October 26, 2012

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

JOHN M. LIPKOWITZ  
9905 SPARROW HAWK CT  
LAS VEGAS NV 89134

Reference: File G-17553

## **INITIAL REVIEW**

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

Dear JOHN M. LIPKOWITZ:

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 storage of 5.0 acre feet (AF) of ground water in a pond for year-round fish and recreation, and the appropriation of 30.0 gallons per minute of water, which is 0.07 cubic foot per second (CFS), from a well in Little Deschutes River Basin for year-round pond maintenance.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The use of water from a well in Little Deschutes River Basin for storage and pond maintenance 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 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.
6. Surface water is not available at any time of the year due to senior water rights on Deschutes 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 well, located in the Deschutes Ground Water Study Area, has 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 2.67 acre-feet (AF) annually. The required mitigation is based on the storage and maintenance of a pond with a surface area of 1.0 acre. The mitigation obligation is calculated based on a consumptive-use factor of 2.67 AF \* the surface area.
11. The Department has determined that mitigation for the proposed use must be located in the Little Deschutes Zone of Impact.
12. The standard allowable rate for pond maintenance is 0.01 CFS for each acre foot of stored water. The application requested 0.07 CFS for maintenance of a 5.0 AF pond. If the application is approved, the rate allowed for pond maintenance will be limited to 0.05 CFS.
13. Additional exam fees in the amount of \$125 are required. It appears the request for above-ground storage was not factored into the exam fee. The Department notes the \$900 mitigation/recording fee was paid when the application was submitted. If you prefer, we can apply \$125 of the \$900 to the exam fee at this time. However, prior to permit issuance \$125 must be received. Please let me know how you wish to proceed.

<b>Category</b>	<b>Fee</b>
Base	\$1000
Up to 1 CFS	\$250
5 acre feet @ \$25 each	\$125
<b>EXAM FEE REQUIRED:</b>	<b>\$1375</b>
<b>EXAM FEE PAID:</b>	<b>\$1250</b>

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

The storage of 5.0 AF of ground water in a pond for year-round fish and recreation, and the appropriation of 0.05 CFS from a well in Little Deschutes River Basin for year-round pond maintenance 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 2.67 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, November 9, 2012. 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.

### **Ground Water Mitigation Conditions**

1. Mitigation Obligation: 2.67 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 2.67 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 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 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 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@wr.d.state.or.us](mailto:Jeana.M.Eastman@wr.d.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,

A handwritten signature in black ink, appearing to read 'J. Eastman'.

Jeana Eastman  
Water Rights Application Caseworker

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

G-17553  
WAB 5-70757  
POU 5-70757  
GW

# Application Fact Sheet

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

Application Number: G-17553

Applicant: JOHN M. LIPKOWITZ, 9905 SPARROW HAWK CT, LAS VEGAS NV 89134

County: DESCHUTES

Watermaster: District 11, Jeremy T. Giffin

Priority Date: APRIL 13, 2012

Source: A WELL IN LITTLE DESCHUTES RIVER BASIN

Use: STORAGE AND POND MAINTENANCE

Quantity: 5.0 ACRE FEET FOR STORAGE AND 0.07 CUBIC FOOT PER SECOND FOR POND MAINTENANCE

Basin Name & Number: Deschutes, #5

Point of Appropriation:

<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>	<b>Measured Distances</b>
22 S	10 E	WM	30	NE SE	1260 FEET SOUTH AND 500 FEET WEST FROM E1/4 CORNER, SECTION 30

Place of Use:

<b>STORAGE AND POND MAINTENANCE</b>				
<b>Twp</b>	<b>Rng</b>	<b>Mer</b>	<b>Sec</b>	<b>Q-Q</b>
22 S	10 E	WM	30	NE SE
22 S	10 E	WM	30	SE SE

Public Notice Date: Tuesday, October 30, 2012

14-day Stop Processing Deadline: Friday, November 9, 2012

End of 30-day Comment Period: Thursday, November 29, 2012

# Mailing List for IR Copies

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Application: G-17553

IR Date: October 26, 2012

**Original mailed to:**

Applicant: JOHN M. LIPKOWITZ  
9905 SPARROW HAWK CT  
LAS VEGAS NV 89134

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

VIA EMAIL:

1. Watermaster District 11
2. Agent – John Short – johnshort@usa.com

**Copies sent to:**

1. WRD - File G-17553
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)*

3. ODFW District Biologists: Brett Hodgson and Amy Stuart
4. ODFW: Rick Kepler
5. Columbia River Intertribal Fish Commission:
6. US Fish & Wildlife: Nancy Gilbert, 20310 Empire Avenue, Suite A100, Bend OR 97701
7. NW Power Planning Council
8. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
9. DOA: Salem: Jim Johnson & Paul Measeles
10. DSL: Shawn Zumwalt
11. Confederated Tribes of the Umatilla Indian Reservation: Jennifer Hudson and Carl Merkle

**Affected Landowners (include "Notice of Initial Review--Affected Landowner")**

1. Kerri Borman, 9905 Sparrow Hawk Ct, Las Vegas NV 89134

Caseworker: jme

**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): JOHN M. LIPKOWITZ

Applicant's agent (*if applicable*): JOHN SHORT

Application number: G-17553

Proposed Use: STORAGE AND POND MAINTENANCE

Period of Use: YEAR-ROUND

Quantity: 5.0 ACRE FEET FOR STORAGE AND 0.07 CUBIC FOOT PER SECOND FOR POND MAINTENANCE

Mitigation Obligation: 2.67 acre-feet

Zone of Impact: Little Deschutes 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: Jeana Eastman  
                      Oregon Water Resources Department  
                      725 Summer St NE Suite A  
                      Salem OR 97301-1266