



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

November 16, 2012

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

FRANCIS DUANE LEE
PO BOX 1657; 15665 TRAPPER POINT RD
SISTERS OR 97759-1657

Reference: File G-17565

INITIAL REVIEW

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

Dear FRANCIS DUANE LEE:

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 11.2 gallons per minute of water, which is 0.02 cubic foot per second (CFS), from Well 1 (DESC 942) in Whychus Creek Basin for irrigation of 2.0 acres March 1 through October 31 of each year.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from Well 1 (DESC 942) in Whychus Creek Basin for irrigation 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 Whychus Creek, 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 3.6 acre-feet (AF) annually. The required mitigation is based on the irrigation of 2.0 acres. The mitigation obligation is calculated based on a consumptive-use factor of 1.8 AF per acre.
11. The Department has determined that mitigation for the proposed use must be located in the Whychus Creek Zone of Impact.
12. The Department has determined that Well 1 (DESC 942) does not meet current minimum well construction standards. In order to meet standards, the well must be resealed to a minimum depth of 18 feet below ground surface.

Prior to the issuance of a permit, evidence demonstrating compliance with well construction standards must be submitted and approved by the Department. In repairing the well(s), you should work closely with the Department and/or a licensed well constructor to ensure that repairs are carried out in a manner that will not violate well construction or other rules. You are encouraged to contact Kris Byrd of the Department's Well Construction and Compliance Section at 503-986-0851 to determine how to proceed.

Please note that repair of the well(s) will not necessarily overcome the potential for substantial interference with surface water and might not result in the issuance of a permit.

Please also note that regardless of the outcome of this application, you will need to work with the Department to either repair or abandon the well(s) to comply with the minimum standards for the construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's ground water supply (OAR 690-200).

13. A portion of the area proposed to be irrigated under this application is currently covered by an existing irrigation water right evidenced by Certificate 981, which conflicts with the application. (See attached map of Certificate 981)

If you would like this application to be the primary right, the Department must receive:

- A completed form authorizing cancellation of the conflicting portions of the existing right, along with a map describing those portions; or
- A completed affidavit of diminution of the conflicting portions of the existing right to reduce them to supplemental use, along with a map describing those portions; or

- A transfer application addressing the conflicting portions of the existing right; or
- Another means of dealing with the conflict between the existing right and the use proposed under this application.

If you would like this application to be supplemental to the existing certificate, the Department must receive a revised map showing the place of use of both the primary and supplemental lands. Please note the supplemental lands will be limited and/or jeopardized as follows:

If the existing right is found to have been forfeited, the use which is supplemental to such certificate may also be canceled.

You may only use the supplemental right after the primary right becomes unavailable. Water from the primary source must be exhausted first.

The season of use for the supplemental irrigation will be limited to that of the primary right.

Please provide information to resolve the conflict no later than Thursday, December 20, 2012.

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.

Summary of Initial Review

The appropriation of 0.02 CFS from Well 1 (DESC 942) in Whychus Creek Basin for irrigation of 2.0 acres March 1 through October 31 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 3.6 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, November 30, 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.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water-level measurements. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place - Initial and Annual Measurements:

The Department requires the permittee to submit an initial water-level measurement in the month specified above once well construction is complete, and annually thereafter until use of water begins; and

After Use of Water has Begun - Reference Water Level Determination

Following the first year of water use, the user shall submit one static water-level measurement in the month specified above which will establish the reference level against which future annual measurements will be compared. The water user is not required to measure additional water levels after the reference level has been determined unless required by the Director. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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, and be submitted to the Department on forms provided by the Department. 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 non-use or restricted use shall continue until the water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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: 3.6 acre-feet of mitigation water in the Whychus Creek Zone of Impact (located anywhere in the Whychus Creek Basin above river mile 16).
2. Mitigation Source: obtain 3.6 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 Whychus Creek 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@wrđ.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,



Water Rights Application Caseworker

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

G-17565
WAB 5-70760
POU 5-70760
GW

Application Fact Sheet

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

Application Number: G-17565

Applicant: FRANCIS DUANE LEE, PO BOX 1657, SISTERS OR 97759-1657

County: DESCHUTES

Watermaster: District 11, Jeremy T. Giffin

Priority Date: JUNE 26, 2012

Source: WELL 1 (DESC 942) IN WHYCHUS CREEK BASIN

Use: IRRIGATION OF 2.0 ACRES

Quantity: 0.02 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
15 S	10 E	WM	4	SW NW	1377 FEET SOUTH AND 786 FEET EAST FROM NW CORNER, SECTION 4

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
15 S	10 E	WM	4	NW NW	0.78
15 S	10 E	WM	4	SW NW	1.22

Public Notice Date: Tuesday, November 20, 2012

14-day Stop Processing Deadline: Friday, November 30, 2012

End of 30-day Comment Period: Thursday, December 20, 2012

Mailing List for IR Copies

Application: G-17565

IR Date: November 16, 2012

Original mailed to:

Applicant: FRANCIS DUANE LEE
PO BOX 1657
SISTERS OR 97759-1657

VIA EMAIL:
APPLICANT – duanel@iinet.com

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

Copies sent to:

1. WRD - File G-17565
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, 63095 Deschutes Market Rd, Bend OR 97701-9794
6. NW Power Planning Council
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Jim Johnson & Paul Measeles
9. DSL: Shawn Zumwalt
10. Confederated Tribes of the Umatilla Indian Reservation: Jennifer Hudson and Carl Merkle

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

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): FRANCIS DUANE LEE

Application number: G-17565

Proposed Use: IRRIGATION OF 2.0 ACRES

Period of Use: MARCH 1 THROUGH OCTOBER 31

Rate requested: 0.02 CUBIC FOOT PER SECOND

Volume requested: 6.0 acre-feet

Mitigation Obligation: 3.6 acre-feet

Zone of Impact: Whychus Creek 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:

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:
Oregon Water Resources Department
725 Summer St NE Suite A
Salem OR 97301-1266