



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

March 29, 2013

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

BONITA I & ERWIN E. SCHMIDT
PO BOX 572
REDMOND OR 97756

Reference: File [G-17588](#)

INITIAL REVIEW

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

Dear Applicants:

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 0.04 cubic foot per second (CFS) of water from Well DESC 328 in Crooked River Basin for irrigation of 3.4 acres April 1 through October 31.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from Well DESC 328 in Crooked River 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 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, tributary to 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 6.1 acre-feet (AF) annually. The required mitigation is based on the use of 0.04 CFS for irrigation of 3.4 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 Crooked River Zone of Impact.
12. The Department has determined that Well DESC 328 does not meet current minimum well construction standards. To meet standards, the well must be resealed to a minimum depth of 95 feet below land surface.

Prior to 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 Bryd of the Department's Well Construction and Compliance Section at 503-986-0851 to determine how to proceed.

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 minimum standards for construction, conversion, alteration, maintenance, and abandonment of water supply wells in order to protect the state's ground water supply (OAR 690-200).

Summary of Initial Review

The use of 0.04 CFS from Well DESC 328 in Crooked River Basin for irrigation of 3.4 acres is not allowable. However, if you provide sufficient mitigation water to offset the proposed use, it may be allowed under OAR 690-505-0610, and contingent upon submittal of evidence demonstrating compliance with current minimum well construction standards.

Mitigation Obligation Options:

To satisfy your mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 6.1 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, April 12, 2013. 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.

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.

Ground Water Mitigation Conditions

- 1. Mitigation Obligation: 6.1 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 6.1 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@wrdd.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-17588](#)

WAB 5-30530508
POU 5-30530508
GW

[G-17588.klk](#)

Application Fact Sheet

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

Application Number: [G-17588](#)

Applicant: BONITA I AND ERWIN SCHMIDT

County: [DESCHUTES](#)

Watermaster: District [11](#), [Jeremy T. Giffin](#)

Priority Date: [SEPTEMBER 27, 2012](#)

Source: [WELL DESC 328](#)

Use: [IRRIGATION OF 3.4 ACRES](#)

Quantity: [0.04 CUBIC FOOT PER SECOND](#)

Basin Name & Number: [Deschutes, #5](#)

Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	13 E	WM	36	NW SW	185 FEET SOUTH AND 420 FEET EAST FROM NORTH ¼ CORNER, SECTION 36

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	13 E	WM	36	NW SW	3.40

Public Notice Date: Tuesday, April 2, 2013

14-day Stop Processing Deadline: Friday, April 12, 2013

End of 30-day Comment Period: Thursday, May 2, 2013

Mailing List for IR Copies

Application: [G-17588](#)

IR Date: March 29, 2013

Original mailed to:

Applicant: BONITA I AND ERWIN E SCHMIDT
PO BOX 572
[REDMOND OR 97756](#)

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

Copies sent to:

1. WRD - File [G-17588](#)
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: 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): BONITA I AND ERWIN E SCHMIDT

Applicant's agent (*if applicable*): N/A

Application number: **G-17588**

Proposed Use: **IRRIGATION** OF 3.4 ACRES

Period of Use: APRIL 1 THROUGH OCTOBER 31

Rate requested: **0.04 CUBIC FOOT PER SECOND**

Volume requested: 10.2 acre-feet

Mitigation Obligation: 6.1 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:

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