



Oregon

Kate Brown, 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

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

February 19, 2016

ELITE SOIL LLC
62870 JOHNSON RANCH RD
BEND OR 97701

Reference: File G-18175

INITIAL REVIEW

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

This letter is to inform you that processing of the water-use permit application has begun, and to describe the 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 supplied, the Department has made the following initial determinations:

1. The application proposed the appropriation of 0.50 cubic foot per second (CFS) of water from a well (DESC 60299/L117959) in Dry River Basin for year-round nursery use on 5.0 acres.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. The appropriation of water from a well (DESC 60299/L117959) for nursery use is allowable under the Deschutes Basin Program (OAR 690-505-0040).
4. If properly conditioned, the proposed use of groundwater will avoid injury to existing groundwater rights and the resource.
5. The Department has determined, based upon OAR 690-09, that the proposed groundwater 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 Deschutes River and downstream waters.

7. The proposed use of hydraulically-connected groundwater 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 and other proximate source 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 the application unless mitigation is provided. The unfavorable findings of this Initial Review may be overcome if mitigation is provided pursuant to the Deschutes Groundwater 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 application proposed a limit that is higher than the general basin-wide standard of 1/40 CFS per acre for nursery use, but did not demonstrate to the satisfaction of the Department the need for a higher limit. If you would like to pursue a permit for a higher limit, please submit additional information to demonstrate the need for the higher limit by **Thursday, March 24, 2016**.

The Department will evaluate any information received prior to the next step in processing. If we don't receive additional information, the Department will limit the limit to 1/40 CFS per acre, being 0.13 CFS.

11. The standard allowable duty for nursery use is 5.0 acre-feet (AF) per acre. If the application is approved, the duty allowed will be limited to 25.0 AF annually.
12. The Department has determined the mitigation obligation is 12.5 AF annually. The required mitigation is based on an annual volume (duty) of 25.0 AF for nursery use on 5.0 acres. The mitigation obligation is calculated based on a consumptive-use factor of 0.5 AF of the total volume.
13. The Department has determined that mitigation for the proposed use must be located in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook).
14. Prior to the issuance of a permit, the Department must receive documentation that the proposed use complies with the local acknowledged comprehensive land-use plan. Please submit documentation from the relevant planning jurisdiction that either a) the proposed use is allowed outright or b) that an approved land-use decision has been obtained, and that either no administrative appeals were received, or all such appeals have concluded.

Summary of Initial Review

The appropriation of 0.13 CFS from a well (DESC 60299/L117959) in Dry River Basin for year-round nursery use on 5.0 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.

Mitigation Obligation Options:

To satisfy the mitigation obligation you can either complete a mitigation project as described in the attached administrative rules, or obtain 12.5 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 the mitigation obligation. Please contact Laura Wilke (503.986.0884) for further information on mitigation projects, forms, and specific requirements to be included in the 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 the application and receive a refund (minus a \$225 processing charge per application). To accomplish this you must notify the Department in writing by **Friday, March 4, 2016**. For your convenience you may use the enclosed "STOP PROCESSING" form.

To Proceed With The Application:

If you choose to proceed with the application, you do not have to do anything at this time. The 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 devices, and recording/reporting of annual water use 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 device in good working order.
- B. The permittee shall allow the watermaster access to the device; provided however, where any device is located within a private structure, the watermaster shall request access upon reasonable notice.
- C. The permittee shall keep a complete record of the volume of water diverted each month, and shall submit a report which includes 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.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

Static Water Level Conditions

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 Department may require the discontinuance of groundwater use, 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.

Groundwater Mitigation Conditions

1. Mitigation Obligation: 12.5 AF of mitigation water in the General Zone of Impact (located anywhere in the Deschutes Basin above the Madras gage, which is located below Lake Billy Chinook).
2. Mitigation Source: obtain 12.5 AF 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 General 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 groundwater permit, or subsequent certificate(s), proposing to deny any permit extension application for the groundwater permit, and proposing to cancel the groundwater 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 groundwater 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 Kim French. If you have any questions about any of the statements contained in this document I can be reached at 503-986-0816 or kim.r.french@wrdd.state.or.us. Please have the 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 "Jim Lund". The signature is fluid and cursive, with a prominent loop at the end.

Water Rights Application Caseworker

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

G-18175
WAB 5-30530501
POU 5-30530501
GW

Application Fact Sheet

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

Application Number: G-18175

Applicant: ELITE SOIL LLC, 62870 JOHNSON RANCH RD, BEND OR 97701

County: DESCHUTES

Watermaster: District 11, Jeremy T. Giffin

Priority Date: DECEMBER 14, 2015

Source: A WELL (DESC 60299/L117959) IN DRY RIVER BASIN

Use: NURSERY USE ON 5.0 ACRES

Quantity: 0.50 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Point of Appropriation:

| Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------|------|-----|-----|-------|---|
| 17 S | 14 E | WM | 23 | SW SW | 900 FEET NORTH AND 790 FEET EAST FROM SW CORNER, SECTION 23 |

Place of Use:

| Twp | Rng | Mer | Sec | Q-Q | Acres |
|------|------|-----|-----|-------|-------|
| 17 S | 14 E | WM | 23 | SW SW | 5.0 |

Public Notice Date: Tuesday, February 23, 2016

14-day Stop Processing Deadline: Friday, March 4, 2016

End of 30-day Comment Period: Thursday, March 24, 2016

Mailing List for IR Copies

Application: G-18175

IR Date: February 19, 2016

Original mailed to:

Applicant: ELITE SOIL LLC
62870 JOHNSON RANCH RD
BEND OR 97701

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

Copies sent to:

1. WRD - File G-18175
2. WRD - Water Availability: Shawn Ortiz-Turner
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.):

1. John Short, WRS LLC, PO Box 1830, Bend, OR 97709
2. Central Oregon Irrigation District, 1055 SW Lake Ct, Redmond OR 97756

Caseworker: Kim French

**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): ELITE SOIL LLC

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

Application number: G-18175

Proposed Use: NURSERY USE ON 5.0 ACRES

Period of Use: YEAR-ROUND

Rate requested: 0.50 CUBIC FOOT PER SECOND

Volume requested: 25.0 ACRE-FEET

Mitigation Obligation: 12.5 ACRE-FEET

Zone of Impact: General 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