



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

July 29, 2016

BILL RILEY
3350 SW 53RD COURT
REDMOND, OR 97756

Reference: File G-18212

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 0.23 cubic foot per second (CFS) of water from A well, tributary to Deschutes River Basin, for irrigation of 18.0 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 a well, tributary to Deschutes River Basin, for irrigation is allowable under the Deschutes Basin Program (OAR 690-505-0400).
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 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 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 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 Department has determined the mitigation obligation is 32.4 acre-feet (AF) annually. The required mitigation is based on the appropriation of 0.23 cubic foot per second of water for irrigation of 18.0 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 Middle Deschutes Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125).

Summary of Initial Determinations

The appropriation of 0.23 cubic foot per second from (CFS) of water from A well, tributary to Deschutes River Basin, for irrigation of 18.0 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 32.4 qualifying mitigation credits from an individual or mitigation bank. If you are interested in obtaining mitigation credits, you may want to contact Laura Wilke at 503-986-0884 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 OWRD's Laura Wilke, Flow Restoration Program Coordinator at 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, August 12, 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.

Groundwater Mitigation Conditions:

- 1. Mitigation Obligation: 32.4 AF of mitigation water in the Middle Deschutes Zone of Impact (located anywhere in the Deschutes Basin above river mile 125).
- 2. Mitigation Source: obtain 32.4 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 Middle 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 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 Lisa Graham. 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 503-986-0808 or Elisabeth.a.graham@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,



Water Rights Application Caseworker

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

G-18212
WAB 5-30530112
POU 5-30530112
GW

Application Fact Sheet

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

Application Number: G-18212

Applicant: BILL RILEY, 3350 SW 53RD COURT, REDMOND, OR 97756

County: DESCHUTES

Watermaster: District 11, Jeremy T. Giffin

Priority Date: MARCH 14, 2016

Source: A WELL, TRIBUTARY TO DESCHUTES RIVER BASIN

Use: IRRIGATION OF 18.0 ACRES

Quantity: 0.23 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
14 S	12 E	WM	26	SW NW	300 FEET NORTH AND 50 FEET EAST FROM W1/4 CORNER, SECTION 26

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
14 S	12 E	WM	26	SW NW	16.00
14 S	12 E	WM	26	SE NW	2.00

Public Notice Date: Tuesday, August 2, 2016

14-day Stop Processing Deadline: Friday, August 12, 2016

End of 30-day Comment Period: Thursday, September 1, 2016

**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): BILL RILEY

Applicant's agent (if applicable): JOHN SHORT, WATER RIGHT SERVICES LLC

Application number: G-18212

Proposed Use: irrigation OF 18.0 ACRES

Period of Use: MARCH 1 THROUGH OCTOBER 31

Rate requested: 0.23 cubic foot per second

Volume requested: 54 ACRE-FEET

Mitigation Obligation: 32.4 ACRE-FEET

Zone of Impact: Middle 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:

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

Deschutes Basin Ground Water Mitigation Rules

690-505-0600 Purpose and Applicability of Ground Water Mitigation Rules

- (1) In the Deschutes Basin, a joint study of ground water resources by the Department and U.S. Geological Survey has established a hydraulic connection between ground water and surface water within the Deschutes Ground Water Study Area (Ground Water Hydrology of the Upper Deschutes Basin, Oregon, Water Resources Investigations Report 00-4162, Portland, Oregon, 2001). Based on the conclusions of the study, the Department has determined that ground water appropriations within the Deschutes Ground Water Study Area have the potential for substantial interference with surface water rights as described in OAR chapter 690, division 9, and will measurably reduce scenic waterway flows as defined in ORS 390.835 unless mitigation is provided pursuant to the rules in this Division.
- (2) These rules implement Senate Bill 1033 (1995, Legislative Assembly), codified as ORS 390.835 to provide for mitigation of impacts to scenic waterway flows and senior water rights while allowing additional qualifying appropriations of ground water in the Deschutes Basin.
- (3) The rules in OAR 690-505-0610 through 690-505-0630 establish the mitigation process for pending and future ground water permit applications in the Deschutes Ground Water Study Area. Without mitigation, the Department is required by law to deny ground water permit applications in the Deschutes Ground Water Study Area.
- (4) Holders of existing ground water permits and associated certificates in the Deschutes Ground Water Study Area issued after July 19, 1995, with priority dates after April 19, 1991, that are specifically conditioned to allow regulation for measurable reduction of a state scenic waterway and that choose to provide mitigation meeting the standards of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9). A ground water permit or certificate for which a mitigation project has been approved by the Department prior to the effective date of these rules shall not be subject to regulation for scenic waterway flows pursuant to ORS 390.835(9).

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0605 Definitions

The following definitions apply to OAR 690-505-0500 through 690-505-0630:

- (1) "Allocation of conserved water" means an application approved under ORS 537.455 to 537.500 and OAR chapter 690, division 18 in which the Department may award mitigation credits for the applicant's portion of the conserved water that is legally protected for instream use resulting from conservation measures, such as canal lining and piping or other improvements in the technology or method for diverting, transporting, applying, or recovering water.
- (2) "Consumptive use" means the Department's determination of the amount of a ground water appropriation that does not return to surface water flows in the Deschutes Basin due to transpiration, evaporation or movement to another basin.
- (3) "Department" means the Oregon Water Resources Department.

(4) "Deschutes Ground Water Study Area" means the Deschutes River Basin drainage area indicated in Exhibit 1.

(5) "General zone of impact" means anywhere above the Madras gage on the Lower Deschutes River or, for wells determined by the Department to have a localized impact on surface water, anywhere within the impacted subbasin of the Deschutes River including the Metolius, Squaw Creek, Little Deschutes, and Crooked River subbasins as identified by the Department.

(6) "Ground water use subject to transfer" means a ground water use established by:

(a) A water right certificate;

(b) A water use permit for which a request for issuance of a water right certificate under ORS 537.250 has been received and approved by the Water Resources Commission under ORS 537.250; or

(c) A transfer application for which an order approving the change has been issued under ORS 540.530 and for which proper proof of completion of the change has been filed with the Water Resources Commission.

(7) "Measurable reduction" as defined in ORS 390.835(12) means that ground water use will individually or cumulatively reduce surface water flows within the scenic waterway in excess of a combined cumulative total of one percent of the average daily flow or one cubic foot per second, whichever is less.

(8) "Mitigation" means to moderate the impacts to surface water flows from a ground water appropriation by obtaining mitigation credits or by providing for implementation of a mitigation project that results in mitigation water.

(9) "Mitigation bank" means an entity that is authorized by the Water Resources Commission to obtain, hold and assign mitigation credits pursuant to Chapter 659, 2001 Oregon Laws (HB 2184) and OAR chapter 690, division 521.

(10) "Mitigation credit" is a means of accounting for mitigation water, calculated in acre-feet, made available by a mitigation project. One mitigation credit is equal to one acre-foot of mitigation water. Mitigation credits are determined and awarded by the Department under Chapter 659, 2001 Oregon Laws (HB 2184) and OAR 690, division 521.

(11) "Mitigation obligation" means the amount of mitigation water needed for the appropriation of ground water as determined by the Department, calculated in acre-feet.

(12) "Mitigation project" means a project approved by the Department that results in mitigation water.

(13) "Mitigation water" means water that is legally protected for instream use from implementation of a mitigation project, calculated in acre-feet.

[ED. NOTE: Exhibits referenced are available from the agency.]

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0610 Mitigation Obligation and Mitigation Standards

(1) Except as provided in section (6), (7) and (8) of this rule, the Department may only approve a ground water permit application in the Deschutes Ground Water Study Area if mitigation is provided pursuant to these rules.

(2) A mitigation obligation may be satisfied by obtaining mitigation credits or by providing for implementation of a mitigation project.

(3) Mitigation projects may include:

(a) The allocation of conserved water provided under ORS 537.455 to 537.500 and OAR chapter 690, division 18, where the applicant's portion of the conserved water is allocated and legally protected for instream use;

(b) The transfer of an existing water right to an instream use if the water right to be transferred is also lawfully eligible for transfer to another out-of-stream use, and for mitigation banks, the time-limited transfer or lease of an existing water right to instream use under ORS 537.348 and OAR chapter 690, division 77;

(c) A permit to appropriate water for the purpose of artificial recharge of a ground water reservoir pursuant to ORS 537.135 and OAR chapter 690, division 350;

(d) A secondary permit to use stored water from an existing reservoir obtained pursuant to ORS 537.130 to 537.211 and OAR chapter 690, division 310, provided the secondary permit is for instream use; or

(e) Other projects approved by the Department that result in mitigation water.

(4) Mitigation water must be provided within the general zone of impact identified by the Department, legally protected for instream use prior to permit issuance, and committed for the life of the permit and subsequent certificate(s).

(5) The amount of mitigation needed to satisfy a mitigation obligation shall be:

(a) One mitigation credit per acre-foot of consumptive use based on the ground water permit application; or

(b) Mitigation water equal to the volume of consumptive use of the ground water permit application, calculated in acre-feet.

(6) These rules do not preclude any person from submitting evidence, which will be considered by the Department, that a proposed or existing ground water appropriation does not have the potential for substantial interference with surface water rights as described in OAR chapter 690, division 9, and will not measurably reduce scenic waterway flows under ORS 390.835.

(7) If the Department finds, based on a preponderance of evidence, that a specific ground water permit application does not have the potential for substantial interference with surface water under OAR chapter 690, division 9, and will not result in a measurable reduction of scenic waterway flows under ORS 390.835, the Department shall not require mitigation for that specific ground water use.

(8) Notwithstanding section (1) of this rule, if the impact of use under a ground water permit application is completely offset by a proposed voluntary cancellation of an existing ground water use subject to

transfer, such that impact on surface waters from the new ground water use is the same as, or less than, impact on surface waters from the existing ground water use subject to transfer, the ground water permit application may be approved without additional mitigation once the proposed voluntary cancellation is complete.

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0615 Notice of Mitigation Obligation

(1) The Department shall provide notice of the mitigation obligation to ground water permit applicants. The notice shall:

- (a) State that mitigation must be provided before a permit may be issued for a water right application approved under ORS 537.621 to 537.626;
- (b) Identify the amount and location of the mitigation obligation; and
- (c) Identify mitigation banks as potential means of providing mitigation.

(2) For ground water permit applications pending before the Department as of the effective date of this rule, the notice of mitigation obligation and the applicant's response to the mitigation obligation shall be incorporated into the water right application process under OAR chapter 690, division 310.

(3) For ground water permit applications submitted after the effective date of this rule, the notice of mitigation obligation shall be included in the initial review report under OAR 690-310-0080.

(4) Ground water permit applicants receiving notice under this rule shall, through the water right application process under OAR chapter 690, division 310, submit proposed mitigation to the Department that meets the requirements of 690-505-0610(2)-(5).

(5) Ground water permit applicants proposing to implement a mitigation project shall identify and describe the project and, in any application associated with the mitigation project, identify that the project is being used to satisfy a mitigation obligation.

(6) If the amount of mitigation identified by the ground water permit applicant is different from that stated in the Department's notice of mitigation obligation, the applicant shall provide an explanation of why the amount is different and identify appropriate information proposed to be used to determine the equivalent consumptive use for the proposed ground water appropriation.

(7) The Department shall work in cooperation with a representative of the Oregon Department of Fish and Wildlife, Oregon State Parks and Recreation Department, Oregon Department of Environmental Quality and Division of State Lands to enhance the resource benefits and make the most effective use of mitigation projects and mitigation water.

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0620 Ground Water Permit and Final Order Conditions

(1) Any final order approving a ground water permit application and the associated permit and certificate issued subsequent to a notice of mitigation obligation under 690-505-0615(1) shall, as appropriate:

- (a) Specify the amount and location of the mitigation obligation;
- (b) Require that mitigation water be legally protected instream for instream use before the permit will be issued;
- (c) Require that mitigation water be committed for the life of the permit and subsequent certificate;
- (d) Require installation of a measuring device, monthly recording of water use and annual reporting of water use;
- (e) If the mitigation is from a secondary right for stored water from a storage project not owned or operated by the ground water permit applicant, require maintenance of a contract for the use of the water with the owner/operator of the storage project;
- (f) Provide for regulation and/or cancellation if the required mitigation is not maintained; and
- (g) Require additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

(2) Any final order issued under OAR chapter 690, division 310 approving a ground water permit application subject to these rules, that is contingent upon mitigation being provided before a permit may be issued, shall expire 5 years after issuance unless the required mitigation is provided.

(3) Failure to comply with conditions required under section (1) of this rule shall result in the Department regulating the associated ground water right, proposing to deny any permit extension application for the associated right, and proposing to cancel the associated permit.

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0625 Municipal and Quasi-municipal Ground Water Permit Applications

(1) 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 that mitigation is provided prior to each stage of development of the permit and in accordance with the standards under 690-505-0610(2)-(5). Municipal or quasi-municipal ground water permit applicants interested in incremental mitigation shall:

- (a) Submit an incremental development plan to the Department as part of the response to a notice of mitigation obligation under OAR 690-505-0615. The plan shall indicate a time schedule for the development of the permit and indicate proposed sources of mitigation that will be obtained and used prior to each stage of development;

(b) Report to the Department the progress of implementing the incremental development plan in accordance with a reporting schedule identified in the final order approving the water right permit under OAR 690-310-0200; and

(c) Submit a new or updated Water Management and Conservation Plan pursuant to OAR chapter 690, division 86.

(2) Applicants or permit holders subject to this rule may request that the Department approve changes to an incremental development plan and related mitigation obligation. A permit holder subject to this rule shall not increase the rate or amount of water diversion before increasing the corresponding required mitigation.

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02

690-505-0630 Additional Findings of Department When Mitigation is Provided

(1) If a ground water permit applicant satisfies the mitigation obligation, notwithstanding OAR chapter 690, division 9, for the purposes of OAR chapter 690, divisions 33, 310, 400, and 410, the proposed ground water appropriation is deemed to be a ground water appropriation that does not have the potential for substantial interference with surface water.

(2) The Department shall include the Oregon State Parks and Recreation Department and the Division of State Lands in the interagency review team process under OAR chapter 690, division 33, and use the interagency review team process to seek agency input on ground water permit applications and mitigation projects in the Deschutes Ground Water Study Area.

Stat. Auth.: ORS 536.027 & ORS 390.835

Stats. Implemented: ORS 390.835, Ch. 659 2001 OL HB 2184

Hist.: WRD 3-2002, f. & cert. ef. 9-27-02