

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE STATE OF OREGON**

In the Matter of Water Rights Application,)
G-18175, Deschutes County)

SUPERSEDING FINAL ORDER

Appeal Rights

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 183.484. Any petition for judicial review must be filed within the 60 day time period specified by ORS 183.484(2). Pursuant to ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or petition the Director for reconsideration of this order. A petition for reconsideration may be granted or denied by the Director, and if no action is taken within 60 days following the date the petition was filed, the petition shall be deemed denied. This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law.

Findings of Fact

1. On December 14, 2015, Elite Soil LLC submitted an application to the Department for a water use permit.
2. The Department issued a Proposed Final Order on July 11, 2017. The protest period closed August 25, 2017, and no protest was filed.
3. As required by OAR 690-505-0615, the applicant must submit mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, a permit shall not be issued until the applicant provides documentary evidence that mitigation water, in an amount satisfying the mitigation obligation, is legally protected instream.
4. On September 19, 2017, the Department issued a Final Order approving Application G-18175 and a draft permit. Subsequently, the Department discovered the September 19, 2017 Final Order erroneously stated that the mitigation obligation for the proposed use would be 76.0 acre-feet (AF). On July 13, 2017, the applicant's agent amended the application to reduce the commercial use to 44.4 AF per year. This reduction, with the nursery use on 5.0 acres, would reduce the mitigation obligation to 9.16 AF, which must be provided in the General Zone of Impact, located anywhere in the Deschutes Basin above the Madras gage, which is below Lake Billy Chinook.
5. The applicant has not submitted documentary evidence that satisfactory mitigation has been obtained.

Conclusions of Law

1. The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Order

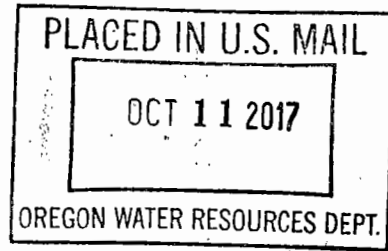
The September 17, 2017 Final Order is superseded by this document and is of no further force or effect.

Application G-17637 therefore is approved with the above modifications. Upon submission of documentary evidence that satisfactory mitigation has been obtained, a permit shall be issued authorizing the proposed water use.

This Final Order shall expire 5 years after issuance unless the required mitigation is provided. OAR 690-505-0620(2).

DATED *Oct 10, 2017*


Dwight French, Water Right Services Division Administrator
for Thomas M. Byler, Director



This order 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@oregon.gov.

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 Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ELITE SOIL LLC
62870 JOHNSON RANCH RD
BEND OR 97701

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-18175

SOURCE OF WATER: A WELL (DESC 60299/L117959) WITHIN DRY RIVER BASIN

RATE AND USE: 0.50 CUBIC FOOT PER SECOND (CFS), FURTHER LIMITED TO 25.0 ACRE-
FEET (AF) ANNUALLY FOR NURSERY USE ON 5.0 ACRES AND 44.4 AF ANNUALLY FOR
COMMERCIAL USES

DATE OF PRIORITY: DECEMBER 14, 2015

PERIOD: YEAR-ROUND

Authorized Point of Diversion:

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

Authorized Place of Use:

	Twp	Rng	Mer	Sec	Q-Q	Acres
NURSERY USE	17 S	14 E	WM	23	SW SW	5.00
COMMERCIAL USE	17 S	14 E	WM	23	SW SW	

The amount of water used for nursery use under this right, together with the amount secured under any other right existing for the same lands, is limited to 0.15 CFS per acre and 5.0 AF per acre per year. For irrigation of containerized nursery plants, the amount of water diverted under this right, together with the amount secured under any other right existing for the same lands, is limited to ONE-FORTIETH of one CFS and 5.0 AF per acre per year. For irrigation of in-ground nursery plants, the amount of water diverted under this right, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one CFS and 2.5 AF per acre per year. The use of water for nursery use may be made at any time, during the period of allowed use specified above, that the use is beneficial. For irrigation of any other crop, the amount of water diverted under this right, together with the amount secured under any other right existing for the same lands, is limited to ONE-EIGHTIETH of one CFS and 2.5 AF per acre during the irrigation season of each year.

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: 9.16 acre-feet of mitigation water in the General Zone of Impact.
2. Mitigation Source: 9.0 mitigation credits, associated with Mitigation Project MP-25, which is a permanent instream transfer. 0.16 mitigation credits will be purchased from another mitigation project.
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 appropriation has increased beyond that used to compute the volume of mitigation water originally.
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 mitigation required is maintained.

STANDARD CONDITIONS

1. Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

3. 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.
4. The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.
5. Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.
6. Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every ten years thereafter.
7. This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best-practice technologies or conservation practices to achieve this end.
8. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged comprehensive land-use plan.
9. Completion of construction and complete application of the water to the use shall be made within five years of permit issuance. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.
10. Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT – NOT A PERMIT

Dwight French, Water Right Services Division Administrator
for, Thomas M. Byler, Director