



# Oregon

Kate Brown, Governor

## Water Resources Department

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October 20, 2017

CRYSTAL CANOPY CULTIVATORS LLC  
63845 DESCHUTES MARKET RD  
BEND OR 97701

Reference: File G-18526

## 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 0.045 cubic foot per second (CFS) of water, further limited to 1.0 acre-foot (AF) per year, from Well 1 (DESC 57132/L78621) within the Deschutes River Basin for year-round nursery use on 4.77 acres.
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 57132/L78621) within the Deschutes River Basin for nursery use 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 rights and the resource.
5. The Department has determined, based upon OAR 690-009, 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 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 Groundwater 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 1.0 AF annually based on the annual volume of 1.0 AF for nursery use. The mitigation obligation is calculated based on a consumptive-use factor of 100% of annual volume.
11. The Department has determined that mitigation for the proposed use must be located in the General Zone of Impact, located anywhere above the Madras gage on the Lower Deschutes River.
12. The applicant provided information that satisfies the mitigation obligation for this application. Instream Transfer T-10730 (Mitigation Project MP-124) was approved on June 3, 2011. MP-124 provides 1.0 mitigation water credit in the General Zone of Impact as mitigation for proposed uses in this application.
13. The Department has determined that Well 1 (DESC 57132/L78621) does not meet current minimum well construction standards. The depth of the upper annular seal is inadequate. In order to meet minimum well construction standards, the well must be cased and sealed with an approved grout to a minimum depth of 120 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, 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 Joel Jeffery of the Department's Well Construction and Compliance Section at 503-986-0852 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 may 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 groundwater supply (OAR 690-200).

#### **Summary of Initial Determinations**

**The appropriation of 0.045 CUBIC FOOT PER SECONDS of water, further limited to 1.0 AF per year from Well 1 (DESC 57132/L78621) within the Deschutes River Basin for year-round nursery use is allowable because it has been demonstrated that sufficient mitigation water is in place for this application under OAR 690-505-0610, contingent upon the submittal of evidence demonstrating compliance with current minimum well construction standards for Well 1 (DESC 57132/L78621).**

#### **Withdrawal Refunds:**

If you choose not to proceed, you may withdraw the application and receive a refund (minus a \$260 processing charge per application). To accomplish this, you must notify the Department in writing by

**Friday, November 3, 2017.** 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: 1.0 AF of mitigation water in the General Zone of Impact located anywhere above the Madras gage on the Lower Deschutes River.
- 2. Mitigation Source: 1.0 mitigation credit, associated with Mitigation Project MP-124 (Transfer T-10730), which is a permanent instream transfer.
- 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).

Irrigation allowed under this permit shall be by drip irrigation or by an equally efficient method.

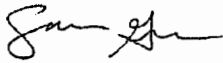
### **Scenic Waterway Condition**

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 Scott Grew. 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 [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov) or 503-986-0899. Please reference the application number available if you contact me. 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,



Scott Grew  
Water Rights Application Specialist

enclosures: Stop Processing Request Form

G-18526  
WAB 5-30530112  
POU 5-30530112  
GW

# Application Fact Sheet

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

Application Number: G-18526

Applicant: CRYSTAL CANOPY CULTIVATORS LLC, 63845 DESCHUTES MARKET RD, BEND  
OR 97701

County: DESCHUTES

Watermaster: District 11, Jeremy T. Giffin

Priority Date: JUNE 19, 2017

Source: Well 1 (DESC 57132/L78621) in Deschutes River Basin

Use: NURSERY USE ON 4.77 ACRES

Period of Use Requested: YEAR-ROUND

Rate requested: 0.045 CUBIC FOOT PER SECOND

Basin Name & Number: Deschutes, #5

Stream Index Reference: NA

Point of Appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	12 E	WM	11	SE NW	580 FEET NORTH AND 300 FEET WEST FROM C1/4 CORNER, SECTION 11

Place of Use:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	12 E	WM	11	SE NW	4.77

**Public Notice Date: Tuesday, October 18, 2017**

**14-day Stop Processing Deadline: Friday, November 3, 2017**

**End of 30-day Comment Period: Thursday, November 23, 2017**