

**Oregon Water Resources Department  
Water Right Services Division**

Water Right Application G-18526 in the )  
name of CRYSTAL CANOPY )  
CULTIVATORS LLC )

FINAL ORDER

**Summary:** Order approving Application G-18526 with draft permit attached.

***Authority***

The application was processed in accordance with Oregon Revised Statute (ORS) 537.615 through 537.628, and 390.826, and Oregon Administrative Rule (OAR) Chapter 690, Divisions 5, 8, 9, 33, 300, 310, 400, 410 and 505. These statutes and rules can be viewed on the Oregon Water Resources website: <http://www.oregon.gov/owrd/pages/law/index.aspx>.

The Department's main page is <http://www.oregon.gov/OWRD/pages/index.aspx>.

This Final Order is issued pursuant to ORS 537.625 and OAR 690-310-0200.

**FINDINGS OF FACT**

The findings of fact in the Proposed Final Order issued June 26, 2018 are incorporated herein; with the following modification:

- a. The Department has omitted the paragraph describing the amount of water allowed for nursery operations.
1. On June 19, 2017, Crystal Canopy Cultivators LLC submitted an application to the Department for a water use permit.
2. The Department issued a Proposed Final Order on June 26, 2018.
3. The protest period closed August 10, 2018, and no protest was filed.
4. 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.

**Hearing and Appeal Rights**

This is a Final Order in other than contested case. This order is subject to judicial review under ORS 536.075 and 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 OAR 137-004-0080 you may 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.

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed. Only the applicant or protestant may appeal (ORS 537.170(7)(b)).

5. The mitigation obligation for the proposed use is 1.0 acre-foot, which must be provided 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.)
6. The applicant has not submitted documentary evidence that satisfactory mitigation has been obtained.

### CONCLUSIONS OF LAW

1. The conclusions of law in the Proposed Final Order issued June 26, 2018 are incorporated herein.
2. The proposed use, as conditioned, will ensure the preservation of the public welfare, safety and health.

NOTE: When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The draft permit is conditioned accordingly.

### ORDER

Application G-18526 is approved. **Upon submission of documentary evidence that satisfactory mitigation has been obtained, a permit consistent with the attached draft permit shall be issued.**

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

If you need to request additional time to submit the required documentation and/or fees, the written request should be received in the Salem Office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED *December 11th, 2018*



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

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- If you have any questions about statements contained in this document, please contact Scott Grew at [scott.a.grew@oregon.gov](mailto:scott.a.grew@oregon.gov) or 503-986-0899.
  - If you have other questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
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STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

CRYSTAL CANOPY CULTIVATORS LLC  
63845 DESCHUTES MARKET RD  
BEND OR 97701

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

APPLICATION FILE NUMBER: G-18526

SOURCE OF WATER: WELL 1 (DESC 57132/L78621) IN DESCHUTES RIVER BASIN

PURPOSE OR USE: NURSERY USE ON 4.77 ACRES, FURTHER LIMITED TO 1.0 ACRE-FOOT ANNUALLY

MAXIMUM RATE: 0.045 CUBIC FOOT PER SECOND

PERIOD OF USE: JANUARY 1 THROUGH DECEMBER 31

DATE OF PRIORITY: JUNE 19, 2017

WELL LOCATION:

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

THE PLACE OF USE IS LOCATED AS FOLLOWS:

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

**1. 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 used each month, and shall submit an annual 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.

- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

## 2. **Annual Measurement Condition:**

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 water user shall discontinue use of, 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.

**3. Well Identification Tag Condition:**

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

**4. Groundwater Mitigation Conditions:**

- a. Mitigation Obligation: 1.0 acre-foot of mitigation water 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).
- b. Mitigation Source: 1.0 mitigation credit, associated with Mitigation Project MP-124 (Transfer T-10730), which is a permanent instream transfer.
- c. Mitigation water must be legally protected instream 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, 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.
- d. 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.
- e. 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.
- f. 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).

**5. 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.

### **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 surface water or 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 well(s) shall be constructed and maintained in accordance with the General Standards for the Construction and Maintenance of Water Supply Wells in Oregon. The works shall be equipped with a usable access port 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 to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data 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 practical 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 land-use plan.
9. Construction of the well shall begin within five years of the date of permit issuance. The deadline to begin construction may not be extended. This permit is subject to cancellation proceedings if the construction deadline to begin is missed.

10. Complete application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.
11. Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

**DRAFT - THIS IS NOT A PERMIT**

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