Oregon
Kate Brown, Governor

Water Resources Department
725 Summer St NE, Suite A
Salem, OR 97301
(503) 986-0900
Fax (503) 986-0904

Water Right Application Initial Review

September 6, 2019

TIORATI MGT LLC
70 SW CENTURY DR., SUITE 100-384
BEND OR 97702

Reference: Application G-18834

This document is to inform you of the preliminary analysis of the water-use permit application and to describe your options. In determining whether an application may be approved, the Department must consider the factors listed below, all of which must be favorable to the proposed use if it is to be allowed. Based on the information supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Preliminary Determinations (Oregon Administrative Rule (OAR) 690-310-0080)

1. Application G-18834 proposes the appropriation of 0.10 cubic foot per second (CFS), further limited to 5.0 acre-feet (AF) of water annually, from a well in Deschutes River Basin for year-round nursery use on 40.1 acres.

2. The proposed use is not prohibited by law or rule except where otherwise noted below.

3. The appropriation of water for nursery use is allowed 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 use will have the potential for substantial interference with Crooked River. Therefore, in accordance with OAR 690-410-0070(1) and 690-400-0010(11)(a)(B), surface water availability must be considered.

6. Surface water is not available at any time of the year due to senior water rights on Crooked 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 690-033-120(2)(b))

8. The proposed well is located within the Deschutes Groundwater Study Area. By law, the Department is required to deny the application unless mitigation is provided. The unfavorable finding of the Initial Review may be overcome if mitigation is provided pursuant to the Deschutes Groundwater Mitigation Rules. (OAR 690-505-0500 to -0630)

9. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS cap on the amount of new groundwater use that may be allocated within the Deschutes Groundwater Study Area. Under the current rules, once the cap is reached, the Department will not be able to propose issuance on any new permits.

10. The Department has determined the mitigation obligation is 5.0 AF annually. The required mitigation is based on the appropriation of 5.0 AF of water annually for nursery use on 40.1 acres. The mitigation obligation is calculated based on a consumptive-use factor of 100% of the total annual volume proposed.

11. The Department has determined that mitigation for the proposed use must be located in the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).

12. The proposed use is located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute (ORS) 390.826. The Department has determined, based upon OAR 690-310-0260, that there is a preponderance of evidence that the proposed use of groundwater 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.

13. Documentation has been submitted acknowledging the land use information request was received by the local Planning Department.

Summary

The appropriation of 0.10 CFS, further limited to 5.0 AF of water annually, from a well in Deschutes River Basin for nursery use on 40.1 acres is not allowable. However, if you provide sufficient mitigation water to satisfy the mitigation obligation of 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 5.0 qualifying mitigation credits from an individual or mitigation bank. If you are interested in obtaining mitigation credits, you may want to contact Sarah Henderson, Flow Restoration Program Coordinator, 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 Sarah Henderson, 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.

At this time, you must decide whether to proceed or to withdraw the application.

Proceed

If you choose to proceed with the application you do not have to notify the Department. The application will 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.

Withdraw

You may withdraw the application and receive a refund (minus a $260 processing charge per application). You must notify the Department **in writing** by **Friday, September 20, 2019**. For your convenience you may use the enclosed "STOP PROCESSING" form.

If a Permit is Issued it will Likely Include the Following Conditions:

1. 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.

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 not be valid, unless the Department authorizes the change in writing.

3. **Water Use Measurement, Recording, and Reporting Condition:**

    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.

4. **Static Water Level 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.

5. **Dedicated Measuring Tube Condition:**

   Wells with pumps shall be equipped with a minimum 3/4-inch diameter, unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. If a pump has been installed prior to the issuance of this permit, and if static water levels and pumping levels can be measured using an electrical tape, then the installation of the measuring tube can be delayed until such time that water levels cannot be measured or the pump is repaired or replaced.

6. **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.

7. **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.

Groundwater Mitigation Conditions

1. Mitigation Obligation: 5.0 AF of mitigation water in the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).

2. Mitigation Source: obtain 5.0 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 Crooked River 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

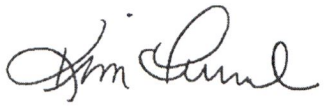
for the groundwater permit, and proposing to cancel the groundwater permit, or subsequent certificate(s).

The water source identified in the application may be affected by an Agricultural Water Quality Management Area Plan. These plans are developed by the Oregon Department of Agriculture (ODA) with the cooperation of local landowners and other interested stakeholders, and help to ensure that current and new appropriations of water are done in a way that does not adversely harm the environment. You are encouraged to explore ODA's Water Quality Program web site at http://www.oregon.gov/ODA/programs/NaturalResources/Pages/AgWaterQuality.aspx to learn more about the plans and how they may affect the proposed water use.

If you have any questions:

Feel free to contact me at Kim.R.French@oregon.gov or 503-986-0816 if you have any questions regarding the contents of this letter or the application. Please include the application number in all correspondence. General questions about water rights and water use permits should be directed to our customer service staff at 503-986-0900. When corresponding by mail, please use this address: Kim French, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266. Our fax number is 503-986-0901.

Sincerely,



Kim French
Water Right Application Specialist
Oregon Water Resources Department

Enclosures: Application Process Description, Stop Processing Request Form, Response to Notice of Mitigation Obligation; and Deschutes Mitigation Rules

G-18834

APPLICATION FACT SHEET

Application File Number: G-18834

Applicant: TIORATI MGT LLC

County: DESCHUTES

Watermaster: JEREMY GIFFIN, 11, SCR

Priority Date: JUNE 12, 2019

Source: A WELL IN DESCHUTES RIVER BASIN

Use: NURSERY USE ON 40.1 ACRES

Quantity: 0.10 CUBIC FOOT PER SECOND, FURTHER LIMITED TO 5.0 ACRE-FEET ANNUALLY

Basin Name & Number: DESCHUTES, #5

WAB: CROOKED R > DESCHUTES R - AB OSBORNE CAN

WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
17 S	13 E	WM	30	SW NE	1084 FEET NORTH AND 608 FEET EAST FROM C1/4 CORNER, SECTION 30

PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q	Acres
17 S	13 E	WM	30	SW NE	40.1

PUBLIC NOTICE DATE: Tuesday, September 10, 2019

14 DAY STOP PROCESSING DEADLINE DATE: Friday, September 20, 2019

30 DAY COMMENT DEADLINE DATE: Thursday, October 10, 2019

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): TIORATI MGT LLC

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

Application number: G-18834

Proposed Use: NURSERY USE ON 40.1 ACRES

Period of Use: JANUARY 1 THROUGH DECEMBER 31

Rate requested: 0.10 CUBIC FOOT PER SECOND

Volume requested: 5.0 ACRE-FEET

Mitigation Obligation: 5.0 ACRE-FEET

Zone of Impact: Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8)

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: Kim French
Oregon Water Resources Department
725 Summer St NE Suite A
Salem OR 97301-1266

APPLICATION PROCESS DESCRIPTION FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

In order to use the waters of Oregon, an application must be submitted and a permit obtained from the Water Resources Department. The water must be used for beneficial purpose without waste. For more information about water right topics, weekly public notice, forms and fees please visit our web site at **www.wrd.state.or.us**

1. Pre-application considerations

- Follow instructions in the application packet.
- If you have questions about completing an application or would like to arrange a pre-application conference contact the Department's Water Rights Customer Service Group at (503) 986-0801.

2. Application filing

- Application with fee is received by the Department.
- Department determines completeness of application.
- If use is not allowed by statute (ORS 538), the application and fees are returned to the applicant.
- An incomplete application and fees are returned to the applicant.
- Only a complete application receives a tentative priority date, is assigned a caseworker, and moves forward for processing.

3. Initial Review (IR)

- Caseworker reviews application by considering basin plans, water availability, statutory restrictions, and all other appropriate factors.
- Caseworker sends IR report to Applicant.
- Contact the Caseworker if you have questions about the IR.
- Four days after date of the IR, it is included in Department's weekly Public Notice.
- Public comments must be submitted within 30 days after the Public Notice.
- **An administrative hold** may be requested in writing by Applicant.

4. Proposed Final Order (PFO)

- Caseworker evaluates application against required criteria and develops draft permit, if appropriate.
- PFO includes instructions for filing of protests.
- Caseworker considers public comments and mails PFO to Applicant.
- The PFO is included in Department's weekly Public Notice.
- Public protests to the PFO must be submitted within 45 days after the Public Notice.

5. Final Order (FO)

- If no protest is filed, Final Order is issued.

The protest process

If one or more protests are filed, the process consists of:

- settlement discussion;
- contested case hearing;
- proposed Order;
- period of time to file exceptions; or
- Possible hearing by Water Resources Commission.
- Final Order is issued.

Permit holder responsibilities

- Comply with all water use conditions of the permit.
- Advise Department of address change or assignment to new permit holder.
- If need arises, request extension of time or authorize cancellation of permit.
- Submit timely claim of beneficial use (COBU) to the Department.
- Most permits require COBU to be prepared by a Certified Water Right Examiner.
- Permits may be canceled by the permit holder or by the Department for failure to comply with or one or more permit conditions.

STOP PROCESSING REQUEST FORM

FOR GROUNDWATER, SURFACE WATER AND REGULAR RESERVOIR APPLICATIONS

- Stop processing deadline is within 14 days of Initial Review.
- Applicant notification to withdraw Water Right Application **G-18834.**
- After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a $260 examination fee.) I understand that without a valid permit I may not legally use the water as requested in my application.
- Signature _____ Date _____
- Signature _____ Date _____
- Under ORS 537.150 (5) and 537.620 (5) timely submission of this request authorizes that the water right application process be stopped and all filing fees (except $260 examination fee) be returned.
- This notice must be received at Water Resources Department by:

Friday, September 20, 2019

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
725 Summer Street, NE - Suite A,
Salem OR, 97301-1271

Mailing List for IR Copies

Application G-18834

IR Date: September 6, 2019

Copies Mailed

By: _____
(SUPPORT STAFF)

On: _____
(DATE)

Original and map mailed to applicant:

TIORATI MGT LLC
70 SW CENTURY DR SUITE 100-384
BEND OR 97702

Sent via auto email:

1. Agent – John Short - johnshort@usa.com
2. WRD – Watermaster Jeremy Giffin #11

Copies sent to:

1. WRD - File G-18834
2. WRD – Surface Water Section
3. WRD – Sarah Henderson
4. DRC – Genevieve Hubert
5. ODFW District Biologists: Brett Hodgson and Amy Stuart
6. ODFW: Danette Faucera
7. DEQ: Eric Nigg & Bonnie Lamb, Eastern Region
8. DOA: Salem: Jim Johnson & Paul Measeles
9. DSL: Shawn Zumwalt
10. Central Oregon Irrigation District, 1055 SW Lake Court, Redmond, OR 97756

Application Specialist: Kim French