



Oregon

Kate Brown, Governor

Water Resources Department

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Salem, OR 97301

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Water Right Application Initial Review

July 1, 2022

KAMERON DELASHMUTT
PINNACLE UTILITIES, LLC
2447 NW CANYON DR
REDMOND OR 97756

Reference: Application G-19139

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-19139 proposes the appropriation of 9.28 cubic feet per second (CFS) of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7 and Well 8 (DESC 756) in Deschutes River Basin for year-round quasi-municipal use.
2. The proposed use is not prohibited by law or rule except where otherwise noted below.
3. Quasi-municipal use is an allowable use under the Deschutes Basin Program (OAR 690-505-0040).
4. Groundwater is not determined to be over-appropriated; however, is determined to **not be available within the capacity of the resource** as defined in OAR 690-400-0010. Therefore, groundwater is not available for the proposed use.
5. As conditioned, the proposed use of groundwater will avoid injury to existing groundwater rights and the resource.
6. The Department has determined, based upon OAR 690-09, that the proposed groundwater use will have the potential for substantial interference with Deschutes River. Therefore, in accordance with OAR 690-410-0070(1) and 690-400-0010(11)(a), surface water availability must be considered.

7. Surface water is not available at any time of the year due to senior water rights on Deschutes River and downstream waters
8. 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)).
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 proposed use is located above the Deschutes Scenic Waterway, as designated under Oregon Revised Statute 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.
11. Pursuant to OAR 690-505-0600(3), without mitigation, the Department is required by law to deny groundwater permit applications in the Deschutes Ground Water Study Area, due to impacts to scenic waterway flows in the Deschutes River. However, as noted in finding #4, groundwater for the proposed use under this application is not available within the capacity of the groundwater resource. **Therefore, mitigation obtained for this application under the Deschutes Mitigation Program will not overcome the significant impairment to the function or character of the groundwater resource.**
12. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright.
13. The application materials state that the applicant has a Water Management and Conservation Plan (WMCP); however the plan on file with the Department is a draft plan. Although it is unlikely that a permit will be issued, if the Department's findings change and a permit is issued, a WMCP will be required if incremental mitigation is proposed under OAR 690-505-0625(1)(c). For entities under 1,000 in population, a WMCP will be required within five years of permit issuance. For entities over 1,000 in population, a WMCP is required within five years of permit issuance or before use of the second increment of water development, whichever is sooner.

Summary of Preliminary Determinations
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The appropriation of 9.28 CFS of water from Well 1, Well 2, Well 3, Well 4, Well 5, Well 6, Well 7 and Well 8 (DESC 756) in Deschutes River Basin for quasi-municipal use is not allowable.
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At this time, you must decide whether to proceed or to withdraw the application.

- To Proceed - If you choose to proceed with the application you do not have to notify the Department. If the Department's findings change and the outcome of the application is favorable, **you will need to submit a completed Response to Notice of Mitigation Obligation (NOMO) form prior to the issuance of a Proposed Final Order.** The application will be placed

on the Department's Public Notice to allow others the opportunity to comment. After the comment period and receipt of the NOMO form (if applicable), the Department will complete a public interest review and issue a Proposed Final Order.

- To Withdraw - You may withdraw the application and receive a refund (minus a \$310 processing charge per application). You must notify the Department **in writing by July 15, 2022**. For your convenience you may use the enclosed "STOP PROCESSING" form.

Although it is unlikely that a permit will be issued, if the Department's findings change and 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:**
 - 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. **Water Management and Conservation Plan:**

For entities under 1,000 in population, the permittee shall submit a Water Management and Conservation Plan, consistent with OAR 690-086, within five years of permit issuance. For entities over 1,000 in population, a WMCP is required within five years of permit issuance or before use of the second increment of water development, whichever is sooner. The Director may approve an extension of this timeline to complete the required Water Management and Conservation Plan. The timeline for submittal of a plan under this permit does not alter the timelines for submittal of a plan under any other order of the Department. No water may be diverted if a Water Management

and Conservation Plan is not submitted within five years of permit issuance, unless an extension of this time has been approved.

5. Scenic Waterway:

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 subsequently reduced. However, the use of groundwater allowed under the terms of this permit will not be subject to regulation for Scenic Water Way flows, provided the required mitigation is maintained.

6. Well Identification Tag:

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: 6.896 AF of mitigation water in the Middle Deschutes River Zone of Impact (located anywhere in the Middle Deschutes Basin above river mile 125).
2. Mitigation Source: obtain 6.896 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 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> to learn more about the plans and how they may affect the proposed water use.

For Further Information:

Feel free to contact me at Kim.R.French@water.oregon.gov or 503-979-3168 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,

A handwritten signature in black ink, appearing to read "Kim French".

Kim French
Water Right Program Analyst
Oregon Water Resources Department

Enclosure: Response to Notice of Mitigation Obligation
 Stop Processing Request Form

APPLICATION FACT SHEET

Application File Number: G-19139

Applicant: KAMERON DELASHMUTT AND PINNACLE UTILITIES, LLC

County: DESCHUTES

Watermaster: JEREMY GIFFIN, 11, SCR

Priority Date: MAY 24, 2021

Source: WELL 1, WELL 2, WELL 3, WELL 4, WELL 5, WELL 6, WELL 7 AND WELL 8 (DESC 756) IN DESCHUTES RIVER BASIN

Use: QUASI-MUNICIPAL USE

Quantity: 9.28 CUBIC FEET PER SECOND

Basin Name & Number: DESCHUTES, #5

WAB: DESCHUTES R > COLUMBIA R - AB BUCKHORN CAN

WELL LOCATION(S):

POA Name	Twp	Rng	Mer	Sec	Q-Q	Measured Distances
WELL 1	15 S	12 E	WM	28	SE NE	2519 FEET SOUTH AND 578 WEST FROM NE CORNER, SECTION 28
WELL 2	15 S	12 E	WM	28	NW SE	2958 FEET SOUTH AND 2316 FEET WEST FROM NE CORNER, SECTION 28
WELL 3	15 S	12 E	WM	28	SE NW	1752 FEET SOUTH AND 3044 FEET WEST FROM NE CORNER, SECTION 28
WELL 3	15 S	12 E	WM	29	NW SE	1677 FEET NORTH AND 1466 FEET WEST FROM SE CORNER, SECTION 29
WELL 5	15 S	12 E	WM	20	NE SE	205 FEET SOUTH AND 434 FEET WEST FROM E1/4 CORNER, SECTION 20
WELL 6	15 S	12 E	WM	20	SW NE	244 FEET NORTH AND 1667 FEET WEST FROM E1/4 CORNER, SECTION 20
WELL 7	15 S	12 E	WM	17	SE NW	2446 FEET SOUTH AND 1180 FEET WEST FROM N1/4 CORNER, SECTION 17
WELL 8	15 S	12 E	WM	29	NE NE	900 FEET SOUTH AND 850 FEET WEST FROM NE CORNER, SECTION 29

PLACE OF USE:

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	17	NW NE
15 S	12 E	WM	17	SW NE
15 S	12 E	WM	17	NE NW
15 S	12 E	WM	17	SE NW
15 S	12 E	WM	17	SW SW
15 S	12 E	WM	17	SE SW
15 S	12 E	WM	17	NW SE
15 S	12 E	WM	17	SW SE
15 S	12 E	WM	20	NW NE
15 S	12 E	WM	20	SW NE
15 S	12 E	WM	20	NE NW
15 S	12 E	WM	20	NW NW

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	20	SW NW
15 S	12 E	WM	20	SE NW
15 S	12 E	WM	20	NE SW
15 S	12 E	WM	20	NW SW
15 S	12 E	WM	20	SW SW
15 S	12 E	WM	20	NE SE
15 S	12 E	WM	20	SW SE
15 S	12 E	WM	20	SE SE
15 S	12 E	WM	21	SW SW
15 S	12 E	WM	28	NE NE
15 S	12 E	WM	28	NW NE
15 S	12 E	WM	28	SW NE

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	28	SE NE
15 S	12 E	WM	28	NE NW
15 S	12 E	WM	28	NW NW
15 S	12 E	WM	28	SW NW
15 S	12 E	WM	28	SE NW
15 S	12 E	WM	28	NE SW
15 S	12 E	WM	28	NW SW
15 S	12 E	WM	28	NE SE
15 S	12 E	WM	28	NW SE
15 S	12 E	WM	29	NE NE
15 S	12 E	WM	29	NW NE
15 S	12 E	WM	29	SW NE
15 S	12 E	WM	29	SE NE

Twp	Rng	Mer	Sec	Q-Q
15 S	12 E	WM	29	SW NW
15 S	12 E	WM	29	SE NW
15 S	12 E	WM	29	NE SW
15 S	12 E	WM	29	NW SW
15 S	12 E	WM	29	NE SE
15 S	12 E	WM	29	NW SE
15 S	12 E	WM	29	SE SE
15 S	12 E	WM	30	NW NE
15 S	12 E	WM	30	SW NE
15 S	12 E	WM	30	SE NE
15 S	12 E	WM	30	NE NW
15 S	12 E	WM	30	SE NW
15 S	12 E	WM	30	NE SE

PUBLIC NOTICE DATE: July 5, 2022

14 DAY STOP PROCESSING DEADLINE DATE: July 15, 2022

30 DAY COMMENT DEADLINE DATE: August 4, 2022

**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) 986-0900.

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.
- 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.

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-19139**.

After reviewing the Initial Review for my application, I request that processing be stopped and the fees be refunded (minus a \$310 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 \$310 examination fee) be returned.
- This notice must be received at Water Resources Department by:

July 15, 2022

- Return the notice to:

OWRD, Water Right Services Division
STOP PROCESSING
1725 Summer Street, NE - Suite A
Salem OR, 97301-1271
