

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF APPLICATION G-11750)
IN THE NAME OF KLUPENGER NURSERY AND)
GREENHOUSES, INC., FOR A PERMIT TO) FINAL ORDER
APPROPRIATE GROUND WATER BY MEANS)
"KLUPENGER NO. 3 WELL"

The attached Proposed Order was served on the parties on September 15, 1988. No objections or exceptions having been filed within the time allowed, the Water Resources Director hereby adopts the Proposed Order as the Final Order in this matter.

The date of service is the date of mailing of this order.

Dated and signed at Salem, Oregon this ^{14th} day of November, 1988.

William H. Young
WILLIAM H. YOUNG
Director

NOTICE: You are entitled to judicial review of this order. Judicial review may be obtained by filing a petition for review within 60 days from the service (date of mailing) of this order. Judicial review is pursuant to the provisions of ORS 536.075 and 183.482.

BEFORE THE WATER RESOURCES DEPARTMENT OF OREGON

IN THE MATTER OF APPLICATION G-11750)	
IN THE NAME OF KLUPENGER NURSERY AND)	
GREENHOUSES, INC., FOR A PERMIT TO)	STATEMENT, FINDINGS OF
APPROPRIATE GROUND WATER BY MEANS)	FACT, CONCLUSION OF LAW
"KLUPENGER No. 3 WELL")	AND PROPOSED ORDER

STATEMENT

Application G-11750 in the name of Klupenger Nursery and Greenhouses, Inc., was filed on November 24, 1987, for a permit to appropriate ground water by means of an existing 220-foot deep well (Klupenger No. 3) for related nursery use on a certain 40.5 acres in the N 1/2 NW 1/4 and containerized nursery stock on a certain 35.0 acres in the SW 1/4 NW 1/4 of Section 34, Township 3 South, Range 1 West, WM. The application proposed to use 400 gallons of water per minute (gpm) for related nursery use and 600 gpm for containerized nursery stock use.

On February 23, 1988, under the provisions of ORS 537.622(1), a protest against approval of the said application was filed by Paul H. Daily. In the protest it is alleged that the proposed use of water would result in hydraulic interference with the protestant's well (3S/1W-34aad) and would prevent the protestant from continuing to obtain the water to which he is entitled to fill his needs under his existing rights.

A geohydrologic investigation and pumping tests were carried out by ground water geologists of the Water Resources Department to gain an understanding of the facts concerning the Daily-Klupenger well interference matter. The results of the investigation and pumping tests are presented in the memorandum report, "Geohydraulic Investigation and Testing for the Daily-Klupenger Interference Issue Near Aurora, Oregon" by John M. Rehm, Jr., dated April 14, 1988. Copies of the report were provided to both parties.

Robert E. Thompson of the law firm of Thompson, Adams, DeBast and Ray, acting for the applicant Raymond C. Klupenger and Alan S. Larsen of the law firm of Schwabe, Williamson, Wyatt, Moore and Roberts, acting for the

protestant Paul H. Daily, stipulated that in lieu of an evidentiary hearing the Water Resources Director's decision in this matter and in a similar matter pertaining to Application G-11638 with the same applicant and protestant be based on a stipulated record consisting of:

Application G-11638 and supporting data
Application G-11750 and supporting data
Protests filed by Paul H. Daily
Water Resources Department report, "Geohydrologic Investigation and Testing for the Daily-Klupgenger Interference Issue Near Aurora, Oregon," April 14, 1988, by John Rehm, Jr., Hydrogeologist
Written submissions by counsel for both parties

After preliminary review of the stipulated record, an interoffice memorandum was prepared at the request of the Hearings Supervisor to assist in evaluation of technical data in the stipulated record. The interoffice memorandum dated July 28, 1988, was prepared by staff hydrogeologists of the Water Resources Department. Copies of the interoffice memorandum were provided to both parties.

The contents of the interoffice memorandum, dated July 28, 1988, were discussed with the parties at a meeting held at the request of the Hearings Supervisor on August 2, 1988. The discussion was primarily directed to rates of pumping from the applicant's wells in question that could be sustained under various conditions without resulting in substantial interference with the protestant's well.

At the August 2, 1988 meeting, both the applicant and the protestant stated that they do not intend to alter their subject wells and requested that the Director's decision be based on the existing conditions of well construction for each of the three subject wells.

FINDING OF FACT

The protestant's irrigation well (3S/1W-33aad) is 330 feet northwest of the applicant's Murray well (3S/1W-34bbc) and 1500 feet north northwest of the applicant's Klupenger No. 3 well (3S/1W-34bcc). These locations are shown on Figure 1 in the Ground Water Report.

The protestant's irrigation well is 129 feet deep and the applicant's Murray well is 134 feet deep. The applicant's Klupenger No. 3 well is 220 feet deep. Drillers' logs of these wells are shown in Appendix 1 of the Ground Water Report.

Aquifer test data for the protestant's irrigation well presented in Table 4 of the Ground Water Report indicate that the well has a Transmissivity of 25000 gallons per day per foot of drawdown and a Coefficient of Storage of 2×10^{-4} .

Aquifer test data for the applicant's Murray well presented in Table 4 of the Ground Water Report indicate that the well has a Transmissivity of 16000 gallons per day per foot of drawdown and a Coefficient of Storage of 7.2×10^{-5} .

Aquifer test data for the applicant's Klupenger No. 3 well presented in Table 4 of the Ground Water Report indicate that the well has a Transmissivity of 15000 gallons per day per foot of drawdown and a Coefficient of Storage of 2×10^{-4} .

Aquifer test data indicate that there is a hydraulic connection between the protestant's irrigation well and the applicant's Murray well and Klupenger No. 3 well from which the proposed appropriations would be made. All of the wells derive their water from the Troutdale Formation. The shallow sand and gravel is hydraulically connected with the lower part of the formation.

Calculations based on the subject wells in their current condition and upon the ground water characteristics as determined by the geohydrologic investigation and pumping tests demonstrate that withdrawal of water from the applicant's Klupenger Well No. 3 at a continuous rate in excess of 350 gpm would result in substantial interference with the protestant's well. The calculations indicate that withdrawal of water from applicant's Klupenger Well No. 3 at a continuous rate of 350 gpm or less (or its equivalent in the case of a higher pumping rate for only a part of each day) would not be expected to result in substantial (if measureable) interference with protestant's well (3S/lW-33aad).

Effective on August 24, 1988, the applicant amended Application G-11750 to request a permit for the withdrawal of 350 gpm from Klupenger Well No. 3 based on a continuous use for 30 day pumping periods. Of the 350 gpm rate of withdrawal (or its equivalent in the case of a higher pumping rate for only a part of each day) the water is to be divided: 150 gpm for related nursery use on 40.5 acres of land and 200 gpm for containerized nursery stock on 35 acres of land.

ULTIMATE FINDING OF FACT

Approval of Application G-11750 subject to prior existing water rights can be approved without resulting in conflict with the water rights of the protestant.

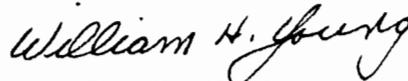
CONCLUSIONS OF LAW

Application G-11750, as amended effective August 24, 1988, should be approved pursuant to ORS 537.620(3) and 537.625(1).

PROPOSED ORDER

NOW, THEREFORE, it is ORDERED that Application G-11750 in the name of Klupenger Nursery and Greenhouses, Inc., for a permit to appropriate ground water from Klupenger Well No. 3 as described above, be approved by issuance of a permit to appropriate not to exceed 350 gallons of water per minute at a continuous rate (or its equivalent in the case of a higher pumping rate for only a part of each day), with the further condition that if use of water under this permit is found to interfere with appropriation of ground water under prior existing water rights, use of the Klupenger Well No. 3 shall be regulated so as to eliminate the interference.

Dated and signed at Salem, Oregon this 15th day of September, 1988.



WILLIAM H. YOUNG
Director

NOTICE: The above order is issued by the Director pursuant to authority delegated by the Water Resources Commission (Commission) pursuant to ORS 536.025(2). A party to the proceeding may file objections and exceptions to this proposed final order, with the Commission, within 30 days from date of service (date of mailing) of a copy of this order on that party. If objections and exceptions are filed, opportunity will be provided for argument to the Commission, and the final order will be issued by the Commission.

If objections and exceptions are not filed within the said 30-day period, a final order will be issued by the Director pursuant to authority delegated to the Director by an action of the Commission.