

**BEFORE THE WATER RESOURCES DEPARTMENT
OF THE
STATE OF OREGON**

In the Matter of Groundwater Permit)	FINAL ORDER REQUIRING
G-15855, Deschutes County)	ADDITIONAL WATER USE
)	REPORTING AND MITIGATION
)	PRIOR TO INCREASE IN WATER
)	USE

Authority

Oregon Administrative Rule (OAR) Chapter 690, Division 505, requires that ground water permits issued in the Deschutes Ground Water Study Area be conditioned to require installation of a measuring device, monthly recording of water use and annual reporting of water use. By condition in Permit G-15855, the Department may also require more frequent reporting of the water use.

OAR Chapter 690, Division 505, also establishes the authority for municipal and quasi-municipal permit holders to provide mitigation under an incremental development plan. OAR Chapter 690, Division 505, and OAR 690, Division 522, further require that holders of permits with incremental development plans not increase the rate or amount of water used without first proving the required mitigation or offset.

Permittee

Brasada Ranch Development, LLC
PO Box 1215
Redmond, OR 97756

Findings of Fact

1. On February 17, 2005, the Department issued Permit G-15855. This permit authorized the use of up to 3.34 cubic feet per second from six wells for Quasi-Municipal water use. Annual use of water from the wells was limited to no more than 508.0 acre-feet.
2. The Department identified that the use of water under the permit would have a mitigation obligation of 203.2 acre-feet in the General Zone of Impact.
3. The permit was issued consistent with the Deschutes Groundwater Mitigation Program under OAR Chapter 690, Division 505. The permit holder was required to provide mitigation in the General Zone of Impact consistent with an incremental development plan on file with the Department.

<p>This is a final order in other than contested case. This order is subject to judicial review under 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 ORS 536.075 and OAR 137-004-0080 you may either petition for judicial review or 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.</p>

4. Permit G-15855 includes the following conditions associated with the incremental development plan:
- A. The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.
 - B. The permittee shall not increase the rate or amount of water diverted, as described in the incremental development plan, prior to increasing the corresponding mitigation.
 - C. The permittee shall seek and receive Department approval prior to changing the incremental mitigation development plan and related mitigation obligation for each stage of permit development.
5. The incremental development plan must indicate a time schedule for the development of the permit and indicate proposed source of mitigation that will be obtained and used for each stage of development. The permit holder is required to report to the Department the progress of implementing the incremental development plan, including the annual volume of water used, by April 1 of each year. In addition, permit holders may request that the Department approve changes to an incremental development plan and related mitigation obligation. Permit holders may not increase the rate or amount of water diversion before increasing the corresponding required mitigation. OAR 690-505-0625 and OAR 690-522-0040.
6. A revised incremental development plan was received by the Department on June 10, 2010. An acknowledgement of the revised plan was sent from the Department on October 4, 2010. The incremental development plan currently on file with the Department, consistent with the request received in 2010, is as follows:

Step	Date Range	Volume Requested	Mitigation Required
1	2005 through 2014	125.0 acre-feet	50.0 acre-feet
2	2015 through 2019	250.0 acre-feet	100.0 acre-feet
3	2020 through 2024	375.0 acre-feet	150.0 acre-feet
4	2025 through 2029	500.0 acre-feet	200.0 acre-feet
5	2030 on	508.0 acre-feet	203.2 acre-feet

7. When the permit was issued in 2005, the permit holder had obtained 50.0 mitigation credits (1 mitigation credit = 1 acre-foot of mitigation water), which was sufficient to satisfy their mitigation obligation for step 1 of the incremental development plan. The mitigation was based upon 1.8 permanent mitigation credits and 48.2 temporary mitigation credits obtained from the Deschutes River Conservancy (DRC) Mitigation Bank. This amount of mitigation was consistently maintained through 2013.
8. The volume of water used annually, as reported to the Department, was less than 125.0 acre-feet through 2012.

9. In 2013, the permit holder reported water annual water use of 145.2 acre-feet. The amount of mitigation water required to satisfy that level of use was 58.1 acre-feet. However, the permit holder only held 50.0 mitigation credits in 2013.
10. In 2014, the permit holder reported annual water use of 188.4 acre-feet. The amount of mitigation water required for that level of use was 75.4 acre-feet. While the permit holder did increase the amount of mitigation provided, the amount provided, 58.1 mitigation credits, was less than needed to satisfy the mitigation requirement.
11. The Department has contacted the permit holder and the agent for the permit holder, Jim Frost, professional engineer, on multiple dates during 2014 and 2015.
12. Jim Frost, agent for the permit holder, provided a progress report to the Department on June 2, 2015. The permittee anticipates providing 100.0 mitigation credits for 2015. Annual water use for 2015 is projected to be approximately 226.2 acre-feet. This level of use would require 90.5 acre-feet of mitigation water. The permit holder may also obtain an additional 28.7 mitigation credits for 2015.
13. On June 12, 2015, documentary evidence was provided to the Department showing that the permit holder had obtained 50.0 temporary mitigation credits from the DRC Mitigation Bank. This is in addition to 50.0 mitigation credits held consistently by the permit holder since 2005. The permit holder also obtained an additional 28.7 mitigation credits as reserve credits for 2015 only. The permit holder currently holds 128.8 acre-feet of mitigation credits and only needs 100.0 mitigation credits under the current incremental development plan.
14. Permit G-15855 is also conditioned to require the permit holder to keep a complete record of the amount of water used each month and to submit a report which includes the recorded water use measurement to the Department annually or more frequently as may be required by the Director.

Conclusions of Law


The Department concludes the permit holder did not provide mitigation consistent with OAR 690-505-0620, OAR 690-505-0625, and OAR 690-522-0040 during the 2013 and 2014 calendar years.

Now, therefore it is ORDERED:

1. Water may only be used consistent with the incremental development plan on file with the Department. Mitigation must be provided by the permit holder prior to any increase in the volume of water used. Prior to any change in use, the permit holder must request and the Department may approve changes in the incremental development plan and related mitigation obligation.
2. The permit holder must provide a progress report to the Department by July 15, 2015. The progress report must include the volume of water used under Permit G-15855 from January 1 through June 30, 2015.

3. After July 15, 2015, the permit holder must provide monthly updates to the Department by the 15th of each month. Each update shall include the volume of water used in the preceding calendar month as well as the volume of water used to date in the current calendar year.

Dated at Salem, Oregon this 23 day of June, 2015.



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

Mailing date: JUN 25 2015