

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

Water Right Application G-17051 in the)
name of CROOKED RIVER RANCH CLUB AND)
MAINTENANCE ASSOCIATION)

PROPOSED FINAL ORDER
TO DENY

This Proposed Final Order supersedes the Proposed Final Order issued June 2, 2009

Summary: The Department proposes to issue an order denying Application G-17051 because the use does not comply with rules of the Commission, specifically Oregon Administrative Rule (OAR) 690-210.

Although it is unlikely that a permit will be issued, if the Department's findings change, prior to the issuance of a permit, the Department must receive the following:

- **Permit recording (mitigation) fees in the amount of \$790.00. A check should be made out to the Oregon Water Resource Department or OWRD.**
- **Documentary evidence that mitigation credits have been obtained.**

Please include the application number on any documents submitted.

Authority

The application is being 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 the Deschutes Basin Program (OAR 690-505). OAR 690-505 and 521 describe the process by which certain groundwaters in the Deschutes Basin may be appropriated by mitigating the impact of the proposed use. These statutes and rules can be viewed on the following website: www.oregon.gov/OWRD/programs/policylawandrules/

The Department's main website can be found at: www.oregon.gov/OWRD

The Department shall presume that a proposed groundwater use will ensure the preservation of the public welfare, safety and health as described in ORS 537.525 if:

- a) The proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12);
- b) Water is available;
- c) The proposed use will not injure other water rights; and
- d) The proposed use complies with the rules of the Commission.

ORS 537.621(2); OAR 690-310-0130.

All four criteria must be met for a proposed use to be presumed to ensure the preservation of the public welfare, safety and health. This shall be a rebuttable presumption and may be overcome by a preponderance of evidence that either one or more of the criteria for establishing the presumption are not satisfied, or that the proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in any comments received, information available in the Department's files or received from other interested agencies, and any other available information. ORS 537.621(2); OAR 690-310-0130(2).

If the Department determines that the presumption is not established, the Department shall determine whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525 and may either:

- a) Propose denial of the application upon a finding that the use will impair or adversely affect the public welfare, safety and health; or
- b) Make specific findings to demonstrate that even though the presumption is not established, the proposed use will not impair or adversely affect the public welfare, safety and health and propose approval of the application with appropriate modifications or conditions.

OAR 690-310-0140(2).

FINDINGS OF FACT

Application History

1. On May 13, 2008, Crooked River Ranch Club and Maintenance Association filed a complete application for the following water use:

Source: WELL 1 (JEFF 832) IN CROOKED RIVER BASIN

Use: IRRIGATION OF 148.53 ACRES

Rate: 2.11 CUBIC FEET PER SECOND (CFS), FURTHER LIMITED TO 445.59 ACRE-
FEET (AF) ANNUALLY

Period of Use: APRIL 1 THROUGH NOVEMBER 1

County: JEFFERSON COUNTY

Place of Use: SECTIONS 14, 23, AND 24, TOWNSHIP 13 SOUTH, RANGE 12 EAST, W.M.

2. On November 21, 2008, the Department mailed the applicant notice of its Initial Review, determining that the use of 1.86 CFS from a well, tributary to Crooked River for irrigation is not allowable. However, if you provide sufficient mitigation water to offset the proposed use, it may be allowed under OAR 690-505-0610. The applicant did not notify the Department to stop processing the application within 14 days of that date. The Initial Review included the Notice of Mitigation Obligation for the proposed groundwater use, pursuant to the Deschutes Groundwater Mitigation Rules (OAR 690-505).
3. On November 25, 2008, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about obtaining future notices and a copy of the Proposed Final Order.

4. On March 20, 2009, Peter Mohr, on behalf of the applicant, submitted an Affidavit for Partial Cancellation of Water Right Certificate 64216, which effectively resolved the conflict addressed in the Initial Review. If a permit is issued for Application G-17051, the Department will concurrently issue a Final Order on this partial cancellation.
5. On March 20, 2009, the Department received the applicant's Response to Notice of Mitigation Obligation Credit or Project Option, wherein the applicant acknowledged that they intend to provide mitigation in the amount of 267.4 AF within the Crooked River Zone of Impact (located anywhere in the Crooked River Basin above river mile 13.8).
6. On May 29, 2009, Peter Mohr, on behalf of the applicant, requested the irrigation season be amended to February 1 through December 1. The Department has determined that this amendment was accepted in error. Under OAR 690-310-0240(3), the Department cannot accept a modification that enlarges the proposed use of water.
7. On June 2, 2009, the Department issued a Proposed Final Order proposing to approve the application with draft permit. The protest period closed on July 17, 2009, and no protest was filed.
8. On May 12, 2010, the Department received a request for an administrative hold from Peter Mohr. This administrative hold expired on November 8, 2010.
9. On November 16, 2023, the Well Construction and Compliance Section reviewed Well 1 (JEFF 832) and determined it does not meet current minimum well constructions standards based upon a review of the well report.

Presumption Criterion (a) - Consistency with Basin Program

10. The proposed groundwater use is located within the Deschutes Ground Water Study Area and is subject to the Deschutes Groundwater Mitigation Rules (OAR 690-505-0500 – 0630).
11. Irrigation is allowed under the Deschutes Basin Program (OAR 690-505-0400). ORS 537.621(3)(b); OAR 690-310-0150(2)(b).
12. Pursuant to OAR 690-505-0500(1), there is a 200.00 CFS limit on the amount of new groundwater use that may be allocated within the Deschutes Ground Water Study Area. Any water allocated under this application may not exceed the limit.

Presumption Criterion (b) - Water Availability

13. An assessment of groundwater availability has been completed by the Department. A copy of this assessment is in the file and can be viewed on the Department's website. Groundwater for the proposed use is not over-appropriated and is available for the proposed use. ORS 537.621(3)(c); OAR 690-310-0150(2)(c); OAR 690-300-0010(57).

Presumption Criterion (c) - Injury Determination

14. The proposed groundwater use is junior to existing water rights downstream in the Deschutes River Basin. Therefore, the proposed use, if properly conditioned and if authorized, will not injure other water rights. ORS 537.621(3)(d); OAR 690-310-0150(2)(e).

Presumption Criterion (d) - Whether the Use Complies with Rules of the Commission

15. Documentation has been submitted from the relevant land-use planning jurisdiction that indicates the proposed use is allowed outright. ORS 537.621(3)(b); OAR 690-310-0150(2)(b).
16. The proposed use is located within the Deschutes Ground Water Study Area. Without mitigation, the Department is required by law to deny groundwater permit applications in the Deschutes Ground Water Study Area. Mitigation may be provided to offset impacts to Scenic Waterway flows and senior surface water rights. OAR 690-505-0600(1)-(3).
17. The Department has insufficient information to verify that Well 1 (JEFF 832) was completed in a manner that protects groundwater resources and meets current minimum well construction standards, as required in OAR 690-210.

Presumption that a Proposed Groundwater Use will Ensure the Preservation of the Public Welfare, Safety and Health under ORS 537.525

18. Because the use does not comply with all rules of the Commission, one of the criteria necessary to establish the presumption is not met and the presumption that the proposed groundwater use will ensure the preservation of the public welfare, safety and health under ORS 537.525 is **not** established. OAR 690-310-0140(1); OAR 690-310-0150(2)(h).
19. Because the presumption is not established, the Department evaluated whether the proposed use will impair or adversely affect the public welfare, safety and health under ORS 537.525. OAR 690-310-0140(2).
20. Information available in Department files, received from other interested agencies, and other available information does not provide a preponderance of evidence that the proposed use would otherwise ensure the preservation of the public welfare, safety and health under ORS 537.525. ORS 537.625(3); OAR-690-310-0140(5).

Further Evaluation of the Proposed Use

21. No comments were received by the close of the comment period. OAR 690-310-0150(1).

Other Criteria and Requirements

22. The amount of water requested, 2.11 CFS, is in excess of the standard rate for the proposed use. The amount of water requested would be limited to 1.86 CFS, further limited to an annual volume of 445.59 AF, on any permit that might be issued under this application. ORS 537.621(3)(c); OAR 690-310-0150(2)(d).
23. The applicant proposed measures to prevent waste, measure the amount of water appropriated, prevent damage to aquatic life and riparian habitat, prevent discharge of contaminated water to a surface stream and to prevent damage to public uses of any affected surface waters. These measures are identified on page 5, Section 5 D., of the application. OAR 690-310-0150(2)(j).
24. The proposed use complies with rules of the Water Resources Commission not otherwise described above.

CONCLUSION OF LAW

The proposed use will not ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

PROPOSED ORDER

The Department recommends issuing an order denying Application G-17051.

DATED March 19, 2024



Katherine Ratcliffe
Water Rights Section Manager, for
Douglas E. Woodcock, Acting Director
Oregon Water Resources Department

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), you can protest this Proposed Final Order. If you wish to submit a protest by U.S. mail, please consider mailing early to ensure the Department receives the protest by the deadline specified. Protests must be received by the Water Resources Department no later than **May 3, 2024**.

As provided in ORS 537.621(7), ORS 536.050(1)(j) and OAR 690-002—0025 – 035 protests must be in writing and include the following:

- Your name, address, and telephone number;
- A description of your interest in the Proposed Final Order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in the Proposed Final Order would impair or be detrimental to your interest;
- A detailed description of how the Proposed Final Order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known;
- Any information or evidence that the proposed use or the proposed use as modified would preserve the public welfare, safety and health as provided in ORS 537.625(3).
- If you are the applicant, the protest fee of \$480 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$950 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing.

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for groundwater), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **May 3, 2024**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$270. If a hearing is scheduled, an additional fee of \$680 must be submitted along with a petition for party status.

After the protest period has ended, the Director will either issue a Final Order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and either:

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

If you do not timely file a protest or timely request a hearing, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a prima facie case upon default. OAR 137-003-0670.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

Notice To Active Duty Servicemembers: Active-duty service members have a right to stay proceedings under the federal Service Members Civil Relief Act. 50 U.S.C. App. §§501-597b. For more information contact the Oregon State Bar at 800-452-8260, the Oregon Military Department at 971-355-4127, or the nearest United States Armed Forces Legal Assistance Office through <http://legalassistance.law.af.mil>.

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- If you have any questions about statements contained in this document, please contact Adam Frederick at Adam.M.Frederick@water.oregon.gov or 971-707-8400.
 - If you have questions about how to file a protest or if you have previously filed a protest and you want to know the status, please contact Will Davidson at Will.D.Davidson@water.oregon.gov or 503-507-2749.
 - If you have any questions about the Department or any of its programs, please contact our Water Resources Customer Service Group at 503-986-0900.
 - Address any correspondence to: Water Right Services Division
725 Summer St NE, Suite A
Fax: 503-986-0901 Salem, OR 97301-1266
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