Name G-16359 By LES PETERSON Address _ 1415 HIGHLAND RD WALLA WALLA WA 99362	Application No. Permit No. Certificate No.	Date	FEES PAID Date Amount Receipt No. 72064 722 05 50.00 76077 4-18-11 \$40000 102670 1011 10 \$575.00 121622 6-16-17 \$35000 123710 Cert. Fee
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760 SW Ninth Ave., Suite 3000 Portland, OR 97205 T. 503.224.3380 F. 503.220.2480 www.stoel.com

> DAVID E. FILIPPI D. 503.294.9529 david.filippi@stoel.com

June 16, 2017

BY HAND DELIVERY

Tom Byler, Director Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271

Re: Protest of Les Peterson to PFO Issued in the Matter of Application for an Extension of Time for Permit G-17294, Water Right Application G-16359

Dear Director Byler:

This firm represents Les Peterson in connection with the above-referenced application and protest. Enclosed please find the original and one copy of the Protest of Les Peterson and Request for Contested Case Hearing for the referenced application and the required filing fees.

Sincerely

David E. Filippi

Enclosures cc: Client

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STATE OF OREGON WATER RESOURCES DEPARTMENT

RECEIPT # 123710

725 Summer St. N.E. Ste. A SALEM, OR 97301-4172 (503) 986-0900 / (503) 986-0904 (fax)

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STATE OF OREGON WATER RESOURCES DEPARTMENT WATER RIGHTS DIVISION

Before the Director of the Water Resources Department

In the Matter of Application for an)	PROTEST OF LES PETERSON
Extension of Time for Permit G-17294,)	AND REQUEST FOR CONTESTED
Water Right Application G-16359,)	CASE HEARING
in the name of Les Peterson)	

On May 2, 2017, the Oregon Water Resources Department (the "Department") issued a proposed final order ("PFO") for an application for an extension of time to complete construction and put water to beneficial use under Permit G-17294 ("Extension Application"). A copy of the PFO is attached to this Protest as Exhibit A, and a copy of the Extension Application is attached to this Protest as Exhibit B. Pursuant to ORS 537.630(1), Les Peterson ("Peterson") protests the PFO and requests a contested case hearing, because Peterson has demonstrated good cause for the Department to allow the extension of time and the Department's refusal to allow the extension would cause substantial hardship to Peterson.

1. Protestant's Name, Address, and Telephone Number

The Protestant's contact information is as follows:

Les Peterson 1415 Highland Road Walla Walla, WA 99362 (509) 522-2124 (telephone) les@lifeswheat.com (email)

Orders, notices, and other correspondence concerning this matter should be sent to legal counsel representing Mr. Peterson in this matter as follows:

David Filippi Stoel Rives LLP 760 SW Ninth Avenue, Suite 3000 Portland, OR 97205 (503) 294-9295 (direct telephone) david.filippi@stoel.com (email)

2. Protestant's Interest in the PFO

Peterson was the applicant for Water Right Application G-16359, is the holder of Permit G-17294, and is the applicant for the Extension Application for Permit G-17294. Permit G-17294 has a long history, beginning in December 2004 when Peterson first applied for a water use permit. In April 2011, following the resolution of various concerns raised by the City of Milton-Freewater over the potential for interference with City wells, Peterson reached an

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agreement with the Department and the City, pursuant to which the Department issued Permit G-16846. Permit G-16846 authorized appropriation from a single well in Birch Creek Basin for irrigation of 350 acres, and specified that completion of construction and complete application of water was to be made by April 22, 2016.

On July 1, 2013, Peterson submitted an application to amend Permit G-16846 to reflect a 40-acre "land swap" between Peterson and Cecil and Marilyn Zerba (the "Zerbas"). Peterson and the Zerbas are neighboring landowners and agreed to exchange ownership of contiguous 40 acre parcels. Peterson's application, T-11630, proposed to add two points of appropriation and change the place of use under Permit G-16846 to reflect the property trade between Peterson and the Zerbas.

On May 12, 2014, nearly a year after Peterson submitted the amendment application, the Department notified Peterson that layered water rights were present on the place of use proposed by T-11630. Peterson explained the nature of the land swap to the Department, and, to resolve the layered water rights issue, on June 17, 2014, the Zerbas submitted a permit amendment application to be processed concurrently with T-11630. The Department approved T-11630 and issued Permit G-17266 on August 15, 2014. Ten days later, on August 25, 2014, the Department issued another order correcting and replacing Permit G-17266 with Permit G-17294—the permit that is the subject of the Extension Application. Significantly, the "C" date of April 22, 2016 was not modified with the issuance of Permit G-17266 or Permit G-17294.

Permit G-17294 authorizes appropriation from three wells in the Birch Creek Basin for irrigation of 350 acres. The wells are located in Sections 4 and 5, Township 5 North, Range 36 East, Willamette Meridian. Well 1, the only point of appropriation originally authorized under Permit G-16846, is located in the southwest quarter of the southwest quarter of Section 4, on land that was the subject of the land swap with the Zerbas. As a result of the land swap, Peterson no longer owns the land where Well 1 is authorized. For that reason, Peterson could not begin well construction until after T-11630 was processed and the Department issued Permit G-17294.

The year following the Department's issuance of G-17294, Peterson commenced efforts to hire a well driller. However, Peterson had difficulty securing the services of a well driller who met the Department's requirements. In December 2015, Peterson sent a letter to the Department requesting a time extension due to the limited market of qualified drillers. At that time, Peterson had reached an agreement with Zollman's Larry Burd Well Drilling, LLC ("Zollman's"). However, because of the high demand for Zollman's services, Zollman's could not immediately commence work on Peterson's wells.

In February 2016, Peterson had the well location surveyed. Then, in March 2016, Peterson began work to prepare the site for Well 2. This work involved construction of an access road, retaining pond, and well pad. Peterson started drilling Well 2 on March 31, 2016. As of July 5, 2016, Well 2 had been drilled to a depth of 1040 feet. Peterson submitted the Extension Application on October 11, 2016.

Adverse Effect of the PFO

Peterson has standing in this matter, as he is the permit holder, and the Department's proposed decision as set forth in the PFO will have an adverse effect on Peterson. Due to the

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sizable financial investment made to complete Well 2, and the lack of available alternative water sources, the denial proposed by the PFO would cause serious negative impact to Peterson's interests. The adverse effects are discussed in more detail below.

4. Argument

The Department's proposal to deny the Extension Application is unwarranted. First, Peterson has shown good cause for the Department to allow the extension of time. Second, Peterson can complete the project within the time period requested for the extension. Third, the Department's decision to deny the Extension Application, where Peterson has invested over \$366,000 in well construction and development, is arbitrary and capricious, and amounts to a wholesale departure from Department practices without any prior notice to Peterson.

A. Peterson has demonstrated good cause for the Department to grant the extension of time.

With exceptions not relevant here, the Department must "for good cause shown, ... order and allow an extension of time . . . within which irrigation or other works shall be completed or the right perfected." ORS 537.230(3).

To evaluate whether good cause exists, the Department is required to "give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right." *Id.* The considerations at ORS 539.010(5) include "the cost of the appropriation and application of the water to a beneficial purpose, the good faith of the appropriator, the market for water or power to be supplied, the present demands therefor, and the income or use that may be required to provide fair and reasonable returns upon the investment."

The "good cause" factors are described in further detail in the Department's regulations at OAR 690-315-0040(2). Specifically, to make a finding of good cause, the Department shall consider, but is not limited to, the following factors:

- "(a) Whether the applicant has demonstrated reasonable diligence in previous performance under the permit;
- "(b) The cost to appropriate and apply the water to a beneficial purpose;
- "(c) The good faith of the appropriator;
- "(d) The market for water or power to be supplied;
- "(e) The present demands for water or power to be supplied;
- "(f) The income or use that may be required to provide fair and reasonable returns on investment;
- "(g) Whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection the right;
- "(h) Any unforeseen events over which the water right permit holder had no control and which delayed development under the permit;
- "(i) Whether denial of the extension will result in undue hardship to the applicant and that there are no other reasonable alternatives exist for meeting water use needs; and
- "(j) Any other factors relevant to a determination of good cause."

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OAR 690-315-0040(2).

Here, the Department erred by concluding that good cause does not exist to approve the Extension Application. Consideration of the factors contained in OAR 690-315-0040(2) demonstrates that there is good cause to allow an extension of time.

Peterson exercised reasonable diligence in previous performance under Permit G-17294.

The first criterion to evaluate good cause is whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). To determine whether an applicant has exercised reasonable diligence, the Department considers the following factors set forth in OAR 690-315-0040(3): (a) the amount of construction completed, (b) the amount of beneficial use of water, (c) whether the permit holder has conformed with permit conditions, and (d) the financial investments made toward developing the beneficial water use.

Here, the Department improperly concluded that Peterson demonstrated only "marginal diligence," rather than reasonable diligence, in development of water under Permit G-17294. First, the Department did not afford sufficient weight to the fact that Peterson has invested over \$366,000 to construct Well 2. Second, the Department improperly determined that Peterson had failed to comply with permit conditions, when, in fact, Peterson had complied with all conditions that were applicable to the development that had been completed to date at the time the Extension Application was submitted.

Although the PFO downplays Peterson's financial investment and well-construction progress, the fact of the matter is that Peterson has spent over \$366,000 to construct Well 2. In February 2016, Peterson commissioned a location survey for the well site. Peterson then constructed an access road and a parking pad for Well 2 and constructed a holding pond to enable well drilling. Peterson has now completed construction of Well 2 to a depth of 1040 feet.

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¹ When the Application was submitted, Peterson had invested approximately \$366,390 to develop Well 2. The Department concluded that Peterson's investment was only \$355,933 because "costs associated with surveying, and construction of an access road and pad for construction of Well 2 . . . are not 'actual construction' under this permit, and therefore are not counted toward development."

The Department misapplied the "actual construction" standard. Evaluating reasonable diligence requires consideration of "financial investments made toward developing beneficial use." OAR 690-315-0040(3)(d). The "actual construction" standard applies to determine whether the applicant began construction within the time required by statute. OAR 690-315-0040(5). A permit cannot be extended if the applicant did not begin "actual construction" during the time required. *Id.* In this case, the Department acknowledges Peterson began "actual construction" within the time required.

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While the Department acknowledged that Peterson has "made an investment towards the development of the water system," the Department improperly described the construction completed at the Well 2 site as "minimal evidence of progress of physical work." In short, construction of an access road, parking pad, holding pond, and substantial progress toward a 1040-foot deep, fully cased and sealed well is more than "minimal evidence" of physical work.

The Department further erred by concluding that Peterson failed to comply with the conditions of Permit G-17294, when, at the time Peterson submitted the Extension Application, many of the requirements specified in the permit conditions were not yet applicable.

When Peterson submitted the Extension Application in October 2016, the irrigation delivery system had not been constructed. For that reason, Peterson had not yet begun appropriating water. And because Peterson had not begun using water, many of the permit conditions were inapplicable. For example, one permit condition requires Peterson to submit an annual water usage report. Since Peterson had not started using water, Peterson could not have complied with this condition. Similarly, another permit condition specifies that, "[b]efore water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation." In the Extension Application, Peterson explained that an accepted measurement device would be installed before water use begins. Despite these explanations provided by Peterson in the Extension Application, the Department concluded that Peterson had "not complied with any of the terms and conditions specified in Permit G-17294."

The Department also did not acknowledge Peterson's compliance with permit conditions related to well construction. Permit G-17294 requires that water be acquired from the same aquifer as the original point of appropriation and that two of the three wells, including Well 2, "be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum." In the July 5, 2016 letter from the well driller, submitted with the Application, the well driller stated that casing hole was being drilled "to meet the permit requirement of casing and sealing to 950ft." The well driller also explained that a Department staff member, Erik Thomasser, was on site to "make sure the well meets the requirements of the permit." The well driller's statements demonstrate that Peterson complied with well construction permit conditions, and, therefore, the Department's allegation that Peterson had "not complied with any of the terms and conditions specified in Permit G-17294" is inaccurate.



² In fact, Department staff was very active and hands-on in providing input and assistance to the well driller, to ensure that the ongoing drilling operation was in compliance with permit terms and conditions. In addition to Mr. Thomasser, other Department personnel who were actively apprised of and involved in the ongoing drilling effort included Joel Jeffery and Jen Woody. To have the Department on one hand advise on drilling operations, which again, occurred in the weeks leading up to the "C" date, only to have the Department more than a year later effectively conclude that the drilling should not have occurred in the first place, underscores the unreasonableness of the Department's position in the PFO.

In sum, Peterson demonstrated "reasonable diligence" in his performance under Permit G-17294 as evidenced by the construction of Well 2, substantial financial investment in well development, and demonstrated compliance with well-construction permit conditions.

ii. Peterson has expended considerable costs to appropriate water.

The second consideration for determining whether good cause exists is the "cost to appropriate and apply the water to a beneficial purpose." OAR 690-315-0040(2)(b).

The PFO combines consideration of "cost to appropriate and apply the water to a beneficial purpose," at OAR 690-315-0040(2)(b) (a factor to evaluate "good cause"), "[f]inancial investments made toward developing the beneficial water use," at OAR 690-315-0040(3)(d) (a factor to evaluate "reasonable diligence"), and "[e]conomic investment in the project to date," at OAR 690-315-0040(4)(d) (a factor to evaluate "market and present demand for water"). Taking the three factors together, the Department summarily concluded that Peterson "had made an investment towards the development of the water system." Nevertheless, the record is clear that Peterson has invested over \$366,000 to construct Well 2, and this amounts to a significant expenditure on the part of Peterson to appropriate and apply water to a beneficial purpose, consistent with the underlying Permit G-17294.

iii. Peterson acted in good faith.

The third factor to evaluate good cause is whether the appropriator has acted in "good faith." OAR 690-315-0040(2)(c). Black's Law Dictionary defines "good faith" as "[a] state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage."

None of the Department's findings indicate that Peterson acted in bad faith in developing the water resource. Yet, the Department concluded that Peterson did not act in good faith based on three proposed findings: first, that Peterson did not comply with any of the conditions of Permit G-17294; second, that no water had been appropriated under Permit G-17294; and, third, that water had not been beneficially used under Permit G-17294.

As discussed in Section 4.A.i above, Peterson complied with all applicable permit conditions given the stage of well development. Many permit conditions did not apply at the time the Application was submitted, because Peterson had not begun using water. With regard to the conditions that *did* apply, Peterson took care to ensure that the conditions were satisfied. Peterson's efforts to hire a qualified driller and comply with well-construction requirements demonstrate Peterson's faithfulness to his obligations under Permit G-17294.

Moreover, under these circumstances, the fact that Peterson had not appropriated or put water to beneficial use is not evidence of bad faith. There is nothing to suggest that Peterson's motivation was to tie up or speculate on water resources. Rather, Peterson had not yet put water to use, because Well 2 was still being completed and his irrigation system had not been constructed. As discussed in detail in Sections 4.A.vi and 4.A.vii below, several factors contributed to Peterson's delay in commencing construction. If non-use was, in and of itself, a basis for determining bad faith, then the Department would never grant extensions of time to

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complete construction, because water cannot be appropriated or put to beneficial use until well construction is in fact complete.

Peterson's actions demonstrate that he acted with honesty in purpose and faithfulness to his obligations under Permit G-17294. Thus, the Department should find that Peterson acted in good faith.

iv. Market and present demands for water do not support the Department's proposal to deny the time extension.

When evaluating good cause, the Department considers market and present demands for water to be supplied. OAR 690-315-0040(2)(d), (e). The Department must take into account the following factors in its evaluation:

- "(a) The amount of water available to satisfy other affected water rights and scenic waterway flows;
- "(b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);
- "(c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;
- "(d) Economic investment in the project to date;
- "(e) Other economic interests dependent on completion of the project; and
- "(f) Other factors relevant to the determination of the market and present demand for water.

OAR 690-315-0040(4).

With respect to the market and present demands for water, the Department found that "there is a significant present demand for water in the Walla Walla Sub Basin, and . . . groundwater levels are declining, and additional appropriation of groundwater may exacerbate these declines." On that basis, the Department concluded that "water is not available to support additional development."

The Department's evaluation of market and present demand for water is erroneous for several reasons. First, the Department did not take into account the conditions already contained in Permit G-17294, which were both the product of a lengthy negotiation and settlement process leading up to the initial issuance of Permit G-16846, and the result of additional scrutiny applied as part of the approval of T-11630. These conditions already serve to guarantee protection of the groundwater resource. Second, the Department based its decision on information about the groundwater resource that was already known to the Department at the time it issued Permit G-17294, which as explained above, was in August 2014, only 20 months prior to the "C" date. And third, the Department placed a disproportionate amount of emphasis on certain factors listed in OAR 690-315-0040(4), while deemphasizing others.

As additional explanation here, the Department first erred by not accounting for conditions included in Permit G-17294. Permit G-17294 is conditioned to protect the groundwater resource and prevent injury to senior water rights holders. With regard to well RECEIVED



construction, Permit G-17294 requires that Wells 2 and 3 be continuously cased and sealed to a depth of at least 950 feet. In the Groundwater Review completed for T-11630, Department staff found that requiring Peterson's wells to be "continuously cased and continuously sealed to a depth greater than 950 feet" would "minimize the possibility of interference" with senior water rights. The PFO overlooks the fact that Peterson's wells must be constructed to prevent interference, which is a condition that is unique to Permit G-17294 as compared to other water rights in the vicinity.

Permit G-17294 also contains conditions related to measurement, reporting, and water use. Permit G-17294 requires that Peterson arrange to have a qualified individual³ measure annual static water levels for each well and report these measurements to the Department. The Department has discretion to require additional water level measurements. Permit G-17294 also obligates Peterson to reduce or discontinue water use under certain circumstances. Specifically, Peterson must stop using water or use less water if any of the following 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 above-listed permit conditions help to guarantee that water appropriation under Permit G-17294 will not cause injury to senior water rights holders or exacerbate groundwater declines in the vicinity, thereby undercutting the Department's proposed conclusion that approving the Extension Application would "exacerbate [groundwater] declines."

In addition to failing to acknowledge the safeguarding conditions of Permit G-17294, the Department improperly based its decision on information about groundwater levels that was known to the Department at the time Permit G-16846 was issued in 2011, as well as the time Permit G-17294 was issued in August 2014 following T-11630. The PFO cites findings made by

³ Qualified individuals include a certified water rights examiner, a registered geologist, a registered professional engineer, a licensed well constructor, or a pump installer licensed by the Construction Contractors Board.

⁴ Peterson acknowledges that the Oregon Water Resources Commission formally designated a serious water management problem area ("SWMPA") for basalt groundwater in the Walla Walla River subbasin, effective May 22, 2017. OAR 690-507-0030(4). A SWMPA designation, however, does not require or otherwise give authority to the Department to deny applications for time extensions for permits that were previously issued. Rather, a SWMPA designation allows the Department to require a water right holder to install a totalizing water measuring device and submit annual water use reports, *see* ORS 540.435, both of which are already included as requirements in Permit G-17294.

Department staff in the "Permit Extension Ground Water Review" that was completed on April 13, 2017. Specifically, Department staff reported that groundwater levels have declined "on the order of 100 feet since the 1970s" and "3 to 4 feet per year over the past five years." This information, which Peterson reserves the right to contest, was not new, and the Department should not now be able to rely on it to come to a different conclusion than the one it reached in 2011 and 2014 with regard to Peterson's water right permit. If this information did not lead to a decision to deny Peterson's water right application in 2011, and did not lead to a decision to deny Peterson's Extension Application now.

Finally, the Department's analysis of market and present demand for water improperly overemphasizes water availability factors and underplays economic considerations. OAR 690-315-0040(4)(d) and OAR 690-315-0040(4)(e) require the Department to consider economic investment in the project and economic interests dependent on completion of the project, but the Department does not give these considerations sufficient weight. Peterson had already invested over \$366,000 to construct Well 2. In addition, as more fully discussed in the next section, the success of Peterson's vineyard development efforts depend on his ability to develop water under Permit G-17294. For all of these reasons, the Department's analysis of present and market demand for water is deficient. Instead, present and market demand for water support approval of the Extension Application.

 Water development will allow Peterson to develop a vineyard, which is likely to generate a reasonable return on investment.

Another factor in determining good cause is "[t]he income or use that may be required to provide fair and reasonable returns on investment." OAR 690-315-0040(2)(f).

The PFO states that, "the Application did not identify that the use and income from the permitted water development will likely result in reasonable returns upon the investment made to date." The Department's application form, however, does not prompt applicants to explain what income is anticipated from the water use. For that reason, the Department did not consider that Peterson intends to use the water authorized by Permit G-17294 to develop a vineyard. Given the success of a number of other vineyard developments in the Milton-Freewater area, Peterson's proposed vineyard has a good likelihood of generating reasonable returns on his investment.

vi. Government requirements significantly delayed well construction.

Whether good cause exists also depends on "[w]hether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right." OAR 690-315-0040(2)(g).

⁵ Department staff's finding that groundwater levels have declined at an average of "3 to 4 feet per year over the past five years" is not new information, because the Department's groundwater elevation measurements show that groundwater declines in the vicinity of Peterson's wells have been fairly consistent since 2006.

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In this case, the Department's processing of Peterson's amendment application, T-11630, delayed construction of Peterson's wells. Peterson applied to the Department to add new points of appropriation and change the place of use under Permit G-16846 on July 1, 2013. The Department did not take action on T-11630 until May 12, 2014, when the Department alerted Peterson to the existence of layered water rights. To address this issue, the Zerbas submitted an amendment application to be processed concurrently with T-11630 on June 17, 2014. The Department did not issue Permit G-17294 until August 25, 2014, well over a year after Peterson applied to amend G-16846.

Significantly, Peterson could not begin well construction until *after* the Department issued the amended permit. The only authorized point of appropriation under Permit G-16846 was located on land that Peterson had exchanged with Zerbas. For that reason, Peterson could not obtain financing until after the permit amendment was approved. The Department erred by not recognizing that the delayed processing of T-11630 substantially postponed the start of construction of Peterson's wells.

vii. Unforeseen events delayed well construction.

In evaluating good cause, the Department must also consider whether any unforeseen events, which were outside of the applicant's control, delayed development under the permit. OAR 690-315-0040(2)(h).

In this case, construction was delayed by unforeseen events related to the well driller. First, Peterson had difficulty securing the services of a well driller who met the Department's requirements. Peterson communicated his difficulty in a December 2015 letter to the Department. At that time, Zollman's had agreed to do work for Peterson, but Zollman's had a backlog of work, and commencement of work on Peterson's well was significantly delayed as a result of that backlog. The tight market for qualified well drillers and Zollman's scheduling limitations were unforeseen events, outside of Peterson's control, which delayed development under the permit.

viii. Denial of the extension would cause Peterson to experience undue hardship.

Finally, to determine whether good cause exists for granting a time extension, the Department is required to consider whether denial of the extension would result in "undue hardship to the applicant" and whether "no other reasonable alternatives exist for meeting water use needs." OAR 690-315-0040(2)(i).

With respect to these criteria, the PFO stated that Peterson did not explain whether denial would cause undue hardship or whether alternative water sources exist. The Department's application form, however, does not prompt the applicant to address either factor. Thus, Peterson had no basis for including in the Extension Application the effect that the denial of the Extension Application would have on his livelihood.

In this case, denial of the time extension will cause undue hardship to Peterson, as it will ruin him financially. Peterson has long dry-land farmed the property at issue, which results in relatively modest incomes as compared to irrigated farming. By committing well over \$350,000 to the development of Well 2, this is an expense that cannot be recouped. Further, to the extent

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that Peterson pursues a vineyard or other irrigated crop, Peterson has no other reasonable alternatives for meeting water use needs. As the Department stated itself, "new groundwater applications [in the project area] are being denied." In this case, denial of the time extension would cause undue hardship because it would completely undermine all of Peterson's investments in his efforts to develop an irrigated farm.

Peterson can complete the project within the time requested for the extension.

To approve an application for an extension of time, the Department must find that "the applicant can complete the project within the time period requested for the extension." OAR 690-315-0040(1)(c).

In this case, the Department relied on an improper basis to conclude that Peterson could not complete the project within the time requested for the extension. Specifically, the Department concluded that Peterson did not satisfy OAR 690-315-0040(1)(c) because the "demand on the [groundwater] resource cannot support the development of the undeveloped portion of water under Permit G-17294." The Department improperly evaluates this criterion based on water availability (which is addressed above), when the purpose of the criterion is actually to evaluate the reasonableness of the duration of the time extension requested.

Whether the duration of time requested is reasonable turns on the capacity of the applicant, not the capacity of the water resource. Specifically, the intent of OAR 690-315-0040(1)(c) is to determine whether an applicant has sufficient resources—financial, technical, and otherwise—to complete construction of a water project in order to put water to beneficial use. This intent is made evident by the phrasing of the Department's application form, which asks the applicant to "[j]ustify the time requested to complete the project and/or apply the water to full beneficial use" and to "[i]nclude any other information or evidence to establish . . . that you will be able to complete the project within the amount of time requested." The Department's interpretation of OAR 690-315-0040(1)(c) would put the applicant in the unusual situation of having to forecast groundwater supply for the foreseeable future. (And in any event, as discussed above, given the permitting history surrounding Permit G-17294, including the resolution of issues raised by the City of Milton-Freewater, the drawdown conditions included in the original Permit G-16846, as well as the additional casing conditions included as a result of T-11630, any concerns over water availability had already been fully addressed prior to the Extension Application.) For these reasons, the Department's conclusion that OAR 690-315-0040(1)(c) turns on the water resource is untenable, and the Department should find that Peterson can complete development within the time requested for extension.

> C. The Department's basis for denying the Application is a departure from well-established precedent, and should be rejected as arbitrary and capricious.

Finally, the Department's decision to deny an application for an extension of time, where the applicant has made a substantial financial investment and has completed substantial construction, is unprecedented. Because the Department does not explain its departure from precedent, the Department's decision is arbitrary and capricious, and thus, unlawful.

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Agencies have an obligation to be consistent or to explain their departure from prior decisions. *Moki, Inc. v. Oregon Liquor Control Com.*, 68 Or App 800, 803 (1984) (a petitioner "is entitled to even treatment by rule of law and reasonable confidence that [it] has received such treatment" (quoting *Sun Ray Drive-In Dairy, Inc. v. Oregon Liquor Control Com.*, 16 Or App 63, 71 (1973)). Here, the Department's decision is inconsistent with previous decisions regarding applications for extensions of time, and the Department does not provide any explanation for the inconsistency.

Using 2015 and 2016 as a snapshot of recent Department actions on extension requests, a review of Department Weekly Notices shows that applications for extensions of time are routinely granted. In 2015, the Department issued 189 PFOs that proposed to approve a non-municipal application for a time extension. Likewise, in 2016, the Department issued 174 PFOs that proposed to approve a non-municipal application for a time extension.

Meanwhile, in 2015, the Department issued only five PFOs that proposed to deny a non-municipal application for a time extension. According to the Department's Water Rights Information System ("WRIS"), two of the applications were resolved by settlement, one application is still pending resolution, and only two were denied. The denial of the two applications was due to the fact that they demonstrated *no construction and financial investment*. Similarly, in 2016, the Department issued nine PFOs to deny a non-municipal application for a time extension. Of the nine applications that the Department proposed to deny, the Department ultimately denied six, one application was withdrawn, one application resulted in a settlement pursuant to which a time extension was granted, and one application was granted.

According to the information available on WRIS, of the six applications that the Department ultimately denied in 2016, five applications demonstrated *no construction* and *no financial investment* in development of the water project since the time that the permit was issued. For the only application that demonstrated financial investment and was denied, the investment was in development of an *unauthorized* well. The application that was withdrawn demonstrated *no financial investment* since the time that the permit was first issued in 1999. With regard to the application that resulted in settlement, the PFO stated that the application demonstrated "no construction, no financial investment or reasonable diligence."

Peterson's Application stands out in stark contrast to the few applications that the Department denied in the previous two years. Contrary to *every* application for an extension that the Department denied in 2015 and 2016, Peterson completed substantial construction and made a substantial financial investment to develop the water right under G-17294. In fact, Peterson is unaware of any instance in which a non-municipal application for extension was denied, where, as here, the construction start requirement was met and significant investment had been made. Peterson's \$366,000 investment provides compelling evidence that the Extension Application should be approved. The Department's proposed decision to deny the Extension Application is not the "even treatment by rule of law" to which Peterson is entitled. *See Sun Ray*, 16 Or App at 71.

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5. Protest Filing Requirements

Peterson's protest is timely filed. An applicant for an extension of time may submit a written protest to the PFO within 45 days from the date of publication of the PFO in the Department's weekly notice. OAR 690-315-0060(1). The Department published notice of the PFO on May 2, 2017. Therefore, protest must be filed on or before June 16, 2017.

Peterson has included with this protest the protest fee of \$350. See ORS 536.050(j).

Peterson has complied with the provisions of OAR 690-002-0030. The protest is in writing and signed by the protestant or the protestant's attorney. OAR 690-002-0030(1). The protest also includes a detailed statement of the following information:

- "(a) Facts sufficient to show that the protestant is entitled to the relief or action requested;
- "(b) The specific relief or action requested;
- "(c) The name and address of the protestant and other person or persons necessary to, or having a direct interest in, the proceeding; and
- "(d) Citation of legal authority or basis for the claim or relief asserted or requested."

Id.

6. Conclusion and Request for Contested Case Hearing

For the reasons set forth above, the Department should approve Peterson's Extension Application.

DATED: June 16, 2017

Respectfully submitted,

David E. Filippi, OSB No. 965095 Kirk B. Maag, OSB No. 105507 Of Attorneys for Les Peterson







Oregon Water Resources Department

Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time for Permit G-17294, Water Right Application G-16359, in the name of Les Peterson

) PROPOSED FINAL ORDER) TO DENY

Permit Information

Application:

G-16359 G-17294

Permit: Basin:

7 - Umatilla / Watermaster District 5

Date of Priority:

December 30, 2004

Source of Water:

Three wells in Birch Creek Basin

Purpose or Use:

Irrigation of 350.0 acres

Maximum Rate:

4.38 cubic feet per second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315,

In Summary, the Department proposes to:

- Deny an extension of time to complete construction of the water system from April 22, 2016, to October 1, 2026.
- Deny an extension of time to apply water to full beneficial use from April 22, 2016, to October 1, 2026.

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EXHIBIT A



ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
cfs – cubic feet per second
Agent – David E. Filippi, Stoel Rives LLP
Well 2 – POA 2 (Startcard #1029943)
POA – point of appropriation

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(1) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is "good cause" to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a "good cause" determination.

FINDINGS OF FACT

- On April 22, 2011, Permit G-16846 was issued by the Department. The permit authorizes
 the use of up to 4.38 cfs of water from a well in Birch Creek Basin for irrigation of 350.0
 acres. The permit specified completion of construction and complete application of
 water was to be made on or before April 22, 2016.
- On August 15, 2014, the Department approved Permit Amendment T-11630 (Special Order Volume 93, Page 108) authorizing additional points of appropriation, and a change in the place of use under Permit G-16846. A superseding Permit G-17266 was issued by the Department on August 25, 2014, to reflect the changes.

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- 3. On August 25, 2014, a correcting superseding Permit G-17294 was issued by the Department, to correct an error in a change in place of use and describe additional points of appropriation proposed under Permit Amendment T-11630. The permit authorizes the use of up to 4.38 cfs of water from three wells in Birch Creek Basin for irrigation of 350.0 acres. The permit specified completion of construction and complete application of water was to be made on or before April 22, 2016.
- 4. On October 17, 2016, on behalf of the permit holder, David E. Filippi, (Agent) for Les Peterson, submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-17294 be extended from April 22, 2016, to October 1, 2026. This is the first permit extension requested for G-17294.
- On October 25, 2016, notification of the Application for Extension of Time for G-17294
 was published in the Department's Public Notice. On October 26, 2016, Walla Walla
 River Irrigation District submitted comments on the Application.
- 6. In summary, the commenter stated the basalt aquifer in Milton Freewater is over appropriated, landowners are facing potential groundwater curtailment for the first time, and that granting an extension of time for Permit G-17294 to further perfect a basalt groundwater right would be detrimental to other basalt groundwater rights.

Review_Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) - (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

 On October 17, 2016, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

- Construction of the well began prior to April 22, 2016, as specified in the permit as being the date to apply water to full beneficial use. The permit holder states, construction of POA 2, Startcard #1029943 (Well 2) began March 31, 2016.
- According to correspondence received by the Department on October 17, 2016, from Zollman's Larry Burd Well Drilling, LLC, construction of Well 2 began March 31, 2016.



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The Department has determined based on Finding of Fact (FOF) 8 and 9 that the permit holder has satisfied the condition requiring beginning of construction of the well.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

OAR 690-315-0040(3)(a)

Amount of Construction (The amount of construction completed within the time allowed in the permit. 1)

- The Application states that on March 31, 2016, construction of Well 2 began.
- Since April 22, 2016, the permit holder has continued construction of Well 2 to a depth of 950 feet below ground surface.

The Application provides minimal evidence of progress of physical work made towards completion of the water system. The Department has determined based on FOF 10 and 11, the permit holder has demonstrated minimal progress towards the development of Permit G-17294.

OAR 690-315-0040(3)(c)

Compliance with Conditions

The water right permit holder's conformance with the permit conditions.

 The Application states that none of the conditions in the permit have been complied with, as construction of the well has not been completed.

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[&]quot;Actual Construction" is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The Department has determined based on FOF 12, that the permit holder has not demonstrated compliance with the terms and conditions as required by Permit G-17294. The Application does not provide evidence of compliance with the terms and conditions of the permit. Therefore, the Department has determined the permit holder has not complied with any of the terms and conditions specified in Permit G-17294.

OAR 690-315-0040(3)(b)

Beneficial Use of Water: the amount of beneficial use made of the water during the permit or previous extension conditions.

- 13. The Application states that no water has been appropriated under this permit.
- 14. The Application does not identify beneficial use of water under this permit.

Based on FOF 12, 13, and 14, the Department has determined that beneficial use of water has not been demonstrated, as no water has been appropriated and the permit holder has demonstrated non-compliance with the terms and conditions under Permit G-17294.

OAR 690-315-0040(2)(b),(3)(d),(4)(d)

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose

15. The Application states an approximate total of \$366,390 has been invested. The Application included costs associated with surveying, and construction of an access road and pad for construction of Well 2 which are not "actual construction" under this permit, and therefore are not counted towards development. After deducting these costs, the approximate total investment for "actual construction" of the water system to date is approximately \$355,933 which is about 22 percent of the total projected cost for complete development of this project. The Application states an additional \$1,250,000 investment is needed to complete this project, which includes completing construction of Well 2, construction of POA 1 and POA 3 if necessary, installing pumps, electrical, and the water delivery system.

The Department has determined based on FOF 1S, that the permit holder had made an investment towards the development of the water system.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

Based on FOF 10 through 15, the Application provides evidence that minimal work has been accomplished towards completion of the water system; the permit holder has demonstrated noncompliance with the terms and conditions of the permit, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has demonstrated marginal diligence in development of the water under Permit G-17294.



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The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- (a)The amount of water available to satisfy other affected water rights and scenic waterway flows;
- (b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);
- (c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;
- (d) Economic investment in the project to date;
- (e) Other economic interests dependent on completion of the project; and
- (f) Other factors relevant to the determination of the market and present demands for water and power.

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

- 16. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-17294; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.
- 17. On April 13, 2017, the undeveloped portion of water under Permit G-17294, being 4.38 cfs, was reviewed by the Department's Groundwater Section for evaluation of current water availability. Based on available information, the Groundwater Section states that water levels in the vicinity of Permit G-17294 show water level declines on the order of 100 feet since the 1970s, and declines of 3 to 4 feet per year over the past 5 years. The Groundwater Section determined that the resource cannot support the complete development of the authorized rate.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

18. The points of appropriation for Permit G-17294, are located within the Birch Creek Basin, and are located in the Walla Walla Sub Basin.

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- Birch Creek is not located within or above any state or federal scenic waterway.
- 20. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.
- 21. The points of appropriation are located in a proposed serious water management problem area, currently new groundwater applications are being denied.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

22. Birch Creek is located within an area ranked "high" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

23. The Application states an approximate total of \$355,933 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

24. The Application did not identify economic interests other than those of the applicant's that may be dependent on completion of the project.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

- 25. Other factors relevant to the determination of the market and present demand for water and power have been identified, in that demand on the resource has resulted in significant declines of water levels in the aquifer, resulting in injury to senior water right holders.
- On October 26, 2016, comments were received by the Department from the Walla Walla River Irrigation District. The commenter stated the basalt aquifer in Milton Freewater is over appropriated, and the Department's Field Services Division recently proposed designating the area a Critical Groundwater Area. Landowners are facing potential groundwater curtailment for the first time, and granting an extension of time for Permit G-17294 to further perfect a basalt groundwater right would be detrimental to existing

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basalt groundwater rights.

The Department has determined based on FOF 17, 18, 21, 25, and 26, that there is a significant present demand for water in the Walla Walla Sub Basin, and that current data, comprising of substantial evidence, indicate groundwater levels are declining, and additional appropriation of groundwater may exacerbate these declines.

OAR 690-315-0040(2)(f) Fair Return Upon Investment

 The Application did not identify that the use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

OAR 690-315-0040(2)(g) Other Governmental Requirements

 The Application states delay in the development of this project was due in part to the length of time involved in gaining approval of a Permit Amendment to change the place of use.

OAR 690-315-0040(2)(h) Unforeseen Events

29. The Application did not identify unforeseen events.

OAR 690-315-0040(2)(i) Denial of the Extension Will Result in Undue Hardship

- 30. The Application did not state if a denial of the extension would result in undue hardship.
- The Application did not identify whether there are other reasonable alternatives for meeting water use needs.

OAR 690-315-0040(2)(c) Good Faith of the Appropriator

 Based on Findings of Fact 12, 13, and 14, above, the Department finds that the Applicant has not demonstrated good faith.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

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33. As of October 17, 2016, the Application states the remaining work to be completed consists of completing construction of the water system, which includes completing construction of Well 2, construction of POA 1, construction of POA 3, with continuous casing and sealing to a depth of at least 950 feet below land surface, installing pumps, electrical, and water delivery infrastructure to all authorized places of use; meeting all permit conditions, which includes installing a totalizing flow meter at each POA, submitting annual water use reports, and annual March static water level measurements for each authorized POA; and applying water to full beneficial use on 350.0 acres.

The Department cannot find that the applicant can complete the project or apply water to full beneficial use within the time requested for the extension, because demand on the resource cannot support the development of the undeveloped portion of water under Permit G-17294.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

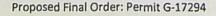
CONCLUSIONS OF LAW

- The permit holder has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
- The permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
- The Application established that there has been marginal diligence toward developing
 the project. The permit holder has not shown that good cause exists for an extension of
 time to complete construction and apply water to full beneficial use pursuant to OAR
 690-315-0040(1)(d).

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 Based on Market and Present Demand of water, pursuant to 690-315-0040(4), water is not available to support additional development.

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to complete construction of the water system under Permit G-17294 from April 22, 2016, to October 1, 2026.

Deny the time to apply water to beneficial use under Permit G-17294 from April 22, 2016, to October 1, 2026.

DATED: May 2, 2017

Dwight French, Administrator, Water Right Services Division If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

Proposed Final Order Hearing Rights

- Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any
 other person adversely affected or aggrieved by the proposed final order may submit a
 written protest to the proposed final order. The written protest must be received by
 the Water Resources Department no later than <u>June 16, 2017</u>, being 45 days from the
 date of publication of the proposed final order in the Department's weekly notice.
- A written protest shall include:
 - The name, address and telephone number of the petitioner;
 - A description of the petitioner's interest in the proposed final order and if the protestant claims 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 adversely affect or aggrieve the petitioner's interest;
 - A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - f. Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.

EXHIBIT A Page 10 of 11

- Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - Issue a final order on the extension request; or
 - b. Schedule a contested case hearing if a protest has been submitted, and:
 - Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Notice Regarding Service Members: 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. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: http://legalassistance.law.af.mil

- If you have questions about statements contained in this document, please contact Corey A Courchane at (503)986-0825.
- 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 Patricia McCarty at 503-986-0820.
- 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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760 SW Ninth Ave., Suite 3000 Portland, OR 97205 T. 503.224.3380 F. 503.220.2480 www.stoel.com

> David E. Filippi D. 503.294.9529 david.fillppi@stoel.com

October 14, 2016

Oregon Water Resources Department Attn: Water Right Permit Extensions 725 Summer Street NE, Suite A Salem, Oregon 97301

Re: Application for Extension of Time Application for Permit G-17294

Dear Sir or Madam:

We represent the permit holder, Les Peterson, with respect to the above-referenced application. Please find enclosed a completed application for extension of time for Permit G-17294, including attachments, along with a check in the amount of \$575.00 for the application fee.

Please do not hesitate to contact me or Mr. Peterson should you have any questions or need additional information regarding the enclosed application.

Sincerely,

David E. Filippi

Enclosures

cc (via email): Les Peterson

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SALEM, OR

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JUN 1 6 2017

OWRD

Application for Extension of Time for a Water Right Permit (NON-Municipal/NON Quasi-Municipal water Use)



Oregon Water Resources Department 725 Summer Street NE, Suite A Salem Oregon 97301 (503) 986-0900 www.wrd.state.or.us

Criteria for a Permit Extension of Time

The Department can accept requests for an extension of time on permits to (1) complete construction, and/or to (2) apply water to beneficial use.

In order to approve a permit extension request the Department must be able to find:

- 1) Construction has begun:
 - A. For Groundwater Permits
 Construction of the well began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.
 - B. For Surface Water or Reservoir Permits
 Construction of the water system began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

The Department will also confirm that:

2) A required fish screen, fish passage or fish by-pass device was installed <u>before or prior</u> to diversion of any water. An exception to the need to confirm installation prior to diversion of any water would be a waiver submitted to the Department from ODFW stating that a fish screen, fish passage or fish by-pass device was not required, provided your permit allows for a waiver.

If you have questions, please call the Department at (503)-986-0900 and ask to speak with a permit extension specialist.

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SALEM, OR

Instructions are in Attachment A.

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Revised 5/25/2016

Application for an Extension of time for a Permit

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C:\Users\ahs5087\Documents\Temporary Summer Work\Les Peterson WR Extension\Peterson App_Ext_WR_perm.docx



TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT A separate extension application must be submitted for each permit as per OAR 690-315-0020(2).

	UAK 090-313-0020)(2).		
I, <u>Les Peterson</u> NAME OF PERMIT HOLDER	(040 500 345 0030/4)	1/2// 11		
NAME OF PERIMIT HOLDER	[OAR 690-315-0020(1) a	ina (3)(a))		
1415 Highland Rd	Walla Walla	WA	99362	
ADDRESS	CITY	STATE	ZIP	
(509) 522-2124 PHONE		<u>les@lifeswhe</u> E-MAIL ADDR	The state of the s	
		7294 (which resul	lted from permit	
do hereby request that the time in	which to:			
complete construction (of di installation of the equipmen on Month: 4 Day: 22 Year: 2	t necessary to the u 016, be extended to	use of water), which October 1, 2026	ch time now expires , (OAR 690-315-0020(3)(i))	
be completed.) and/or the time in which to:	ermit does not spec	iny a date by when	·	
apply water to full beneficial time now expires on Month: [OAR 690-315-0020(3)(i)]				RECEIVE JUN 1 6 2017
I am the permit holder, or have written authori Time), to apply for an extension of time under t extension application are grounds for OWRD to	this permit. I understand	that false or misleading	statements in this	OWRE
File Pitario) July 1, 2016			
Signature	Date Date		BECC	11/200
LES PETERSON	Permit Holder		, ILCEI	VED BY OWR D
Printed Name	Title		d	7 7 7 000
			g	1 1 2016
Revised 5/25/2016 Application f	for an Extension of time	for a Permit	Page 2 of 10	ALEM, OR
C:\Users\ahs5087\Documents\Temporary Summer Woo	rk\Les Peterson WR Extensio	n\Peterson App_Ext_WR_	perm.docx	

EXHIBIT B Page 3 of 27 Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$575.
- Signature page (Second page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION along with the Supporting documents and/ or evidence

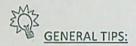
\$575 STATUTORY FEE TO:

Water Resources Department Attn: Water Right Permit Extensions 725 Summer Street NE, Suite A Salem, Oregon 97301



JUN 1 6 2017





- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The
 correct form is APPLICATION FOR EXTENSION OF TIME FOR MUNICIPAL AND QUASI-MUNICIPAL WATER USE
 PERMITS, available at the following link:
 http://www.oregon.gov/owrd/PUBS/docs/forms/fillable muni quasi ext app form 2014.doc
- Request the reasonable amount of time necessary to fully complete construction of the water
 project and/or to fully use the permitted quantity of water under the terms and conditions of
 your permit. Should this request be approved, it will be OWRD's expectation that you will
 complete your project within the new time period allowed. Future extensions may not be
 granted.
- A separate APPLICATION FOR EXTENSION OF TIME must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet, Instructions for Completing an Application for Extension of Time for A
 WATER RIGHT PERMIT (Attachment A), provides details that will help you answer each question on
 the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These
 rules may be viewed at:
 - http://arcweb.sos.state.or.us/pages/rules/oars 600/oar 690/690 315.html

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You may provide OWRD with any additional information or evidence that will aid us in making
our decision. Please note that OWRD may require other information that is necessary to 17 2016
evaluate the application. OAR 315-0020(3)(n).

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Application for an Extension of time for a Permit

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- After careful review of the Application for Extension of Time, you may contact OWRD at (503)
 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights Services Division.
- An Application for an Extension of Time will be reviewed for completeness. OWRD will return
 any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- The water right permit. If needed, a copy of the water right permit can be downloaded from the Department's Website at http://apps.wrd.state.or.us/apps/wr/wrinfo/ (using the link to the Water Rights Information System (WRIS). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- Documentation which demonstrates compliance with permit conditions (for example, well
 construction logs; static water level measurement reports; annual water use reports; ODFW
 fish screen certification; a plan to monitor the effect of water use on ground water aquifers
 utilized under the permit; etc.).

Questions to complete this application for an Extension of Time Please see the instruction sheet to help you answer these questions.

1. For Gro	Beginning Construction within required deadlines. OAR 690-315-0020(3)(d) oundwater Permits Has construction of the point of appropriation (well) authorized under this perm Yes No	it begun?
	Date construction began Month: March Day: 31 Year: 2016	
	Details of construction and attach documentation: See attached documentation	RECEIVED
	Start Card 1029943	JUN 1 6 2017
	Letter from Gary Zollman to Les Peterson, dated July 5, 2016	014177
For Sur	face/Reservoir Permit	OWRD
	Has construction of the water system begun? Yes No	RECEIVED BY OWRD
	Date construction began Month: Day: Year:	
	Details of construction and attach documentation:	OCT 1 7 2016
		SALEM, OR
OAR 690-	-315-0020(3)(A)(e)(A)	
2	Parmits typically contain standard or special conditions that must be fully satisfic	ad to lawfully

2. Permits typically contain standard or special conditions that must be fully satisfied to lawfully develop and use permitted water. Review the permit subject to this extension to identify which of the conditions listed in the 2nd column are contained within it. Using the extra row labeled "other" to specify any other additional conditions specified in a final order approving a permit amendment or

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Application for an Extension of time for a Permit

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prior extension of time. In the 1st column check the box for each condition (row) identified as relevant. In the 3rd column check "Yes" if you have completed or met the permit condition. Check "No" if the condition is not yet satisfied. In the 4th column, give the date when the condition was satisfied or will be satisfied. Attach any pertinent documentation. Note: a pump test condition does not need to be addressed here however; you must submit the results of the test to the Department for approval prior to certification.

CHART-A

	Permit Conditions in this Permit	Have Completed or	Date satisfied/ or will
Checkbox	Ground water Check those included on this permit	Met?	be satisfied
⊠ ⊠	Installation of a meter/totalizing flow meter	Yes X No	Before water use begins, 3/1/2017
\boxtimes	Submittal of annual water usage report	Yes X No	Following the first year of water use, ending 10/31/2017
\boxtimes	Submittal of initial static water level measurement	Yes X No	Following completion of construction, within 30 days of measurement as measured between 2/1/2017 and 3/31/2017
\boxtimes	Submittal of annual static water level measurements in the month required	Yes X No	30 days from measurement as measured between 2/1/2018 and 3/31/2018
	Submittal of Seven consecutive static water level measurements in the month required	Yes No	
	Special well construction standards	Yes X No	At time that well construction is completed
	Submittal of a monitoring plan	Yes No	
	Other (Specify):	Yes No	
	Other (Specify):	Yes No	
	Other (Specify):	Yes No	
	Surface Water or Reservoir	是的最高。	A CALL
	Installation of a meter/ totalizing flow meter/ in-line meter	Yes No P	ECEIVED BY OWN
	Installation a staff gauge	Yes No	
	Installation of a fish screen	Yes No	UCI 17 2016
	Installation of a fish by-pass device	☐ Yes ☐ No	
	Installation of a fish passage	Yes No	SALEM, OR
	Installation of an outlet gate/pipe/ conduit	Yes No	
	Submittal of a letter from ODFW that fish screen, fish by-pass device, and or fish passage is not required	Yes No	
	Submit as-built plans and specification	Yes No	DEC
	Submittal of a letter from an engineer prior to storage	□ Ves □ No	HE

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Application for an Extension of time for a Permit

Page 5 of 10



Other (Specify):	Yes No	
Other (Specify):	Yes No	
Other (Specify):	☐ Yes ☐ No	

If you have NOT complied with Permit conditions, explain the reasons why and indicate a date certain, when you will be in compliance.

Well construction was ongoing as of the April 22, 2016 completion date contained in the Permit G-17294, and as such, not all permit conditions had been fulfilled. I intend to be in full compliance with all permit conditions by the end of the requested extension period, October 1, 2026.

[OAR 690-315-0020(3)(e)]

3. Provide evidence of physical work made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-B); and if applicable, within the time period of the most recent extension granted (CHART-C). CHART-B (below) must be completed for all Application for Extension of Time requests. Use chronological order. (this does NOT include planning, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land, or planting crops)

CHART-B

The state of the s		
DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED List any work done before the permit was issued – eg. well drilled.	COST*
	None. No work was performed prior to permit issuance.	
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER. List work/actions done during the permitted time period.	COST*
4/22/11 (date original permit G- 16846 signed) 8/25/14 (date amended permit signed, per T-11630)	OCT	ED BY OWR: 1 7 2016 EM, OH
2/27/16	Surveyor location survey	508.00
3/17/16	Construction of access road to well location site and pad for parking and mobilization for POA-2	9852.45
3/17/16	Construction of holding ponds to enable well construction drilling for POA-2	1900.00
3/31/16	Start of well drilling for POA-2 by Zollman Drilling	
	Application for an Enterprise of the for Decit	REC

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4/22/2016	Date the permit specified complete application of water to the use shall be made- all permits contain this date.	
DATE	WORK ACCOMPLISHED AFTER the date the permit specified complete application of water COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME: List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.	cost*
Ongoing from 4/22/16 through end of June 2016	Continuation of well construction (See involces attached from Zollman's Larry Burd Well Drilling, LLC dated 5/3, 5/25, and 6/28/16. Note that some expenses from 5/3/16 invoice were incurred prior to 4/22/16)	354,033.03

^{*} If exact cost is not known, you must provide your best estimate.

If this is <u>not</u> your 1st Application for Extension of Time request, fill out CHART-C below in addition to CHART-B above. Use chronological order.

CHART-C

DATE	WORK ACCOMPLISHED <u>DURING</u> THE LAST EXTENSION PERIOD List all work done during the last authorized extension period.	cost*
	"Extended From" date for complete application of water used in the 1st (or the most recent) Application for Extension of Time.	
(*)	N/A. This is my first application for extension of time request.	
	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	
DATE	WORK ACCOMPLISHED <u>AFTER</u> THE LAST EXTENSION PERIOD EXPIRED List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.	cost*
	N/A.	

^{*} If exact cost is not known, you must provide your best estimate. [OAR 690-315-0020(3)(f)]

5. Cost of project to date: 366,390.48 3SS, 933 Cc (The total combined cost from CHART-B and CHART-C) [OAR 690-315-0020(f)]

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[OAR 690-315-0020(3)(e)(B)] Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit and/or prior extensions of time (if any) made to date. Report the rate used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit. For Surface Water Permit Extensions (e.g. S-XXXX or R-XXXX): TIP: Report the rate in the same units of measurement as specified in the permit. Maximum rate used to date = cfs (cubic feet per second) or, Maximum rate used to date = ____ gpm (gallons per minute) Acre-feet stored to date = AF For Ground Water Permit Extensions (e.g. G-XXXX): 7. TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used. CHART-D IF DRILLED Is this well Is the actual Maximum Well Log Well Tag drilled location Instantaneous, authorized Well # as Water Has this If yes, provide or utilized Number Numberauthorized on rate used to identified User's well been the Permit, e.g. e.g. this permit or date from this under any on Permit Well# drilled? Certificate, or on a permit OTHER MORR # 27566 well - - under Transfer No. 50473 or N/A amendment? this permit only water (See'8 below) (CFS or GPM) rights? Yes X Yes 🗌 Yes X Not yet POA 2 POA 2 N/A N/A No 🗌 irrigating No X No Yes Yes 🔲 No 🔲 Yes 🗌 POA 1 POA 1 No 🗌 No X RECEIVED Yes Yes 🗌 Yes 🗌 POA 3 POA 3 No 🗌 No 🗌 No X Yes Yes 🗌 Yes 🗌 JUN 1 6 2017 No 🗆 No 🗌 No Total Instantaneous rate from all wells utilized under this permit If the drilled location of a well is not authorized on this permit, please specify its RECEIVED BY OWRD location below, or provide a map showing its location. OCT 1 7 2016

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Application for an Extension of time for a Permit

Has or will a Permit Amendment Application been/be filed? Yes No

If a Permit Amendment Application has been filed: Transfer No. T-__

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Well#	Actual location	: Well #_	Actual location:
[OAR 690-315	i-0020(3)(e)(C)]		
9. Pro	vide the total nun	nber of acres irrigate	ed to date under this permit (if applicable).
			rear since permit issuance, and provide a
		identifying the acre	
copy of th	e application map	identifying the acre.	inigated. IV/A
T 1 - 1		N1/A	
I otal acre	s irrigated to date:	N/A	
Ground W	ater Permits: Plea	ise specify which we	lls are being utilized for this irrigation.
Well #	Acres	Well #	Acres
Well#	Acres	Well #	Acres
[OAR 690-315	-0020(3)(i)(j)]		
		f your future plans a	nd schedule to complete the construction of

CHART-E

the water system, and/or apply water to full beneficial use under the terms and conditions

APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
Fall 2016	Complete well construction, including casing, electric, etc. for POA 2	250,000.00
2026	Additional well construction for POA 1 and/or POA 3 (if necessary)	500,000.00
2026	Complete delivery infrastructure to all authorized POU, including electrical installation, equipment, pumps, etc.	500,000.00
Year: 2026	Date intend to apply water to full beneficial use under the terms and conditions of this permit.	
TO LOCATION TO	Total Cost	1,250,000.00

[OAR 690-315-0020(3)(g)]

of the permit.

11. Estimated remaining cost to complete the project: 1,2500,000.00

(The total cost from CHART-E)

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[OAR 690-315-0020(3)(h)]

12. Describe the reasons why the construction was not completed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances. Include any additional unforeseen events and/or other governmental regulation or requirements.

Actual construction was not started until early 2016. This was primarily due to the length of time to complete a prior transfer application (to add additional POAs to the permit), to arrange financing, to select and schedule a drilling contractor, and to prepare the site for construction.

[OAR 690-315-0020(3)(k)]

13. <u>Justify the time requested</u> to complete the project and/or apply the water to full beneficial use. Include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

Once construction of the existing well is completed, I will need additional time to put the irrigation delivery system in place. In addition, I anticipate the need to file a further permit amendment to address a land exchange with a neighbor, as I will need to move 40 acres of authorized POU from lands I no longer own to lands that I acquired as part of the exchange. Meanwhile, my neighbor will also need to move 40 acres of authorized POU he has under his own water right permit from lands I now own to lands that he now owns as a result of the exchange. (See T-11844.) Finally, depending on the production of the well currently under construction, I may develop one or both of the additional authorized POAs. I anticipate full build out of my system no later than October 2026.

[OAR 690-315-0020(3)(m)(n)]

 Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

I anticipate that additional unforeseen circumstances may occur. As such, I am requesting the maximum allowed time to complete construction and application of water to beneficial use.

Attach permit, and documentation to the application CEIVED BY OWRD

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Application for an Extension of time for a Penn RD

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STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

This correcting superseding permit is issued to correct an error in a change in place of use and describes additional points of appropriation proposed under Permit Amendment Application T-11630 and approved by Special Order Vol. 93, Pages 108-110 entered August 15, 2014, and correcting order approved by Special Order Vol. 93, Page 281, entered Rug 25 2014. This permit supersedes Permit G-17266.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: THREE WELLS IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

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WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	4	sw sw	WELL 1: 480 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 4
5 N	36 E	WM	5	NE SE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE E1/4 CORNER OF SECTION 5
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

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SALEM, OR

Application G-16359/T-11630.sah

Water Resources Department

PERMIT G-17294

THE PLACE OF USE IS LOCATED AS FOLLOWS:

PAGE 2

Twp	Dna	IRRIGA Mer	Sec	00	Agras
TWP	Rng	INICI	360	Q-Q	Acres
5 N	36 E	WM	4	NE NW	40.0
5 N	36 E	WM	4	SE NW	40.0
5 N	36 E	WM	4	NESW	40.0
5 N	36 E	WM	4	NW SW	40.0
5 N	36 E	WM	4	SW SW	40.0
5 N	36 E	WM	4	SESW	40.0
5 N	36 E	WM	9	NE NE	20.0
5 N	36 E	WM	9	NW NE	40.0
5 N	36 E	WM	9	NENW	40.0
5 N	36 E	WM	9	SE NW	10.0
				Total	350.0

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Permit Amendment T-11630 Conditions

The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.

Well construction in the Columbia River Basalts is limited to development of one aquifer.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter of measuring BY OWRD device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable hotice2016
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval. SALEM, OR

Application G-16359/T-11630.sah

Water Resources Department

PERMIT G-17294

PAGE 3

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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
- 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:

- 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
- Annual water-level measurements reveal a water-level decline of 25 or more feet;
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

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SALEM, OR

PERMIT G-17294

Application G-16359/T-11630.sah

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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OARr635-415: ForBY OWRD purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed. OCT 17 2016

The use may be restricted if the quality of downstream waters decreases to the point that those The use may be restricted if the quality of downstream waters decreased to the property waters no longer meet existing state or federal water quality standards due to reduced flows. RECEIVEL

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Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the Watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made on or before April 22, 2016. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued August 25, 2014

Dwight French, Water Right Services Division Administrator, for

Directof, Oregon Water Resources Department

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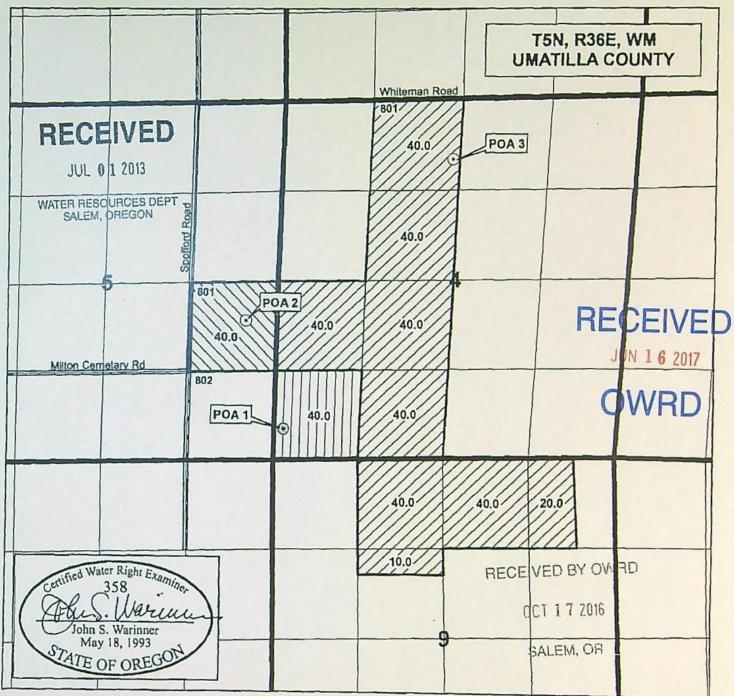
JUN 1 6 2017

OCT 1 7 2016

SALEM, OR

Application G-16359/T-11630.sah

Water Resources Department



POA (Authorized)

POA 1 is authorized well in SW SW Sec 4, located 480 ft N and 130 ft E from SW Corner of Sec 4.

POA (Additional)

POA 2 is proposed well in NE SE Sec 5, located 590 ft S and 475 ft W from E 1/4 Corner of Sec 5. POA 3 is proposed well in NE NW Sec 4, located 915 ft S and 100 ft W from N 1/4 Corner of Sec 4.

T011630 N

1 in = 1320 ft

POU (unchanged)

POU remains unchanged for most quarter-quarter sections.

POU (From)

SW SW of Sec 4 (40 ac) will not be irrigated under this water right.

POU (To)

NE SE of Sec 5 (40 ac) will be irrigated under this water right.

PERMIT AMENDMENT MAP

App G-16359 and Permit G-16846 Change POU and Add POAs

> in the name of LES PETERSON

Revised: 28 DEC 2012

Oregon Water Resources Department	4	Main	0	Help
Startcard Data	0	Return	9	Contact Us
Well Constructor: 1881 GARRY L ZOLLMAN; ZOLLMAN'S LARRY BURD WELL DRILLING LLC				
Start Card Number: 1029943 Owner Information				
Company				
First LES Last PETERSON Name				
Street1 1415 HIGHLAND RD				
Street2				
City WALLA WALLA State Washington V Zip 9936	62			
Home 509-522-2124 Work Phone				
Type of Work Fee Required ☑ New No Fee Required ☐ Alteration				
☐ Conversion ☐ Abandonment				
Original Start Card# Original Well Tag#			F	RECEIVED
Construction				JUN 1 6 2017
Proposed Existing/ Diameter (inches) 16		7		0011 2 0 2011
Date Depth(ft)				OWRD
□ Domestic □ Community □ Industrial □ Irrigation				
☐ Thermal ☐ Injection ☐ Livestock Other:			-	RECEIVED BY OWNE
☐ Monitoring ☐ Piezometer ☐ Dewatering ☐			,	RECEIVED BY OWRD
Proposed Well Location 1/4 MI. NE DIAGONAL FROM INTERSECTION OF SPOFFORD			esce.	OCT 1 7 2016
Street address of well	KD. AI	VD.	< >	SALEM, OR
County Umatilla V Township 5.00 N V Range 36.00	EV	Section	5	
QQ/Q NE V SE V Lattitude Longitude				
Taxlot 801				

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.



ZOLLMAN'S LARRY BURD WELL DRILLING, LLC

PO Box 1542, Pendleton, OR 97801 www.zollmanswelldrilling.com • zollmanslbwd@yahoo.com

July 5, 2016

Les Peterson 1415 Highland Rd Walla Walla, WA 99362 RECEIVED

JUN 1 6 2017

Re: Current Well Construction on Irrigation Well Permit G-17294, Start Card 1029943

OWRD

Les,

I am writing this letter to document the current construction phase we are at in the building of your irrigation well East of Milton-Freewater, Oregon.

Construction on this well started March 31, 2016.

Current drilling depth of the 19inch diameter casing hole is 1040ft. and we are drilling in a basalt aquifer that needs to be sealed per the direction of the local well inspector Erik Thomasser. Erik has been on site to help make sure the well meets the requirements of the permit.

The well has a 20inch surface hole, cased and sealed into basalt with cement grout to a depth of 100ft. Another casing hole with a 19inch diameter is currently being drilled to meet the permit requirement of casing and sealing to 950ft. Since we have been in an aquifer that has been open for almost 200ft. and still in a vesicular basalt aquifer zone we have had to change drilling techniques from air drilling to mud drilling. This drilling has continued past the 950ft. depth because of the continuing aquifer. This will allow us to case and seal using a cement grout through this aquifer to seal it off from the aquifer you will be using.

There have been two Oregon Water Resource Department Employees we have been working with on this project:

Locally - Erik Thomasser, Regional Well Inspector from Pendleton office

541-278-5456

RECEIVED BY OWRD

Salem – Jen Woody, Umatilla Basin Critical Water

503-986-0855

OCT 1 7 2016

Garry L. Zollman

Sincerely.

Oregon license 1881

SALEM, OR

Pendleton 541.276.3681 Hermiston 541.567.3088 Milton-Freewater 541.938.5135

Toll Free 800.953.3681 Fax 541.276.0209

We want to be your driller



engineers | landscape architects | planners | surveyors HDJ Design Group 314 W 15th Street RECEIVED

JUN 1 6 2017

OWRD

Les Peterson 1415 Highland Road Walla Walla, WA 99362

Vancouver, WA 98660-2927

Invoice number Date 4288-00-001 02/27/2016

Project 4288-00 LES PETERSON - WELL LOCATION SURVEY

HDJ Project Manager Greg E. Flowers

Services and Expenses for the month of February 2016:

Summary of Services:

POA Staking Complete.

Labor

Billed Amount 505.00

Invoice total

505.00

Aging Summary

Invoice Number	Involce Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
4288-00-001	02/27/2016	505.00	505.00				
	Total	505.00	505.00	0.00	0.00	0.00	0.00

Please make checks payable to HDJ Design Group, PLLC. To ensure proper credit, please include the INVOICE NUMBER on your check.

DUE UPON RECEIPT 1.5% per month will be assessed on past due accounts.

RECEIVED BY OWRD

OCT 17 2016

SALEM, OR

W. 4.2

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #: Invoice Date:

29566 03/21/2016

Due Date:

03/31/2016

Purchase Order #:

Job# 5812

Project: Peterson, Les 564 Spoffard Rd

Milton Freewater OR

97862

Customer # 3011

License: 116200

To: Les Peterson

1415 Highland Rd

Walla Walla WA 99362

Description	Unit	Quanity	Price	Amount
3/15/16: Mark out for locates and mob backhoe.				
Mob/Backhoe 1 In:	Hrs	1.00	\$100.00	100.00
Labor/2 hrs	Hrs	2.00	\$60.00	120.00
3/17/16: Build Road				
850G Cat/3 hrs	Hrs	3.00	\$100.00	300.00
Big Hamm Roller/1 hrs	Hrs	1.00	\$90.00	90.00
Backhoe/3 hrs	Hrs	3.00	\$100.00	300.00
Dump Truck # 65/3 hrs	Hrs	3.00	\$100.00	300.00
Tkt # 22495/13.93 tons of 2 1/2"-0 delivered 3/17/16	Ton	13.93	\$10.75	149.75
Tkt # 22498/15.05 tons of common borrow delivered 3/17/16	Ton	15.05	\$10.00	150.50
Tkt # 22499/15.83 tons of common borrow delivered 3/17/16	Ton	15.83	\$10.00	158.30
Tkt # 22500/13.74 tons of common borrow delivered 3/17/16	Ton	13.74	\$10.00	137.40
Tkt # 22501/15.00 tons of common borrow delivered 3/17/16	Ton	15.00	\$10.00	150.00
Tkt # 22502/18.98 tons of common borrow delivered 3/17/16	Ton	18.98	\$10.00	189.80
Tkt # 22503/15.89 tons of common borrow delivered 3/17/16	Ton	15.89	\$10.00	158.90
Tkt # 22504/15.24 tons of common borrow delivered 3/17/16	Ton	15.24	\$10.00	152,40
Tkt # 22505/17.12 tons of common borrow delivered 3/17/16	Ton	17.12	\$10.00	171.20
Tkt # 22506/15.54 tons of common borrow delivered 3/17/16	Ton	15.54	\$10.00	155.40
Tkt # 22507/15.65 tons of common borrow delivered 3/17/16	Ton	15.65	\$10.00	156.50
Tkt # 22508/16.42 tons of common borrow delivered 3/17/16	Ton	16.42	\$10.00	164.20
Tkt # 22509/12.39 tons of common borrow delivered 3/17/16	Ton	12.39	\$10.00	123.90
200.78	15	200.78	3	228.25

Please Pay This Amount

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00 Sales Tax: 0.00 Amount Due: 9,952.45

\$ 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts overdue on regular stale from days, OWRD

Please make check payable to Humbert Asphalt, Inc.

Thank you for your prompt payment!

RECEIVEDOCT 1 7 2016

JUN 1 6 2017

SALEM, OR

EXHIBIT B Page 21 of 27

. Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #: Invoice Date: Due Date:

29566 03/21/2016 03/31/2016

Purchase Order #:

License: 116200

To: Les Peterson 1415 Highland Rd Walla Walla WA 99362

Job # 5812 Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR 97862

Customer #

Description	Unit	Quanity	Price	Amount
Tkt # 22510/15.39 tons of common borrow delivered 3/17/16	Ton	15.39	\$10.00	153.90
Tkt # 22511/13.81 tons of common borrow delivered 3/17/16	Ton	13.81	\$10.00	138.10
Tkt # 22512/12.25 tons of common borrow delivered 3/17/16	Ton	12.25	\$10.00	122.50
Tkt # 22513/15.05 tons of common borrow delivered 3/17/16	Ton	15.05	\$10.00	150.50
Tkt # 22514/15.86 tons of common borrow delivered 3/17/16	Ton	15.86	\$10.00	158.60
Tkt # 22515/15.03 tons of common borrow delivered 3/17/16	Ton	15.03	\$10.00	150.30
Tkt # 22516/15.00 tons of common borrow delivered 3/17/16	Ton	15.00 0	\$10.00	150.00
3/18/16: Bujld Road		15.00 30		
850G Cat/5 hrs	Hrs	5.00	\$100.00	500.00
Big Hamm Roller/3 hrs	Hrs	3.00	\$90.00	270.00
Tkt # 22522/14.42 tons of common borrow delivered 3/18/16	Ton	14.42	\$10:00	144.20
Tkt # 22523/15.18 tons of common borrow delivered 3/18/16	Ton	15.18	\$10.00	151.80
Tkt # 22524/11.87 tons of common borrow delivered 3/18/16	Ton	11.87	\$10.00	118.70
Tik # 22525/13.50 tons of common borrow delivered 3/18/16	Ton	13.50	\$10.00	135.00
Tkt # 22526/14.22 tons of common borrow delivered 3/18/16	Ton	14.22	\$10.00	142.20
Tkt # 22529/13.72 tons of common borrow delivered 3/18/16	Ton	13.72	\$10.00	137.20
Tkt # 22530/17.53 tons of common borrow delivered 3/18/16	Ton	17.53	\$10.00	175.30
Tkt # 22531/15.83 tons of common borrow delivered 3/18/16	Ton	15.83	\$10.00	158.30
Tkt # 22535/16.40 tons of common borrow delivered 3/18/16	Ton	16.40	\$10.00	164.00
Tkt # 22536/15.66 tons of common borrow delivered 3/18/16	Ton	15.66	\$10.00	156.60
Tkt # 22537/18.89 tons of common borrow delivered 3/18/16	Ton	18.89_	\$10.00	188.90
		167.22	66	94.35

18 lop/s

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00 Sales Tax: 0.00 Amount Due: 9,952.45

Please Pay This Amount

\$ 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts Please make check payable to Humbert Asphalt, Inc.

overdue on Egitan statement dates.

Thank you for your prompt payment!

RECEIVED

OCT 1 7 2016

JUN 1 6 2017

SALEM, OR



EXHIBIT B Page 22 of 27 . Hambert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

1415 Highland Rd

Walla Walla WA 99362

Invoice #:

29566

Invoice

Invoice Date: Due Date:

03/21/2016 03/31/2016

Purchase Order #:

Job# 5812

Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR 97862

Customer # 3011

License: 116200 To: Les Peterson

Description	Unit	Quanity	Price	Amount
Tkt # 22538/16.53 tons of common borrow delivered 3/18/16	Ton	16.53	\$10.00	165.30
Tkt # 22539/15.28 tons of common borrow delivered 3/18/16	Ton	15.28	\$10.00	152.80
Tkt # 22540/18.44 tons of common borrow delivered 3/18/16	Ton	18.44	\$10.00	184.40
Tkt # 22542/16.04 tons of common borrow delivered 3/18/16	Ton	16.04	\$10.00	160.40
Tkt # 22545/16.25 tons of common borrow delivered 3/18/16	Ton	16.25	\$10.00	162.50
Tkt # 22546/18.09 tons of common borrow delivered 3/18/16	Ton	18.09	\$10.00	180.90
Tkt # 22549/18.12 tons of common borrow delivered 3/18/16	Ton	18.12	\$10.00	181.20
Tkt # 22550/14.84 tons of common borrow delivered 3/18/16	Ton	14.84	\$10.00	148.40
Tkt # 22551/20.10 tons of common borrow delivered 3/18/16	Ton	20.10	\$10.00	201.00
Tkt # 22552/14.89 tons of common borrow delivered 3/18/16	Ton	14.89	\$10.00	148.90
Tkt # 22553/14.60 tons of common borrow delivered 3/18/16	Ton	14.60	\$10.00	146.00
Tkt # 22555/18.45 tons of common borrow delivered 3/18/16	Ton	18.45	\$10.00	184.50
Tkt # 22556/17.35 tons of common borrow delivered 3/18/16	Ton	17.35	\$10.00	173.50
Tkt # 22561/15.41 tons of common borrow delivered 3/18/16	Ton	15.41	\$10.00	154.10
Tkt # 22562/20.38 tons of common borrow delivered 3/18/16	Ton	20.38	\$10.00	203.80
Tkt # 22563/17.82 tons of common borrow delivered 3/18/16	Ton	17.82	\$10.00	178.20
Tkt # 22564/15.25 tons of common borrow delivered 3/18/16	Ton	15.25	\$10.00	152.50
Tkt # 22565/20.18 tons of common borrow delivered 3/18/16	Ton	20.18	\$10.00	201.80
kt # 22566/17.79 tons of common borrow delivered 3/18/16	Ton	17.79_	\$10.00	177.90
16		375.81	a	952.45
looks		3701	1	756,73

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00

Sales Tax: 0.00

Amount Due: 9,952.45

Please Pay This Amount

8 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts

overdue on Peru State State of Bale OWRD

Please make check payable to Humbert Asphalt, Inc. Thank you for your prompt payment!

OCT 1 7 2016

JUN 1 6 2017

SALEM, OR



Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

1415 Highland Rd

Walla Walla WA 99362

Invoice

Invoice #: Invoice Date:

29565 03/21/2016

Due Date:

03/31/2016

OR

Purchase Order #:

Job # 5812

Project: Peterson, Les

564 Spoffard Rd Milton Freewater

97862

Customer# 3011

License: 116200 To: Les Peterson

Description .	Unit	Quanity	Price	Amount
3/15/16: Mob D8N and start building water holding pond.				
Mob/D8N	Hrs	1.00	\$200.00	200.00
D8N/4.5 hrs	Hrs	4.50	\$200.00	900.00
3/15/16: Finish building water holding pond.				
D8N/4 hrs	Hrs	4.00	\$200.00	800.00
No Charge for Demobing D8N				

Non-Taxable Amount:

1,900.00

Taxable Amount:

0.00

Sales Tax:

0.00

Amount Due:

1,900.00

Please Pay This Amount

\$ 1,900.00

A service charge of 18.00

% per annum will be charged on all amounts Please make check payable to Humbert Asphalt, Inc.

overdue on regula Estatement do ESY OWRD

Thank you for your prompt payment!

JUN 1 6 2017

OCT 17 2016

SALEM, OR

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
5/3/2016	81

Bill To
Peterson Farms
Les Peterson
1415 Highland Road
Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
100 100 1 1 15 1 200 50 15 2 1 0.5 2	Start Card Mobilization Drill 24" surface hole from 0' to 100' 20" Casing from + 2' to 98' Surface Seal 22 bags Bentonite 15 yards cement grout Cement Grout Pump equipment and labor Drill 19" hole from 100' to 300' 50 gallons drilling fluid 15 gallons drilling Polymer Soda Ash 50# bag 16 inch float shoe/plug Cat Skid Steer 2 weeks Aux Compressor Rentals (2) + transport 578 gallons diesel fuel for Aux Compressors	225.00 1,000.00 175.00 59.54 500.00 400.00 500.00 148.00 27.00 51.23 40.00 6,200.00 2,800.00 10,180.00 2.29	225.0 500.0 17,500.0 5,954.0 500.0 6,000.0 500.0 29,600.0 1,350.0 768.4 80.0 6,200.0 1,400.0 20,360.0 1,323.6
			7 2016 M, OR

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Total

\$92,261.07

JUN 1 6 2017



Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #	
5/25/2016	82	

Bill To
Peterson Farms
Les Peterson
1415 Highland Road
Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

53 Drill 19" casing hole from 800' to 900' with roller bit 53 hours at \$550/hr 550.00 29,150.0 20,360.0 3,826 3826 gals Diesel Fuel used for Aux Compressors thru May 24, 2016 21.4 8,187.6 105 105 gals Drilling fluid @ 27.00/gal 27.00 2,835.0					
53 Drill 19" casing hole from 800' to 900' with roller bit 53 hours at \$550/hr 2 Aux Compressor Rental X 2 @ \$10,180.00/ea 3,826 3815 Dises Fleut used for Aux Compressors thru May 24, 2016 105 gals Drilling fluid @ 27.00/gal 960' 16" x .375 wall easing ordered @ current steel price of \$54.25 PECEL /ED BY OWF	Quantity	Description		Rate	Amount
OCT 1.7 2016	500 53 2 3,826 105	Drill 19" casing hole Air Rotary from 300' to 800' @ \$14 Drill 19" casing hole from 800' to 900' with roller bit 53 Aux Compressor Rental X 2 @ \$10,180.00/ea 3826 gals Diesel Fuel used for Aux Compressors thru M 105 gals Drilling fluid @ 27.00/gal	3 hours at \$550/hr ay 24, 2016	550.00 10,180.00 2.14 27.00	29,150.0 20,360.0 8,187.6 2,835.0
				0	CT 1.7 2016

Total

\$186,612.6

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JUN 1 6 2017



Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
6/28/2016	92

Bill To

Peterson Farms Les Peterson 1415 Highland Road Walla Walla, WA 99362

P.O. No.	Terms	Project	
	Due on receipt		

Quantity	Description	Rate	Amount .
1 1,782 165 68 720 4 5 20 1 1 1 1 54 1	Drill 19 inch casing hole Roller Bit from 900' to 1,040' Frac Tank Delivery Frac Tank Rental 1 month 1,782 gals Diesel Fuel used for Aux compressors 5/25/16 - 6/3/16 165 gals Air Drilling foam @ \$27.00/gal 68 30# bags N Seal Loss Circulation Material 720 50# bags Bentonite @ \$12.25/bag 4 5gal buckets Polymer Drilling fluid Additive @ \$256.06/bucket 5 50#bags Soda Ash 20 1/2 # bags loss circulation material @ \$9.65/bag Water Truck Rental 1 week 6/24/16 - 6/30/2016 Cat Skid Steer Rental 1 month Mud Recycle System 54 hrs @ \$150.00/hr 50.5 hours Mud Pumping	148.00 1,485.20 1,176.00 2.14 27.00 120.05 12.25 256.06 40.00 9.65 1,584.00 2,800.00 150.00 250.00	20,720.00 1,485.20 1,176.00 3,813.48 4,455.00 8,163.40 8,820.00 1,024.24 200.00 193.00 1,584.00 2,800.00 8,100.00 12,625.00
		RECEIV	ED BY OWRD
		00	1 7 2016
		SA	LEM, OR

RECEIVED

Total

\$75,159.32

JUN 1 6 2017



Mailing List for Extension PFO Copies

PFO Date: May 23, 2017 <u>Copies Mailed</u>

Application: G-16359 By: SP On: 5-2-17

Original mailed to Applicant:

Les Peterson 1415 Highland Rd Walla Walla, WA 99362

Copies sent to:

- 1. WRD App. File G-16359/ Permit G-17294
- Stoel Rives LLP
 David E. Filippi
 760 SW Ninth Ave, Suite 3000
 Portland, OR 97205
- Walla Walla River Irrigation District Teresa Kilmer
 PO Box 248
 Milton-Freewater, OR 97862

Fee paid as specified under ORS 536.050 to receive copy:

4. None

Receiving via e-mail (10 AM Tuesday of signature date) (DONE BY EXTENSION SPECIALIST)

- WRD Watermaster District 5, Greg Silbernagel
- 6. WRD North Central Regional Manager, Mike Ladd
- 7. TACS Sarah Henderson

CASEWORKER: CAC

COURCHANE Corey A * WRD

From: IVERSON Justin T * WRD

Sent: Thursday, April 13, 2017 3:22 PM
To: COURCHANE Corey A * WRD

Cc: WOODY Jennifer L * WRD; LADD Michael F * WRD; BATEMAN Brenda O * WRD;

FRENCH Dwight W * WRD

Subject: FW: Peterson Well Permit G-17294

Hi Corey,

FYI, I responded to Garry's email with a phone call, agreed with your advice as cited in his email below, let him know that the groundwater section had provided a technical review to you regarding the extension, and told him that you were the best point of contact for future calls from Mr. Peterson.

Cheers, Justin

Justin Iverson

Groundwater Section Manager
Oregon Water Resources Department
725 Summer St NE, Suite A | Salem, OR 97301
P: 503-986-0933 | E: Justin.T.Iverson@oregon.gov

----Original Message----

From: WOODY Jennifer L * WRD

Sent: Wednesday, April 12, 2017 11:59 AM

To: IVERSON Justin T * WRD

Subject: FW: Peterson Well Permit G-17294

Do you want to take this one or shall I?

----Original Message----

From: zollmans Lbwd [mailto:zollmanslbwd@yahoo.com]

Sent: Wednesday, April 12, 2017 8:45 AM

To: WOODY Jen L.

Cc: THOMASSER Erik A * WRD; JEFFERY Joel W.

Subject: Peterson Well Permit G-17294

Morning Jen,

I am in need of some information and not sure who to go to for this information. If you can help us it would be very beneficial.

On the Peterson Well, Permit G-17294 he applied for an extension on the time last fall and as near as I can tell I see no information if he obtained this.

We have been constructing this well since March 30, 2016 and only stopped with a special standard request because of weather and some financial needs of the owner.

We are currently constructing on the well and the question came up from the owner that he cannot get an answer from OWRD as to what has occurred since the request of the extension of time on his Permit.

Les Peterson has been in contact with Sarah Henderson and she sent him to Corey Courchane. The Response was they could not tell him if his permit is approved or denied and " that it might be prudent to not continue with construction of well until you know what the outcome of your application might be".

I am totally alarmed at this response since all previous extensions of time for ongoing construction of wells permitted has been to give an extension.

To stop construction leaves me in a problem to make sure I abide by 690 rules.

The owner has spent well over \$400,000. dollars on this project and will need to spend about the same to finish his entire system. This is not being taken lightly.

Any help or information would be appreciated.

Sincerely,

Garry Zollman 541-969-9626 cell

Zollman's Larry Burd Well Drilling, LLC P. O. 1542 Pendleton, OR 97801 541-276-3681 office 541-276-0209 fax

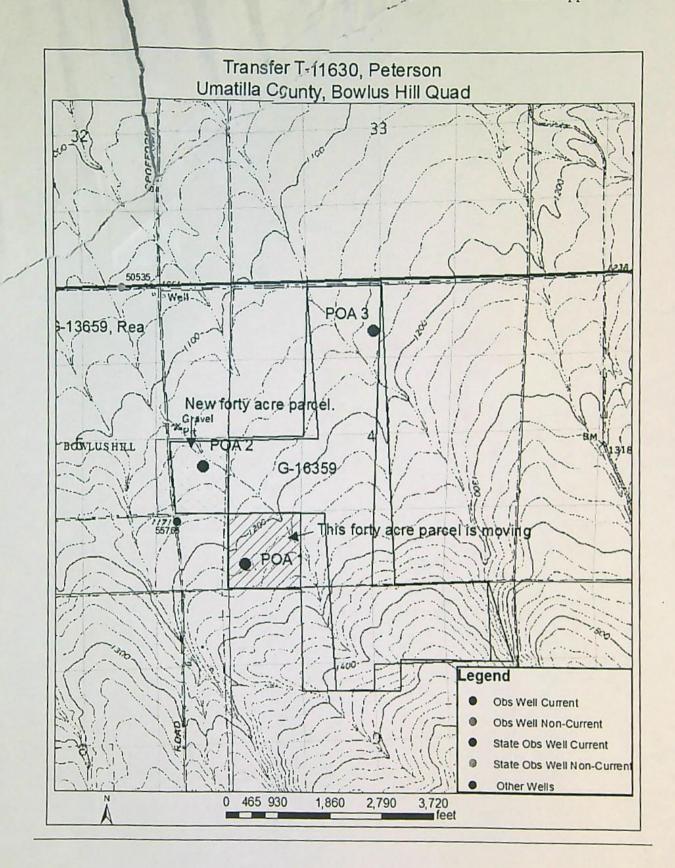
www.zollmanswelldrilling.com

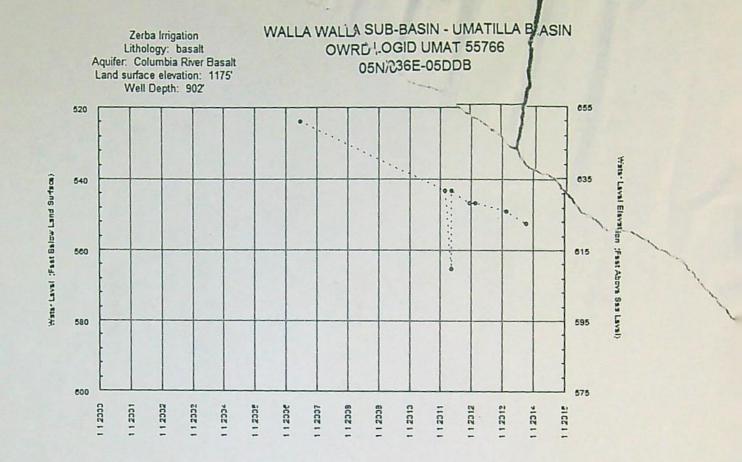
FROM T-11630



THE REAL PROPERTY.	WRD	Oregon Water Resource 725 Summer Street NE, S Salem, Oregon 97301-12 (503) 986-0900 www.wrd.state.or.us	Suite A			'orm:
App	lication: T-1	11630		Ap	plicant Name: Les	Peterson
Prop	oosed Chang	ges: POA USE	⊠ APOA ⊠ POU	☐ SW→GW ☐ OTHER	RA	
Rev	iewer(s): N	Marc Norton		I	Date of Review: 12	2/11/2013
		provided in the appaper approved because:	lication is insu	ifficient to evalua	te whether the proj	posed
		well reports provided the transfer.	d with the appl	ication do not cor	respond to the wat	er rights
	The application does not include water well reports or a description of the well construction details sufficient to establish the ground water body developed or proposed to be developed.					
	Other	_				
1.	Basic description of the changes proposed in this transfer: The applicant and a neighbor have traded 40 acre parcels – Change in place of use. The applicant would like to add two new POAs.					
2.	Will the proposed POA develop the same aquifer (source) as the existing authorized POA? Yes No Comments: No well has been constructed on this property. Well depth and construction plays a major role in which aquifer(s) is/are developed. Well construction for G-16359 was very open concerning casing and seal requirements.					
3.						
	The state of the s	stimate the portion of that will need to be	Carlo Company of the	CONTRACTOR OF THE PROPERTY OF		

4.	a) Will this proposed change, at its maximum allowed rate of use, likely result in an increase
	in interference with another ground water right?
	Yes No Comments: The original POA is about 1450 feet southeast of an existing
	permitted well – UMAT 55766 (Application G-16095, Permit G-15704). The proposed
	POA -2 is about 1150 northeast of UMAT 55766. Constructing and producing water from
	both POA 1 and 2 could cause significant interference with UMAT 55766. The priority dat
	for UMAT 55766 is September 26, 2003. Permit G-15704 has a decline condition that could
	allow the Department to restrict use if water level declines in UMAT 55766 exceed certain
	limits. Water levels have already declined 25 feet from June 2006 through February 2013. Limit C is a decline of 25 feet or more.
	To avoid interference with a senior user, Permit G-15704, any well-constructed under
	Permit G-16846 should be continuously cased and continuously sealed to a depth greater
	than 950 feet.
	b) If yes, would this proposed change, at its maximum allowed rate of use, likely result in
	another groundwater right not receiving the water to which it is legally entitled?
	Yes No If yes, explain: Construction of POA 1 and 2 would have the potential
	for significant interference with a senior groundwater user. Proposed well construction
	mentioned above would minimize the possibility of interference with the senior right.
5.	a) Will this proposed change, at its maximum allowed rate of use, likely result in an increase in interference with another surface water source? Yes No Comments: Groundwater was encountered at a depth of 633 feet below land surface, well below any near surface water sources.
	b) If yes, at its maximum allowed rate of use, what is the expected change in degree of
	interference with any surface water sources resulting from the proposed change?
	Stream: Minimal Significant
	Stream: Minimal Significant
	Provide context for minimal/significant impact:
6.	What conditions or other changes in the application are necessary to address any potential issues identified above: Condition any well-constructed under Permit G-16846 to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.
7.	Any additional comments: Well construction in the Columbia River Basalts needs to limit development to one aquifer.
8.	There is considerable discrepancy on the map submitted for the permit amendment between
-	the Public Land Survey, Tax Lots and the 2011 air photo of the area. This should be
	clarified.





Permit Extension Ground Water Review Reviewed By: Date Reviewed Justin Iverson, Ground Water Section Manager Corey Courchane, Permit Extension Review Ground Water Review for File G-16359 / Permit G-17294

The above referenced permit is currently being reviewed for an Extension of Time. Before I can determine whether or not an Extension of Time should be granted, a Ground Water review for this file is necessary. Special designations affecting this permit are as follows:

NOTE: Original Division 9 review completed by: Mike Zwart – January 20, 2005

For Ground Water / Hydrology Staff Use: (Availability)

Please review as per checked boxes:

Date:

To:

From:

Subject:

(Date permit issued: August 25, 2014)

- Permit G-17294 is located in Milton-Freewater groundwater area of concern. Permit G-17294 contains the following condition(s):
 - Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum; and
 - Well construction in the Columbia River Basalts is limited to development of one aquifer.

The permit authorizes an appropriation rate of 4.38 cfs The Permit holder has developed no water use to date (as of October 17, 2016) The portion of the Permit left to be developed 4.38 cfs

Based on information currently available, can the resource support the complete development of the authorized rate? Yes No circle one)

worm lands in the vicinity of this affirmation furnit show	unter
level declines on the order of 100 ft since the 1970s and -3	-4 ft /4r
over the fast 5 years (see affected hydrography for hearty	wells).
This area is currently subject to a rulendary process to	classing ges
for exempt uses only and voluntary agreements or CGWA	desquetion
is expected in the fature to reduce obscured ges tend declines. Should any additional conditions be added to the extension of time to mitig	gate the effects
	No (circle one)
f yes, explain:	

COURCHANE Corey A * WRD

From: COURCHANE Corey A * WRD

Sent: Wednesday, March 01, 2017 1:13 PM

To: 'les

Subject: RE: Les Peterson, Permit G-17294, Extension

Les,

I wouldn't be able to tell you if the Department will approve or deny your application, until feedback is received from Groundwater Section for further evaluation. Based on this information, it might be prudent to not continue with construction of the well until you know what the outcome of your application might be. Ultimately it is a business decision. I wish I could offer you more advice.

Sincerely,

Corey A Courchane

COREY A COURCHANE | EXTENSION SPECIALIST

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0825 | Fax: 503 986-0901

Email: corey.a.courchane@oregon.gov | Web: http://www.oregon.gov/OWRD

From: les [mailto:les@lifeswheat.com]
Sent: Wednesday, March 01, 2017 12:45 PM

To: COURCHANE Corey A * WRD

Subject: RE: Les Peterson, Permit G-17294, Extension

Importance: Low

Hello Corey,

The obvious question is when shall I request the well driller to return? He was shut down due to weather conditions and left for another job. This request was initiated 'July

2016"? What if the application is denied? Enough time has passed even for OWRD to review the situation.

What would you advise me to do?

Thanks, Les

From: COURCHANE Corey A * WRD [mailto:Corey.A.Courchane@oregon.gov]

Sent: Wednesday, March 1, 2017 8:51 AM

To: les@lifeswheat.com

Subject: Les Peterson, Permit G-17294, Extension

Les,

Your email question was forwarded to me by Sarah Henderson. Your extension application is currently awaiting groundwater review by our Groundwater Section. I do not have a time frame available of when the Department will continue processing your application. If you have any further questions or concerns, please let me know.

Thank you,

Corey A Courchane

COREY A COURCHANE | EXTENSION SPECIALIST

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503 986-0825 | Fax: 503 986-0901

Email: corey.a.courchane@oregon.gov | Web: http://www.oregon.gov/OWRD

YEAR OWRD,

The wells designated by this permit are still ander construction.

What is the status on the "application for extension of time" on this Fermit?

Lus Reters -

Application 6 16359 Permit 6 17294

MAR 0 6 2017

SALEM, OR

COURCHANE Corey A * WRD

From:

ORTIZ-TURNER Carlos * WRD

Sent:

Tuesday, March 28, 2017 1:20 PM

To:

COURCHANE Corey A * WRD

Subject:

Re: Permit G-17294

Attachments:

scan_20170328_125937.pdf

Good Afternoon Cory,

I received a water level report with a note attached asking about the status on an application for extension of time. I thought you might be able to answer their question. I included a scan of the note and contact information.

Les Peterson Permit: G-17294 509-849-2877

Thank you,

Carlos Ortiz-Turner | Assistant Hydrographer
Carlos Ortiz-Turner@Oregon.gov | 503-986-0822
Reporting & Recording Line 503-986-0905
Water Use Reporting / Water Rights Map Tool / Water Rights Info Query

COURCHANE Corey A

From: Teresa Kilmer <teresa@wwriver.com>
Sent: Wednesday, October 26, 2016 3:28 PM

To: COURCHANE Corey A

Subject: Permit G-17294 Time Extension Application filed 10/17/2016

Hi Corey,

The basalt aquifer in Milton-Freewater is over-appropriated. Brenda Bateman, Jen Woody, Justin Iverson and Ivan Gall with the Oregon Water Resources Department Field Services Division recently conducted a meeting in our community proposing designating this area a Critical Groundwater Area. Landowners are facing potential groundwater curtailment for the first time.

Les Peterson originally submitted application (G-16359) for permit G-17294 on December 30, 2004. Granting a time extension to further perfect a basalt groundwater right would be detrimental to existing basalt groundwater rights. The landowner should be required to submit a CBU and prove up on the portion of the permit that has been perfected to avoid exacerbating the groundwater decline in our community.

If you would like to discuss my concerns further, I can be reached at: 509-386-4024.

Sincerely,
Teresa Kilmer
District Manager
Walla Walla River Irrigation District

COURCHANE Corey A

From:

FRENCH Dwight W

Sent:

Friday, October 21, 2016 12:37 PM

To:

COURCHANE Corey A; PIERCEALL Jeffrey D

Subject:

FW: G-17294 Extension

Could one of you please print this out for the file.

Thanks, Dwight

Dwight French

Water Right Services Division Administrator Oregon Water Resources Department dwight.w.french@state.or.us 503-986-0819

From: BYRD Kris R

Sent: Friday, October 21, 2016 11:03 AM

To: FRENCH Dwight W

Subject: FW: G-17294 Extension

Dwight,

I am passing this message along. I'm around if you have any questions for me.

Kris

Kristopher R. Byrd, Manager Well Construction and Compliance Section Oregon Water Resources Department (503) 986-0851 Direct Line (503) 986-0902 Fax

We're on the Web: www.wrd.state.or.us

From: THOMASSER Erik A

Sent: Friday, October 21, 2016 9:30 AM

To: BYRD Kris R

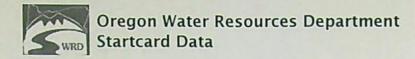
Subject: G-17294 Extension

Good morning Kris,

Mike Ladd has requested that I provide you the drilling start date for startcard 1029943: irrigation well on G-17294 for Les Peterson. According to both my notes and the drillers project record the drilling for this well began on 3/31/16. Mike also requested that you discuss this with Dwight French as it is relevant to an extension of time recently filed by Mr. Peterson.

Thank you,

Erik A. Thomasser, GiT, PG



A Main O Help

3 Return

Contact Us

Startcard	Number:	1029943
-----------	---------	---------

Received: 3/15/2016 Fee Received: 3/15/2016

License	Nbr 1881	Phone Nhr	541-276-3681	
		Fliotie Noi	341-270-3001	
Driller Na	me GARRY L ZOLLMAN			
Driller Compa	any ZOLLMAN'S LARRY E	BURD WELL DRILLING		# 102 9942
Owner Informat	ion			# 1029943 Thomassing
Company				Thomas of the
First LES		Last Name PETERSON		RE. EN Processor respective
Street1 1415	HIGHLAND RD			still
Street2				Comptiment 14
City WALL	A WALLA	State WA Zi	p 99362	probes Enkis auge
Home 509-5	522-2124	Wor Phon	k e	ptill in process to the problems to the problems to the problems of the proble
Type of Work				
Fee Require	ed 🗷 New	No Fee Require	d Alteration	
	□ Conversion		Abandonm	ent
	Deepening			
Origin Startcard		Original Well Tag	#	
Construction				
Propose		Existing/	Diame	
Commencement Date		Proposed 1200 Depth(ft)	(inch	es) 16
Use				
□ Domestic	☐ Community	☐ Industrial	☑ Irrigat	ion
□ Thermal	□ Injection	□ Livestock	Other:	
☐ Monitoring	☐ Piezometer	☐ Dewatering		
Proposed Well	Location			
Street address of well	1/4 MI. NE DIAGONAI MILTON CEM	FROM INTERSECTIO	N OF SPOFFOR	RD RD. AND
County	Umatilla Township	5.00 N	Range 36.0	0 E Section 5
QQ/Q	NE SE Lattitude		Longitude	
Taxlot 8	301			

Extension PFO Checklist for

Other than Muni or Quasi-Municipal

Water Use Permits

(OAR 690-315-0010 through OAR 690-315-0060)

Application: 6-16359 Permit: 6-17294 Permit Amendment? No Yes T-11630 pending papproved 8/15/14 Permit Holder's Name: Les Peterson					
Permit Holder's Name: Les Peterson Permit Holder's Mailing Address: 1415 Highand Rd Walla Walla WA 99362 Permit Holder's Mailing Address: 1415 Highand Rd Walla Walla WA 99362					
email les@ lifeswheat.com					
Phone Number: (509) 522- 2124					
Drainage Basin: 7 County: Umatilla Watermaster District: 5 Watermaster: 6 Silberregel Wille Lab. Date Permit was issued: 44.11 25.2019 riority Date: December 30, 2011 Date of PN: 10/25/16					
Drainage Basin: 7 County: Unatilla Watermaster District: 5 Watermaster: 6 Silber regel Will					
Date Permit was issued: August 25, 2019 riority Date: December 30, 2011 Date of PN: 10/25/16					
Source: Three wells in Birch Gock Basin					
Use: IR of 350.0 acres					
"0": 4.38 cts					
Orig "A" Date: Orig "B" Date: 4/22/2016 Orig "C" Date: 4/22/2016					
Extension request received: U-R-16 Last Authorized Date: "C" Date:					
Request Number / Proposed Proposed 2-26					
(1, 2, 3): C Date:					
Condition Condition Permit Condition					
Met? Not Met? Begin construction: Start cond # 1029943 3-31-16					
wells 2 and 3 cont. cased + sealed > 950 ft at minimum					
Well Construction [mitch to one aguster					
TEM at each POA					
TFM at each POA					
TFM at each POA Feb-March SWL					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No Work was accomplished within the time allowed in the permit or previous extension GW REVIEW: Y D CC					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No Work was accomplished within the time allowed in the permit or previous extension Water right permit holder conformed with the permit or previous extension conditions Beneficial use made of the water during the permit or previous extension time limits MITIGATION REVIEW: Y N					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No Work was accomplished within the time allowed in the permit or previous extension Water right permit holder conformed with the permit or previous extension conditions Beneficial use made of the water during the permit or previous extension time limits Permit holder has beneficially used Cfs/gpm/af of the total permitted quantity of water on cares					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No Work was accomplished within the time allowed in the permit or previous extension Water right permit holder conformed with the permit or previous extension conditions Beneficial use made of the water during the permit or previous extension time limits Permit holder has beneficially used					
Factors to consider in determining "Reasonable Diligence" [OAR 690-315-0040(3)]: Yes No Work was accomplished within the time allowed in the permit or previous extension Water right permit holder conformed with the permit or previous extension conditions Beneficial use made of the water during the permit or previous extension time limits Permit holder has beneficially used Cfs/gpm/af of the total permitted quantity of water on cares					

Applica	ation	Permit		Township	_Range	Section
Determi	nation of the market ar	nd the present demand	for water or p	ower to be supplied:		
Vas Na	Ground Water Permits: Surface Water Permits:	Identify the closest su Is the POA located Is the POD located		localized water basin.	Birch	Creek
Needs"	above a state scenic wath within a stream segment within a critical or limited within a sensitive, threat in a waterbody listed on within an area ranking less the written record, can be written record.	t designated as a federal ved Ground Water Area? tened or endangered spectified by the DEQ Section 303(d) ow / moderate high/Highan the Department make can be found. Apparament be found.	Name of area cies area source List of Water thest (circle on the a finding of oproval of Extensial of Extens	Guality Limited Areas? e) for stream flow restor "Good Cause" to appute tension Request	s.gov/wildriversli S Milfor on/div33map.aml Date adder ration needs rove the exter	d to list Source: OWRD "Streamflow Restoration Maps (by region)
Conditions to be included in Extension PFO (if applicable)? Yes No (NOTE: Check the file record for documentation to add a condition(s) at the extension stage.)						
	☐ 5-year Progress Rep	ort Checkpoints (Years:			The A	
	Other:			April Asey		A Blow warm
Footno	te regarding Claim of E	Beneficial Use. Choose t	he appropria	e language below and		
	"For permits appl been completed a Water Resources	nd either: (1) Hire a water right	July 9, 1987, upo examiner certified vater right certification	n complete development of the l under ORS 537.798 to condu te; or (2) Continue to appropr	act a survey, the c	st notify the Department that the work has original to be submitted as required by the he water right permit until the Water
	"Pursuant to ORS examiner to surve	Surface Water - post J 537.230(4), upon the completi by the appropriation. Within on ter to a beneficial use), the perm	on of beneficial us e year after the co	mplete application of water to	a beneficial use (t holder shall hire a certified water rights or by the date allowed for the complete icial use."
Ø	"Pursuant to ORS examiner to surve	Ground Water - post J 537.630(4), upon the completi by the appropriation. Within on ter to a beneficial use), the perm	on of beneficial us e year after the co	mplete application of water to	a beneficial use (t holder shall hire a certified water rights for by the date allowed for the complete ficial use."
NOTE	<u>S:</u>		-	AND THE O		
				sails from		
						are the second
	60 13					
Extens Mailin	ion "PFO" Dates g / Issuance Date:	Protest Dea	ndline Date:		ssuance Date	: 6/16
Review	ver's Name:	Ney		Date: 10-19-1	6	
		THE RESERVE TO THE RE			Of Later Land	

Completeness Checklist for Permit Extension of Time Application

Minimum completeness criteria for Extension of Time Applications are set forth in OAR 690-086-0020(3) for NON-Municipal or NON-Quasi-Municipal permits and in OAR 690-086-0070(3) for Municipal or Quasi-Municipal permits.

4	1.	Is the permit to be extended Non-Cancelled according to WRIS and the permit file?
4	2.	If the permit has been cancelled, the Extension Application cannot be accepted. Is the extension applicant's name and mailing address the permit holder of record?
		If an Assignment has not yet occurred, and is not submitted with the Extension of Time Application, the application <u>cannot</u> be accepted.
2	3.	Did Construction begin on or before the "A" date (Actual Construction date), If no "A" date then by the "C" date (Completion Date?
F	4.	IF NO, Return application, The Extension cannot be granted. Pull the permit file. If a copy of the permit is not in the file, pull up an image of the permit in WRIS.
1	5.	Is the appropriate Extension of Time Application used?
		If the wrong application form is used, the Extension Application cannot be accepted. If a Municipal or Quasi-Municipal permit, use: "Application for Extension of Time for Municipal and Quasi-Municipal Water Use Permits."
17	6	• If a NON-Municipal or NON-Quasi-Municipal permit, use: "Application for Extension of Time for a Water Right Permit (Non-Municipal / Non-Quasi-municipal Water Use)." Are the requested date(s) for extension identified (Page 1)?
	0.	• Check the permit to see if it includes a "B-Date" and/or a "C-Date." "B-Date" = date by which construction of the water delivery system for the permit is to be completed.
Z	7.	"C-Date" = date by which full beneficial use of water under the permit is to be accomplished AND CONSTUCTION MUST BEGIN by if no "A" DATE. Is the Extension Application signed (with an original signature) by permit holder(s) of record or an authorized agent?
		(If signed by agent, documentation from the permit holder(s) granting authorization for the agent to sign on their behalf must be provided or be present and current in the permit file.)
	8.	If not signed by a permit holder of record or authorized agent, the Extension Application cannot be accepted. Are all questions on the application answered?
		(NOTE: Supporting documentation such as: copies of the permit, well log(s), annual water use reports, static water level measurement reports, evidence demonstrating construction/work/water use accomplished, etc. may be included.
7	9.	*If applicable, has the \$85 fee for the Assignment been paid?
		If the fee has NOT been paid, the application cannot be accepted. **NOTE: If the fee is the only item missing, contact the applicant to see if they can submit the fee with the next few days. If the applicant commits to submitting the fee within one week, hold the Extension Application, and explain to them that if it is not received the application will be returned (as we are required to keep any application, regardless of how complete, if retained by the Department as long as two weeks.
		If after completing this checklist, it is not clear whether the application can be accepted, please route both the money slip and Non-Muni Extension Application to Machelle Bamberger or Corey Courchane. For municipal application route to, Machelle Bamberger. One will either: 1) accept the application; 2) return the application; or 3) prepare a deficiency letter.
Re	eviev	wed by: Date: Date:

STATE OF OREGON

WATER RESOURCES DEPARTMENT

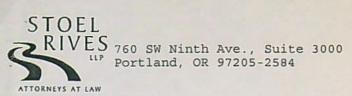
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RECEIPT#		61	06	6

725 Summer St. N.E. Ste. A SALEM, OR 97301-4172

INVOICE # .

		(503) 986-09	900 / (503) 986-0904 ((fax)		
RECEIVED FROM:	Stoe	IRI	VES	1	APPLICATION	G- 110359
BY:		DI.			PERMIT	0,100
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	MISCELLANEOUS		1110111			
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0410	RESEARCH FEES					\$
0408	MISC REVENUE: (DENTIFY)				S
TC162	DEPOSIT LIAB. (IDI	ENTIFY)				\$
0240	EXTENSION OF TIM	1E				\$ 575.00
	WATER RIGHTS:		EXAM F	EE		RECORD FEE
0201	SURFACE WATER		S		0202	\$
0203	GROUND WATER		S		0204	\$
0205	TRANSFER		\$			
	WELL CONSTRUCT	TION	EXAM F	EE		LICENSE FEE
0218	WELL DRILL CONS	TRUCTOR	\$		0219	S
	LANDOWNER'S PE	RMIT			0220	\$
	OTHER	(IDENTIFY)				
0526 7	TREASURY	0427 14	ELL CONST S	TADT	EEE	
				IANI		
0211	WELL CONST STAF		S	_	CARD#	
0210	MONITORING WELL	_5	\$		CARD#	
	OTHER	(IDENTIFY)				
0607 T	TREASURY	0467 H	YDRO ACTIVIT	Y LI	NUMBER	
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0231	HYDRO LICENSE F	EE (FW/WRI	0)			\$
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Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal



STATE OF OREGON WATER RESOURCES D

SUPPLIER NUMBER CHECK NUMBER 16765

CHECK DATE 10-14-16 895017

INVOICE NUMBER	INVOICE DATE	DESCRIPTION	AMOUNT
SR101416	10-14-16	Application for Extension of Time: Permit G-17294	575.00
		RECEIVED BY OWRD OCT 17 2016 SALEM, OR	
		TOTAL	575.00

Application for Extension of Time for a Water Right Permit (NON-Municipal/NON Quasi-Municipal water Use)



Oregon Water Resources Department 725 Summer Street NE, Suite A Salem Oregon 97301 (503) 986-0900 www.wrd.state.or.us

Criteria for a Permit Extension of Time

The Department can accept requests for an extension of time on permits to (1) complete construction, and/or to (2) apply water to beneficial use.

In order to approve a permit extension request the Department must be able to find:

- 1) Construction has begun:
 - A. For Groundwater Permits

Construction of the well began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

- B. For Surface Water or Reservoir Permits
 - Construction of the water system began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

The Department will also confirm that:

2) A required fish screen, fish passage or fish by-pass device was installed <u>before or prior</u> to diversion of any water. An exception to the need to confirm installation prior to diversion of any water would be a waiver submitted to the Department from ODFW stating that a fish screen, fish passage or fish by-pass device was not required, provided your permit allows for a waiver.

If you have questions, please call the Department at (503)-986-0900 and ask to speak with a Permit extension specialist.

RECEIVED BY OWRD

OCT 17 2016

SALEM, OR

Instructions are in Attachment A.

Revised 5/25/2016

Application for an Extension of time for a Permit

Page 1 of 10

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT A separate extension application must be submitted for <u>each</u> permit as per OAR 690-315-0020(2).

Lloca	Paterson								
i, Les F	NAME OF PERMIT HOLDER	[OAR 690-315-0020(1)	and (3)(a)]						
1415 H ADDRE	Highland Rd ESS	Walla Walla CITY	<u>WA</u> STATE	<u>99362</u> ZIP					
(509) 5	522-2124 PHONE		<u>les@lifeswhe</u> E-MAIL ADDR	CONTRACTOR OF THE PARTY OF THE					
		ed Permit Number	17294 (which resul	Ited from permit					
do her	eby request that the time in	which to:							
	complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on Month: 4 Day: 22 Year: 2016, be extended to October 1, 2026, [OAR 690-315-0020(3)(i)] N/A (Check this box if the permit does not specify a date by when construction must								
and/o	be completed.) the time in which to:								
	apply water to full beneficial time now expires on Month : [OAR 690-315-0020(3)(i)]								
Time), to	permit holder, or have written authoriz apply for an extension of time under t a application are grounds for OWRD to	his permit. I understand	that false or misleading	statements in this					
Signature LES PETE Printed N	RSON	July 1, 2016 Date Permit Holder Title		RE	CEIVED BY OWRD				
Revised 5	/25/2016 Application for	or an Extension of time	e for a Permit	Page 2 of 10	SALEM, OR				

C:\Users\ahs5087\Documents\Temporary Summer Work\Les Peterson WR Extension\Peterson App_Ext_WR_perm.docx

Application for an Extension of time for a Permit

Page 2 of 10

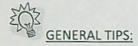
Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$575.
- Signature page (Second page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION along with the Supporting documents and/ or evidence

\$575 STATUTORY FEE TO:

Water Resources Department Attn: Water Right Permit Extensions 725 Summer Street NE, Suite A Salem, Oregon 97301



- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The
 correct form is APPLICATION FOR EXTENSION OF TIME FOR MUNICIPAL AND QUASI-MUNICIPAL WATER USE
 PERMITS, available at the following link:
 http://www.oregon.gov/owrd/PUBS/docs/forms/fillable muni quasi ext app form 2014.doc
- Request the reasonable amount of time necessary to fully complete construction of the water
 project and/or to fully use the permitted quantity of water under the terms and conditions of
 your permit. Should this request be approved, it will be OWRD's expectation that you will
 complete your project within the new time period allowed. Future extensions may not be
 granted.
- A separate APPLICATION FOR EXTENSION OF TIME must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet, Instructions for Completing an Application for Extension of Time for a
 WATER RIGHT PERMIT (Attachment A), provides details that will help you answer each question on
 the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These
 rules may be viewed at:
 - http://arcweb.sos.state.or.us/pages/rules/oars 600/oar 690/690 315.html

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You may provide OWRD with any additional information or evidence that will aid us in making
our decision. Please note that OWRD may require other information that is necessary to 17 2016
evaluate the application. OAR 315-0020(3)(n).

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- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights Services Division.
- An Application for an Extension of Time will be reviewed for completeness. OWRD will return
 any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- The water right permit. If needed, a copy of the water right permit can be downloaded from the Department's Website at http://apps.wrd.state.or.us/apps/wr/wrinfo/ (using the link to the Water Rights Information System (WRIS). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- Documentation which demonstrates compliance with permit conditions (for example, well
 construction logs; static water level measurement reports; annual water use reports; ODFW
 fish screen certification; a plan to monitor the effect of water use on ground water aquifers
 utilized under the permit; etc.).

Questions to complete this application for an Extension of Time Please see the instruction sheet to help you answer these questions.

1.	Beginning Construction within required deadlines. OAR 690-315-0020(3)(d)	
	roundwater Permits	
	Has construction of the point of appropriation (well) authorized under this per Yes No	mit begun?
	Date construction began Month: March Day: 31 Year: 2016	
	Details of construction and attach documentation: See attached documentation	n.
	Start Card 1029943 Letter from Gary Zollman to Les Peterson, dated July 5, 2016	
For S	urface/Reservoir Permit	
	Has construction of the water system begun? Yes No	RECEIVED BY OWRD
	Date construction began Month: Day: Year:	
	Details of construction and attach documentation:	OCT 1 7 2016
		SALEM, OR

OAR 690-315-0020(3)(A)(e)(A)

2. Permits typically contain standard or special conditions that must be fully satisfied to lawfully develop and use permitted water. Review the permit subject to this extension to identify which of the conditions listed in the 2nd column are contained within it. Using the extra row labeled "other" to specify any other additional conditions specified in a final order approving a permit amendment or

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prior extension of time. In the 1st column check the box for each condition (row) identified as relevant. In the 3rd column check "Yes" if you have completed or met the permit condition. Check "No" if the condition is not yet satisfied. In the 4th column, give the date when the condition was satisfied or will be satisfied. Attach any pertinent documentation. Note: a pump test condition does not need to be addressed here however; you must submit the results of the test to the Department for approval prior to certification.

CHART-A

Permit Conditions in this Permit		Have Completed or	Date satisfied/ or will
	Ground water	Met?	be satisfied
Checkbox	Check those included on this permit		
	Installation of a meter/totalizing flow meter	Yes X No	Before water use begins, 3/1/2017
	Submittal of annual water usage report	Yes X No	Following the first year of water use, ending 10/31/2017
\boxtimes	Submittal of initial static water level measurement	Yes X No	Following completion of construction, within 30 days of measurement as measured between 2/1/2017 and 3/31/2017
×	Submittal of annual static water level measurements in the month required	Yes X No	30 days from measurement as measured between 2/1/2018 and 3/31/2018
	Submittal of Seven consecutive static water level measurements in		
	the month required	Yes No	
	Special well construction standards	Yes X No	At time that well construction is completed
	Submittal of a monitoring plan	Yes No	completed
	Other (Specify):	Yes No	
	Other (Specify):	Yes No	
	Other (Specify):	Yes No	
	Surface Water or Reservoir		
	Installation of a meter/ totalizing flow meter/ in-line meter	□ Yes □ No R	ECEIVED BY OWRE
	Installation a staff gauge	☐ Yes ☐ No	
	Installation of a fish screen	Yes No	OCT 1 7 2016
	Installation of a fish by-pass device	Yes No	
	Installation of a fish passage	Yes No	SALEM, OR
	Installation of an outlet gate/pipe/ conduit	Yes No	
	Submittal of a letter from ODFW that fish screen, fish by-pass device, and or fish passage is not required	Yes No	
	Submit as-built plans and specification	Yes No	
	Submittal of a letter from an engineer prior to storage	Yes No	

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Other (Specify):	☐ Yes ☐ No
Other (Specify):	☐ Yes ☐ No
Other (Specify):	☐ Yes ☐ No

If you have NOT complied with Permit conditions, explain the reasons why and indicate a date certain, when you will be in compliance.

Well construction was ongoing as of the April 22, 2016 completion date contained in the Permit G-17294, and as such, not all permit conditions had been fulfilled. I intend to be in full compliance with all permit conditions by the end of the requested extension period, October 1, 2026.

[OAR 690-315-0020(3)(e)]

3. Provide evidence of physical work made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-B); and if applicable, within the time period of the most recent extension granted (CHART-C). CHART-B (below) must be completed for all Application for Extension of Time requests. Use chronological order. (this does NOT include planning, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land, or planting crops)

CHART-B

DATE	List any work done before the permit was issued – eg. well drilled. None. No work was performed prior to permit issuance.	COST*
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER List work/actions done during the permitted time period.	COST*
4/22/11 (date original permit G- 16846 signed) 8/25/14 (date amended permit signed, per T-11630)		EIVED BY OWR OCT 1 7 2016 SALEM, OR
2/27/16	Surveyor location survey	505.00
3/17/16	Construction of access road to well location site and pad for parking and mobilization for POA-2	9852.45
3/17/16	Construction of holding ponds to enable well construction drilling for POA-2	1900.00
3/31/16	Start of well drilling for POA-2 by Zollman Drilling	

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4/22/2016	Date the permit specified complete application of water to the use shall be made- all permits contain this date.			
DATE	WORK ACCOMPLISHED AFTER the date the permit specified complete application of water <u>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME:</u> List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.	cost*		
Ongoing from 4/22/16 through end of June 2016	Continuation of well construction (See invoices attached from Zollman's Larry Burd Well Drilling, LLC dated 5/3, 5/25, and 6/28/16. Note that some expenses from 5/3/16 invoice were incurred prior to 4/22/16)			
	Total Cost for Chart-B 366,390.48 35	5,933		

^{*} If exact cost is not known, you must provide your best estimate.

4. If this is <u>not</u> your 1st Application for Extension of Time request, fill out CHART-C below in addition to CHART-B above. *Use chronological order*.

CHART-C

	WORK ACCOMPLISHED <u>DURING</u>	
DATE	THE LAST EXTENSION PERIOD	COST*
	List all work done during the last authorized extension period.	
	"Extended From" date for complete application of water used in the 1st	
	(or the most recent) Application for Extension of Time.	
	N/A. This is my first application for extension of time request.	
	"Extended To" date for complete application of water resulting from the 1 st (or the most recent) Application for Extension of Time.	
DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time.	COST*
	N/A.	
00000	Total Cost of Chart-C	

^{*} If exact cost is not known, you must provide your best estimate. [OAR 690-315-0020(3)(f)]

5. Cost of project to date: 366,390.48 355, 933 Cc (The total combined cost from CHART-B and CHART-C) [OAR 690-315-0020(f)]

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[OAR 690-315-0020(3)(e)(B)]

Provide evidence of the maximum rate (or duty, if applicable) of water diverted for beneficial use under this permit and/or prior extensions of time (if any) made to date.

<u>TIP:</u> Report <u>the rate</u> used to date. Unless full beneficial use has been made, this rate will be less than the rate authorized on the permit.

6.	For Surface	Water Bermit	Extensions	In a C VVVV or	D VVVVI
0.	For Surface	water Permit	Extensions	(e.g. S-XXXX or	K-XXXXII

TIP: Report the rate in the same units of measurement as specified in the permit.

Maximum rate <u>used to date</u> = _	cfs (cubic feet per second)	or,
Maximum rate <u>used to date</u> = _	gpm (gallons per minute)	or,
Acre-feet stored to date =	AF	

For Ground Water Permit Extensions (e.g. G-XXXX):

<u>TIP:</u> Include information from ALL wells that pertain to this permit, including drilled wells not currently used.

CHART-D

				IF	DRILLED		
Water User's Well #	Has this well been drilled?	Well Log Number e.g. MORR 50473	Well Tag Number e.g. # 27566 or N/A	is the actual drilled location authorized on this permit or on a permit amendment? (See 8 below)	Maximum instantaneous rate used to date from this well under this permit only (CFS or GPM)	Is this well authorized or utilized under any OTHER water rights?	If yes, provide the Permit, Certificate, or Transfer No.
POA 2	Yes X No	N/A	N/A	Yes X No 🔲	Not yet irrigating	Yes 🗌 No X	
POA 1	Yes No X			Yes No		Yes 🗌 No 🔲	
POA 3	Yes No X			Yes 🗌 No 🔲		Yes No	
	Yes No			Yes 🗌 No 🔲		Yes 🗌 No 🔲	
	User's Well # POA 2	User's well been drilled? POA 2 Yes X No POA 1 Yes No X POA 3 Yes No X Yes Yes	User's well been drilled? POA 2 Yes X No N/A POA 1 Yes No X POA 3 Yes No X	User's well been drilled? Number e.g. MORR # 27566 or N/A	Water User's Well been drilled? Well Log Number e.g. MORR 50473 POA 2 Yes X No	Water User's Well been drilled? Well Log Number e.g. MORR 50473 POA 2 Yes X No	Water User's Well been drilled? Well Log Number e.g. MORR 50473 POA 2 Yes X No No No No Yes No X POA 3 Yes No Yes No No

	The second of th	orace memoral memoral annual a		
8. locatio	If the drilled loca on below, or provi	tion of a well is not authorized on this de a map showing its location.	permit, please spec	ify its ECEIVED BY OWRE
Has or	will a Permit Ame	endment Application been/be filed? Y	es No	OCT 1 7 2016
If a Pe	rmit Amendment	Application <u>has</u> been filed: Transfer N	o. T	SALEM, OR
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Well # [OAR 690-315	Actual location: 5-0020(3)(e)(C)]	Well	# Actual location:
		ber of acres irriga	ated to date under this permit (if applicable).
			h year since permit issuance, and provide a
copy of th	e application map i	dentifying the acr	res irrigated. N/A
Total acre	s irrigated to date:	N/A	
Ground W	ater Permits: Plea	se specify which w	wells are being utilized for this irrigation.
Well #	Acres	Well #	Acres
Well #	Acres	Well #	Acres
[OAR 690-315	5-0020(3)(i)(j)]		
			a and ashadula to assumb to the county of an al

10. Provide a summary of your future plans and schedule to complete the construction of the water system, and/or apply water to full beneficial use under the terms and conditions of the permit.

CHART-E

ESTIMATED COST
(projected)
250,000.00
500,000.00
500,000.00
1,250,000.00
t

[OAR 690-315-0020(3)(g)]

11. Estimated remaining cost to complete the project: 1,2500,000.00 (The total cost from CHART-E)

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[OAR 690-315-0020(3)(h)]

12. Describe the reasons why the construction was not completed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances. Include any additional unforeseen events and/or other governmental regulation or requirements.

Actual construction was not started until early 2016. This was primarily due to the length of time to complete a prior transfer application (to add additional POAs to the permit), to arrange financing, to select and schedule a drilling contractor, and to prepare the site for construction.

[OAR 690-315-0020(3)(k)]

13. <u>Justify the time requested</u> to complete the project and/or apply the water to full beneficial use. Include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

Once construction of the existing well is completed, I will need additional time to put the irrigation delivery system in place. In addition, I anticipate the need to file a further permit amendment to address a land exchange with a neighbor, as I will need to move 40 acres of authorized POU from lands I no longer own to lands that I acquired as part of the exchange. Meanwhile, my neighbor will also need to move 40 acres of authorized POU he has under his own water right permit from lands I now own to lands that he now owns as a result of the exchange. (See T-11844.) Finally, depending on the production of the well currently under construction, I may develop one or both of the additional authorized POAs. I anticipate full build out of my system no later than October 2026.

[OAR 690-315-0020(3)(m)(n)]

 Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

I anticipate that additional unforeseen circumstances may occur. As such, I am requesting the maximum allowed time to complete construction and application of water to beneficial use.

Attach permit, and documentation to the application CEIVED BY OWRD

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STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

This correcting superseding permit is issued to correct an error in a change in place of use and describes additional points of appropriation proposed under Permit Amendment Application T-11630 and approved by Special Order Vol. 93, Pages 108-110 entered August 15, 2014, and correcting order approved by Special Order Vol. 93, Page 281, entered August 25 2014. This permit supersedes Permit G-17266.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: THREE WELLS IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	4	sw sw	WELL 1: 480 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 4
5 N	36 E	WM	5	NE SE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE EI/4 CORNER OF SECTION 5
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

OCT 1 7 2016

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Application G-16359/T-11630.sah

Water Resources Department

PERMIT G-17294

		IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	4	NE NW	40.0
5 N	36 E	WM	4	SE NW	40.0
5 N	36 E	WM	4	NESW	40.0
5 N	36 E	WM	4	NW SW	40.0
5 N	36 E	WM	4	SWSW	40.0
5 N	36 E	WM	4	SESW	40.0
5 N	36 E	WM	9	NE NE	20.0
5 N	36 E	WM	9	NW NE	40.0
5 N	36 E	WM	9	NENW	40.0
5 N	36 E	WM	9	SE NW	10.0
				Total	350.0

Permit Amendment T-11630 Conditions

The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.

Well construction in the Columbia River Basalts is limited to development of one aquifer.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter of measuring BY OWRD device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice?016
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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
- 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
- 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:

- 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.

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PERMIT G-17294

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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 625-415: Forby OWRD purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced 15 ws. OR

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the Watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made on or before April 22, 2016. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued August 25, 2014

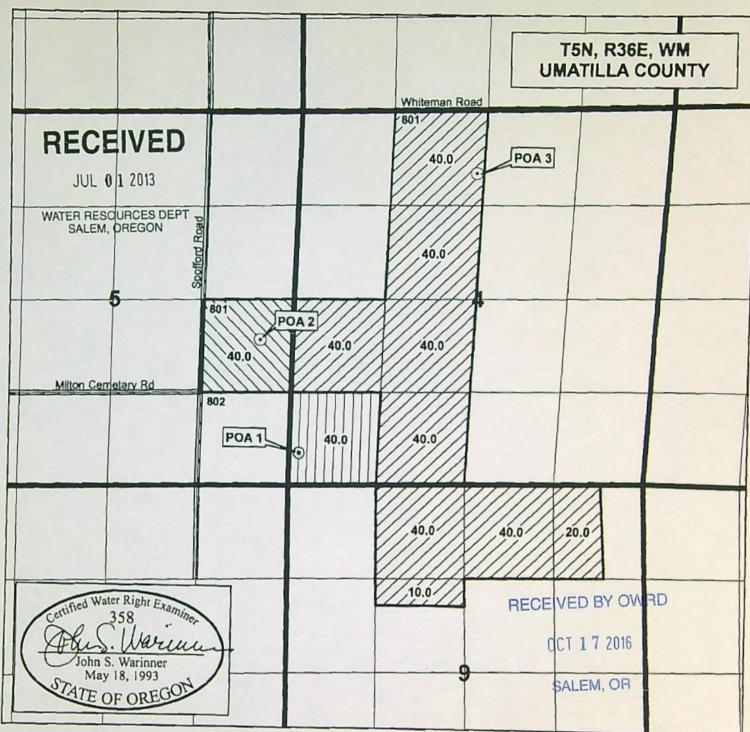
Dwight French, Water Right Services Division Administrator, for

Director, Oregon Water Resources Department

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OCT 1 7 2016

SALEM, OR PERMIT G-17294



POA (Authorized)

POA 1 is authorized well in SW SW Sec 4, located 480 ft N and 130 ft E from SW Corner of Sec 4.

O POA (Additional)

POA 2 is proposed well in NE SE Sec 5, located 590 ft S and 475 ft W from E 1/4 Corner of Sec 5. POA 3 is proposed well in NE NW Sec 4, located 915 ft S and 100 ft W from N 1/4 Corner of Sec 4.



1 in = 1320 ft

POU (unchanged)

POU remains unchanged for most quarter-quarter sections.

POU (From)

SW SW of Sec 4 (40 ac) will not be irrigated under this water right.

POU (To)

NE SE of Sec 5 (40 ac) will be irrigated under this water right.

PERMIT AMENDMENT MAP

App G-16359 and Permit G-16846 Change POU and Add POAs

> in the name of LES PETERSON

Revised: 28 DEC 2012

Oregon Water Resources Department

@ Help

₩ Main

Startcard Data	
Well Constructor: 1881	
GARRY L ZOLLMAN; ZOLLMAN'S LARRY BURD WELL DRILLING LLC	
Start Card Number: 1029943 Owner Information	
Company	
First LES Last PETERSON Name	
Street1 1415 HIGHLAND RD	
Street2	
City WALLA WALLA State Washington V Zip	p 99362
Home 509-522-2124 Work	
Type of Work Fee Required ☑ New	ent .
Card# Tag#	
Construction Proposed Commencement Date Existing/ Proposed 1200 Depth(ft) Diarne Cinche	es) 16
Use	
□ Domestic □ Community □ Industrial □ Irriga	ation
☐ Thermal ☐ Injection ☐ Livestock Other:	RECEIVED BY OWRD
Monitoring Piezometer Dewatering	
Proposed Well Location	OCT 1 7 2016
Street address of well 1/4 MI. NE DIAGONAL FROM INTERSECTION OF SPOF	SALEM, OR
County Umatilla V Township 5.00 N V Range	36.00 E V Section 5
QQ/Q NE V SE V Lattitude Longitude	
Taxlot 801	

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.



ZOLLMAN'S LARRY BURD WELL DRILLING, LLC

PO Box 1542, Pendleton, OR 97801 www.zollmanswelldrilling.com • zollmanslbwd@yahoo.com

July 5, 2016

Les Peterson 1415 Highland Rd Walla Walla, WA 99362

Re: Current Well Construction on Irrigation Well Permit G-17294, Start Card 1029943

Les,

I am writing this letter to document the current construction phase we are at in the building of your irrigation well East of Milton-Freewater, Oregon.

Construction on this well started March 31, 2016.

Current drilling depth of the 19inch diameter casing hole is 1040ft. and we are drilling in a basalt aquifer that needs to be sealed per the direction of the local well inspector Erik Thomasser. Erik has been on site to help make sure the well meets the requirements of the permit.

The well has a 20inch surface hole, cased and sealed into basalt with cement grout to a depth of 100ft. Another casing hole with a 19inch diameter is currently being drilled to meet the permit requirement of casing and sealing to 950ft. Since we have been in an aquifer that has been open for almost 200ft, and still in a vesicular basalt aquifer zone we have had to change drilling techniques from air drilling to mud drilling. This drilling has continued past the 950ft, depth because of the continuing aquifer. This will allow us to case and seal using a cement grout through this aquifer to seal it off from the aquifer you will be using.

There have been two Oregon Water Resource Department Employees we have been working with on this project:

Locally - Erik Thomasser, Regional Well Inspector from Pendleton office

541-278-5456

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Salem – Jen Woody, Umatilla Basin Critical Water

503-986-0855

OCT 17 2016

Garry L. Zollman

Sincerely,

SALEM, OR

Oregon license 1881

Pendleton 541.276.3681 Hermiston 541.567.3088

Milton-Freewater 541.938.5135 Toll Free 800.953.3681

Fax 541.276.0209

We want to be your driller



HDJ Design Group 314 W 15th Street Vancouver, WA 98660-2927

> Les Peterson 1415 Highland Road Walla Walla, WA 99362

Invoice number

4288-00-001

Date

02/27/2016

Project 4288-00 LES PETERSON - WELL LOCATION SURVEY

HDJ Project Manager Greg E. Flowers

Services and Expenses for the month of February 2016:

Summary of Services:

POA Staking Complete.

Labor

Billed Amount 505.00

Invoice total

505.00

Aging Summary

Invoice Number	Invoice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
4288-00-001	02/27/2016	505.00	505.00				
	Total	505.00	505.00	0.00	0.00	0.00	0.00

Please make checks payable to HDJ Design Group, PLLC. To ensure proper credit, please include the INVOICE NUMBER on your check.

DUE UPON RECEIPT 1.5% per month will be assessed on past due accounts.

RECEIVED BY OWRD W 3.23.16

OCT 17 2016

SALEM, OR

Les Peterson

Invoice number 4288-00-001

Invoice date 02/27/2016

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #:

29566

Invoice Date: Due Date:

03/21/2016 03/31/2016

Purchase Order #:

Job # 5812 Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR

97862

Customer # 3011

License: 116200

To: Les Peterson

1415 Highland Rd

Walla Walla WA 99362

Description	Unit	Quanity	Price	Amount
3/15/16: Mark out for locates and mob backhoe.				
Mob/Backhoe 1 hr	Hrs	1.00	\$100.00	100.00
Labor/2 hrs	Hrs	2.00	\$60.00	120.00
3/17/16: Build Road				
850G Cat/3 hrs	Hrs	3.00	\$100.00	300.00
Big Hamm Roller/1 hrs	Hrs	1.00	\$90.00	90.00
Backhoe/3 hrs	Hrs	3.00	\$100.00	300.00
Dump Truck # 65/3 hrs	Hrs	3.00	\$100.00	300.00
Tkt # 22495/13.93 tons of 2 1/2"-0 delivered 3/17/16	Ton	13.93	\$10.75	149.75
Tkt # 22498/15.05 tons of common borrow delivered 3/17/16		15.05	\$10.00	150.50
Tkt # 22499/15.83 tons of common borrow delivered 3/17/16	Ton	15.83	\$10.00	158.30
Tkt # 22500/13.74 tons of common borrow delivered 3/17/16		13.74	\$10.00	137.40
Tkt # 22501/15.00 tons of common borrow delivered 3/17/16		15.00	\$10.00	150.00
Tkt # 22502/18.98 tons of common borrow delivered 3/17/16		18.98	\$10.00	189.80
Tkt # 22503/15.89 tons of common borrow delivered 3/17/16		15.89	\$10.00	158.90
Tkt # 22504/15.24 tons of common borrow delivered 3/17/16	Ton	15.24	\$10.00	152.40
Tkt # 22505/17.12 tons of common borrow delivered 3/17/16	Ton	17.12	\$10.00	171.20
Tkt # 22506/15.54 tons of common borrow delivered 3/17/16		15.54	\$10.00	155.40
Tkt # 22507/15.65 tons of common borrow delivered 3/17/16		15.65	\$10.00	156.50
Tkt # 22508/16.42 tons of common borrow delivered 3/17/16		16.42	\$10.00	164.20
Tkt # 22509/12.39 tons of common borrow delivered 3/17/16		12.39	\$10.00	123.90
3 102.39		200.78	3	228.25
13/3	IDANS	Non-Taxable A	Imount:	9,952.45
167.22	o li al	Taxable Amoun	nt:	0.00

Please Pay This Amount

Sales Tax: 0.00 Amount Due: 9,952.45

\$ 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts

overdue on regular stalement dates. OWRD

Please make check payable to Humbert Asphalt, Inc.

Thank you for your prompt payment!

OCT 17 2016

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

License: 116200

To: Les Peterson 1415 Highland Rd Walla Walla WA 99362 Invoice

Invoice #: 29566

Invoice Date: 03/21/2016 Due Date: 03/31/2016

Purchase Order #:

Job # 5812 Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR 97862

Customer # 3011

Description	Unit	Quanity	Price	Amount
Tkt # 22510/15.39 tons of common borrow delivered 3/17/16	Ton	15.39	\$10.00	153.90
Tkt # 22511/13.81 tons of common borrow delivered 3/17/16	Ton	13.81	\$10.00	138.10
Tkt # 22512/12.25 tons of common borrow delivered 3/17/16	Ton	12.25	\$10.00	122.50
Tkt # 22513/15.05 tons of common borrow delivered 3/17/16	Ton	15.05	\$10.00	150.50
Tkt # 22514/15.86 tons of common borrow delivered 3/17/16	Ton	15.86	\$10.00	158.60
Tkt # 22515/15.03 tons of common borrow delivered 3/17/16	Ton	15.03	\$10.00	150.30
Tkt # 22516/15.00 tons of common borrow delivered 3/17/16	Ton	15.00 30	\$10.00	150.00
avious pulp 1		102.3		
3/18/16: Build Road			0100.00	500.00
850G Cat/5 hrs	Hrs	5.00	\$100.00	500.00
Big Hamm Roller/3 hrs	Hrs	3.00	\$90.00	270.00
Tkt # 22522/14.42 tons of common borrow delivered 3/18/16	Ton	14.42	\$10.00	144.20
Tkt # 22523/15.18 tons of common borrow delivered 3/18/16	Ton	15.18	\$10.00	151.80
Tkt # 22524/11.87 tons of common borrow delivered 3/18/16	Ton	11.87	\$10.00	118.70
Ttk # 22525/13.50 tons of common borrow delivered 3/18/16	Ton	13.50	\$10.00	135.00
Tkt # 22526/14.22 tons of common borrow delivered 3/18/16	Ton	14.22	\$10.00	142.20
Tkt # 22529/13.72 tons of common borrow delivered 3/18/16	Ton	13.72	\$10.00	137.20
Tkt # 22530/17.53 tons of common borrow delivered 3/18/16	Ton	17.53	\$10.00	175.30
Tkt # 22531/15.83 tons of common borrow delivered 3/18/16	Ton	15.83	\$10.00	158.30
Tkt # 22535/16.40 tons of common borrow delivered 3/18/16	Ton	16.40	\$10.00	164.00
Tkt # 22536/15.66 tons of common borrow delivered 3/18/16	Ton	15.66	\$10.00	156.60
Tkt # 22537/18.89 tons of common borrow delivered 3/18/16	Ton	18.89	\$10.00	188.90
		167.22	61	94.35

18 100/5

 Non-Taxable Amount:
 9,952.45

 Taxable Amount:
 0.00

 Sales Tax:
 0.00

 Amount Due:
 9,952.45

Please Pay This Amount

\$ 9,952.45

A service charge of 18.00 % per annum w Please make check payable to Humbert Asphalt, Inc.

% per annum will be charged on all amounts

overdue on Egyten stetement dates.

Thank you for your prompt payment!

OCT 1 7 2016

. Hambert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #:

29566

Invoice Date: Due Date:

03/21/2016 03/31/2016

OR

Purchase Order #:

To: Les Peterson 1415 Highland Rd

Walla Walla WA 99362

Job # 5812 Project: Peterson, Les

564 Spoffard Rd

Milton Freewater

97862

Customer # 3011

License: 116200

Description	Unit	Quanity	Price	Amount
Tkt # 22538/16.53 tons of common borrow delivered 3/18/16	Ton	16.53	\$10.00	165.30
Tkt # 22539/15.28 tons of common borrow delivered 3/18/16	Ton	15.28	\$10.00	152.80
Tkt # 22540/18.44 tons of common borrow delivered 3/18/16	Ton	18.44	\$10.00	184.40
Tkt # 22542/16.04 tons of common borrow delivered 3/18/16	Ton	16.04	\$10.00	160.40
Tkt # 22545/16.25 tons of common borrow delivered 3/18/16	Ton	16.25	\$10.00	162.50
Tkt # 22546/18.09 tons of common borrow delivered 3/18/16	Ton	18.09	\$10.00	180.90
Tkt # 22549/18.12 tons of common borrow delivered 3/18/16	Ton	18.12	\$10.00	181.20
Tkt # 22550/14.84 tons of common borrow delivered 3/18/16	Ton	14.84	\$10.00	148.40
Tkt # 22551/20.10 tons of common borrow delivered 3/18/16	Ton	20.10	\$10.00	201.00
Tkt # 22552/14.89 tons of common borrow delivered 3/18/16	Ton	14.89	\$10.00	148.90
Tkt # 22553/14.60 tons of common borrow delivered 3/18/16	Ton	14.60	\$10.00	146.00
Tkt # 22555/18.45 tons of common borrow delivered 3/18/16	Ton	18.45	\$10.00	184.50
Tkt # 22556/17.35 tons of common borrow delivered 3/18/16	Ton	17.35	\$10.00	173.50
Tkt # 22561/15.41 tons of common borrow delivered 3/18/16	Ton	15.41	\$10.00	154.10
Tkt # 22562/20.38 tons of common borrow delivered 3/18/16	Ton	20.38	\$10.00	203.80
Tkt # 22563/17.82 tons of common borrow delivered 3/18/16	Ton	17.82	\$10.00	178.20
Tkt # 22564/15.25 tons of common borrow delivered 3/18/16	Ton	15.25	\$10.00	152.50
Tkt # 22565/20.18 tons of common borrow delivered 3/18/16	Ton	20.18	\$10.00	201.80
Tkt # 22566/17.79 tons of common borrow delivered 3/18/16	Ton	17.79	\$10.00	177.90
16		325.81	9	952.45
lonks		シト		

19

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00 Sales Tax: 0.00 Amount Due: 9,952.45

Please Pay This Amount

\$ 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts

overdue on regular statement Bates. WRD

Please make check payable to Humbert Asphalt, Inc.

Thank you for your prompt payment!

OCT 17 2016

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #:

29565

Invoice Date: Due Date:

03/21/2016 03/31/2016

OR

Purchase Order #:

Job # 5812

Project: Peterson, Les 564 Spoffard Rd

Milton Freewater

97862

Customer # 3011

License: 116200

To: Les Peterson

1415 Highland Rd

Walla Walla WA 99362

Description	Unit	Quanity	Price	Amount
3/15/16: Mob D8N and start building water holding pond.				
Mob/D8N	Hrs	1.00	\$200.00	200.00
D8N/4.5 hrs	Hrs	4.50	\$200.00	900.00
3/15/16: Finish building water holding pond.				
D8N/4 hrs	Hrs	4.00	\$200.00	800.00
No Charge for Demobing D8N				

Non-Taxable Amount:

1,900.00

Taxable Amount: Sales Tax:

0.00 0.00

Amount Due:

1,900.00

Please Pay This Amount

\$ 1,900.00

A service charge of 18.00

% per annum will be charged on all amounts

overdue on regular statement dales Y OWRD

Please make check payable to Humbert Asphalt, Inc.

OCT 17 2016

SALEM, OR

Thank you for your prompt payment!

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
5/3/2016	81

Bill To

Peterson Farms
Les Peterson
1415 Highland Road
Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
1 0 5	Start Card Mobilization	225.00	225.00 500.00
	Drill 24" surface hole from 0' to 100'	1,000.00 175.00	17,500.00
	20" Casing from + 2' to 98'	59.54	5,954.00
	Surface Seal 22 bags Bentonite	500.00	500.00
15	15 yards cement grout	400.00	6,000.00
1	Cement Grout Pump equipment and labor	500.00	500.00
	Drill 19" hole from 100' to 300'	148.00	29,600.00
50	50 gallons drilling fluid	27.00	1,350.00
	15 gallons drilling Polymer	51.23	768.45
2	Soda Ash 50# bag	40.00	80.00
1	16 inch float shoe/plug	6,200.00	6,200.00
	Cat Skid Steer 2 weeks	2,800.00	1,400.00
	Aux Compressor Rentals (2) + transport 578 gallons diesel fuel for Aux Compressors	10,180.00	20,360.00 1,323.62
		RECEIVED	BY OWRD
		OCT 1	7 2016
		SALE	M, OR
		Total	\$92,261.0

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
5/25/2016	82

Bill To

Peterson Farms
Les Peterson
1415 Highland Road
Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

		Due on receipt	
Quantity	Description	Rate	Amount
53 2 3,826 105	Drill 19" casing hole Air Rotary from 300' to 800' @ \$148.00/ft Drill 19" casing hole from 800' to 900' with roller bit 53 hours at \$550/hr Aux Compressor Rental X 2 @ \$10,180.00/ea 3826 gals Diesel Fuel used for Aux Compressors thru May 24, 2016 105 gals Drilling fluid @ 27.00/gal 960' 16" x .375 wall casing ordered @ current steel price of \$54.25	148.00 550.00 10,180.00 2.14 27.00 54.25	74,000.0 29,150.0 20,360.0 8,187.6 2,835.0 52,080.0
			VED BY OWR
			ALEM, OR
		Total	\$186,612.6

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
6/28/2016	92

Bill To

Peterson Farms
Les Peterson
1415 Highland Road
Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
1 1,782 165 68 720 4 5 20 1 1	Drill 19 inch casing hole Roller Bit from 900' to 1,040' Frac Tank Delivery Frac Tank Rental 1 month 1,782 gals Diesel Fuel used for Aux compressors 5/25/16 - 6/3/16 165 gals Air Drilling foam @ \$27.00/gal 68 30# bags N Seal Loss Circulation Material 720 50# bags Bentonite @ \$12.25/bag 4 5gal buckets Polymer Drilling fluid Additive @ \$256.06/bucket 5 50#bags Soda Ash 20 1/2 # bags loss circulation material @ \$9.65/bag Water Truck Rental 1 week 6/24/16 - 6/30/2016 Cat Skid Steer Rental 1 month Mud Recycle System 54 hrs @ \$150.00/hr 50.5 hours Mud Pumping	148.00 1,485.20 1,176.00 2.14 27.00 120.05 12.25 256.06 40.00 9.65 1,584.00 2,800.00 150.00 250.00	20,720.00 1,485.20 1,176.00 3,813.48 4,455.00 8,163.40 8,820.00 1,024.24 200.00 193.00 1,584.00 2,800.00 8,100.00 12,625.00
		RECE	VED BY OWR
			CT 1 7 2016 ALEM, OR



Water Resources Department

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

October 21, 2016

REFERENCE: Application for Extension of Time

Dear Extension of Time Applicant:

The Water Right Services Division has received your application for an extension of time for **APPLICATION FILE #:** G-16359 (**Permit** G-17294). Your application will be reviewed in the future. Following the review, you will receive a Proposed Final Order either approving or rejecting the extension of time request. A 45-day protest period begins upon issuance of the Proposed Final Order. After the protest period closes, a Final Order is issued.

You may continue the use of water under your water right until the Water Resources Department formally takes action on your extension application. If your permit includes conditions, water use reporting, water level measurement reporting, etc., you are required to comply with the conditions.

Any additional development that occurs after the expired completion date, identified on the permit or an extension order, can only be claimed upon an approved extension application.

If you have questions concerning your extension of time application, please contact Corey Courchane at (503) 986-0825. For general information about the Water Resources Department, you may contact the Water Resources' Customer Service Group at (503) 986-0801 or you may access the Department's website at: www.wrd.state.or.us.

Application: 6-16359 Permit: 6-17294 Public Notice Route Slip New Application Extension of Time per Division 315 Rules (Extensions received on July 1, 2001 or after)			
Applicant/Permit Les Peterson			
WRIG	Money Receipted on: 10-17-16		
☐ Extension	Specialist		
×	Added to tracking spreadsheet		
After fee is receipted and app is added to spreadsheet, route to			
Stacy Phi	llips		
ONA	Recent Assignment (Check WRIS for Update)		
8	Publish on Public Notice (initial 30-day comment): Date of notice 10.25-10		
1	Update WRIS Database		
A	In the "PNotice Date" field Enter the date the Extension Application was published on the Public Notice.		
N	In the "Ext Filed" field Enter the date the Extension Application was received.		
☐ Yes or ☐	No: Return file to Extension Specialist after PN		
NOTES:			

HENDERSON Sarah A

From: Filippi, David <david.filippi@stoel.com>
Sent: Friday, October 14, 2016 3:04 PM

Sent: Friday, October 14, 2016 3:04 PM
To: HENDERSON Sarah A

Cc: les

Subject: Les Peterson water right permit extension application

Attachments: Peterson app.PDF

Sarah,

Per our discussion today, please find attached a final extension application for permit G-17294, including attachments. The original along with a check in the amount of \$575 for the application fee will be placed in the mail and sent to the OWRD extension section.

Please let me know if you have any questions. Thank you,

David.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205 Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com



760 SW Ninth Ave., Suite 3000 Portland, OR 97205 T. 503.224.3380 F. 503.220.2480 www.stoel.com

> DAVID E. FILIPPI D. 503.294.9529 david.filippi@stoel.com

October 14, 2016

Oregon Water Resources Department Attn: Water Right Permit Extensions 725 Summer Street NE, Suite A Salem, Oregon 97301

Re: Application for Extension of Time Application for Permit G-17294

Dear Sir or Madam:

We represent the permit holder, Les Peterson, with respect to the above-referenced application. Please find enclosed a completed application for extension of time for Permit G-17294, including attachments, along with a check in the amount of \$575.00 for the application fee.

Please do not hesitate to contact me or Mr. Peterson should you have any questions or need additional information regarding the enclosed application.

Sincerely,

David E. Filippi

Enclosures

cc (via email): Les Peterson

RECEIVED BY OWRD

HENDERSON Sarah A

From: les <les@lifeswheat.com>

Sent: Saturday, August 20, 2016 8:33 PM

To: Sarah A Henderson

Subject: application

Hello Sarah,

Did you receive my e-mail regarding the time extension application?

Les Peterson

HENDERSON Sarah A

From: HENDERSON Sarah A

Sent: Wednesday, August 17, 2016 11:24 AM

To: Filippi, David (david.filippi@stoel.com)

Subject: FW: Permit Amendment

Hi David,

Les told me he sent you the extension of time application, do you happen to know when it might be submitted to the Department?

Have a wonderful day.

Sarah

From: HENDERSON Sarah A

Sent: Friday, July 29, 2016 4:55 PM **To:** Filippi, David; HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hi David,

Do you have a timeline for when you will be submitting the extension of time?

Have a wonderful weekend.

Sarah

From: Filippi, David [mailto:david.filippi@stoel.com]

Sent: Wednesday, July 06, 2016 4:48 PM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Thanks Sarah. Les is pulling together the information required for the extension application, and plan is to file that very soon. While I assume that will be processed by others, we will let you know when it's been submitted. Thank you.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Wednesday, July 06, 2016 2:43 PM **To:** Filippi, David; HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hi David,

Thank you for getting back to me, I'm glad that you spoke with Les, I just didn't believe he would want those acres layered and not on his land.

I spoke to the extension folks and it looks like an extension takes approximately 6 months, maybe a little less. Then hopefully we will be able to process the permit amendments. With just a place of use change it would just be a 30 day comment period when submitted and then a final order and superseding permit could go out.

Let me know if you need any additional information or have any questions, and again thanks to both you and Les for responding so quickly.

Have a most excellent day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: Filippi, David [mailto:david.filippi@stoel.com]

Sent: Tuesday, July 05, 2016 9:36 AM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hello Sarah.

I just left you a voice mail message, but thought I'd follow up with a quick email. I communicated with Les over the holiday weekend, and Les would like to file a further transfer application to change his POU and avoid the stacking issue. He will first be filing an application for extension for his permit. Please call me at your convenience. Thank you,

David.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 24, 2016 2:25 PM

To: les

Cc: Filippi, David

Subject: RE: Permit Amendment

Hi Les,

Thank you for contacting me so quickly.

I-want to clarify the reason I sent the email out, I didn't want your water rights to become "stacked" (layered) your priority date is 2004 whereas Zerba is 2003, I just thought you would want your water rights moved to your place of use.

In 2013 you submitted a permit amendment application to change your place of use (the swap) and add additional points of appropriation. Then in June 2014 I sent you and David a letter stating that Peterson would need to do a permit amendment moving the place of use as well because of layering. That application was submitted in June 2014. Then you withdrew the place of use from your permit amendment so I could proceed with your application final order quicker for you. Attached is the final order and correcting final order for your permit amendment.

According to the email attached, the plan was for you to submit another permit amendment application immediately after the issuance of your final order, to move those 40 acres of water right to your land, while at the same time we are moving Zerbas 40 acres of water right to his land. Also attached is a permit amendment application (if submitted will cost \$1000.00).

If you are going to submit the permit amendment, I can wait to issue the final order on Zerba until August or so, so that they will not be layered.

I hope this better explains my email earlier, I am not privy to any of the easement or contracts you and Zerba have. I am only aware of the water right side of things.

Please let me know if there is anything I can help with or if you do plan to submit the permit amendment application I can help with that as well. Or if we need to talk on the phone we can do that to.

If you are going to submit the application, let me know and I will also put Zerba on a one month hold.

Have a wonderful day.

Sarah

From: les [mailto:les@lifeswheat.com] Sent: Friday, June 24, 2016 1:13 PM

To: Sarah A Henderson Cc: Filippi, David

Subject: Permit Amendment

Hello Sarah,

My understanding was the point of appropriation I initially received with my water right in 2004 would be provided an easement by Cecil Zerba as a result of the "land swap". To date that has not been accomplished. That point of appropriation is on the subject property. Can OWRD move it to another point on my property?

The concept of "stacking" point of use for one entity onto another was never a possible solution from what I understood. That is why waiting for an easement seemed to be without time consideration. When Cecil Zerba provided one I'd provide the other.

If you could provide me a guideline, forms required, or sample copy of the permit amendment needed I'll be more than happy to accommodate the procedure required. I will relinquish the point of use as well as the point of appropriation. With only four business days before July 1 it will need to be brief.

My primary focus will shift from the current well construction nearing completion on another point of appropriation on the property to harvest soon. If you can provide me the paperwork I will try to facilitate the process by releasing all interest. What more can I do?

HENDERSON Sarah A

From:

HENDERSON Sarah A

Sent:

Friday, July 29, 2016 4:55 PM

To:

Filippi, David; HENDERSON Sarah A

Cc:

les

Subject:

RE: Permit Amendment

Hi David,

Do you have a timeline for when you will be submitting the extension of time?

Have a wonderful weekend.

Sarah

From: Filippi, David [mailto:david.filippi@stoel.com]

Sent: Wednesday, July 06, 2016 4:48 PM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Thanks Sarah. Les is pulling together the information required for the extension application, and plan is to file that very soon. While I assume that will be processed by others, we will let you know when it's been submitted. Thank you.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Wednesday, July 06, 2016 2:43 PM To: Filippi, David; HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hi David.

Thank you for getting back to me, I'm glad that you spoke with Les, I just didn't believe he would want those acres layered and not on his land.

I spoke to the extension folks and it looks like an extension takes approximately 6 months, maybe a little less. Then hopefully we will be able to process the permit amendments. With just a place of use change it would just be a 30 day comment period when submitted and then a final order and superseding permit could go out.

Let me know if you need any additional information or have any questions, and again thanks to both you and Les for responding so quickly.

Have a most excellent day.

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: Filippi, David [mailto:david.filippi@stoel.com]

Sent: Tuesday, July 05, 2016 9:36 AM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hello Sarah,

I just left you a voice mail message, but thought I'd follow up with a quick email. I communicated with Les over the holiday weekend, and Les would like to file a further transfer application to change his POU and avoid the stacking issue. He will first be filing an application for extension for his permit. Please call me at your convenience. Thank you,

David.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 24, 2016 2:25 PM

To: les

Cc: Filippi, David

Subject: RE: Permit Amendment

Hi Les,

Thank you for contacting me so quickly.

I want to clarify the reason I sent the email out, I didn't want your water rights to become "stacked" (layered) your priority date is 2004 whereas Zerba is 2003, I just thought you would want your water rights moved to your place of use.

In 2013 you submitted a permit amendment application to change your place of use (the swap) and add additional points of appropriation. Then in June 2014 I sent you and David a letter stating that Peterson would need to do a permit amendment moving the place of use as well because of layering. That application was submitted in June 2014. Then you withdrew the place of use from your permit amendment so I could proceed with your application final order quicker for you. Attached is the final order and correcting final order for your permit amendment.

According to the email attached, the plan was for you to submit another permit amendment application immediately after the issuance of your final order, to move those 40 acres of water right to your land, while at the same time we are moving Zerbas 40 acres of water right to his land. Also attached is a permit amendment application (if submitted will cost \$1000.00).

If you are going to submit the permit amendment, I can wait to issue the final order on Zerba until August or so, so that they will not be layered.

I hope this better explains my email earlier, I am not privy to any of the easement or contracts you and Zerba have. I am only aware of the water right side of things.

Please let me know if there is anything I can help with or if you do plan to submit the permit amendment application I can help with that as well. Or if we need to talk on the phone we can do that to.

If you are going to submit the application, let me know and I will also put Zerba on a one month hold.

Have a wonderful day.

Sarah

From: les [mailto:les@lifeswheat.com]
Sent: Friday, June 24, 2016 1:13 PM

To: Sarah A Henderson **Cc:** Filippi, David

Subject: Permit Amendment

Hello Sarah,

My understanding was the point of appropriation I initially received with my water right in 2004 would be provided an easement by Cecil Zerba as a result of the "land swap". To date that has not been accomplished. That point of appropriation is on the subject property. Can OWRD move it to another point on my property?

The concept of "stacking" point of use for one entity onto another was never a possible solution from what I understood. That is why waiting for an easement seemed to be without time consideration. When Cecil Zerba provided one I'd provide the other.

If you could provide me a guideline, forms required, or sample copy of the permit amendment needed I'll be more than happy to accommodate the procedure required. I will relinquish the point of use as well as the point of appropriation. With only four business days before July 1 it will need to be brief.

My primary focus will shift from the current well construction nearing completion on another point of appropriation on the property to harvest soon. If you can provide me the paperwork I will try to facilitate the process by releasing all interest. What more can I do?

Les Peterson

From: Filippi, David <david.filippi@stoel.com> Wednesday, July 06, 2016 4:48 PM Sent:

HENDERSON Sarah A To:

Cc:

Subject: RE: Permit Amendment

Follow Up Flag: Follow up Flag Status: Flagged

Thanks Sarah. Les is pulling together the information required for the extension application, and plan is to file that very soon. While I assume that will be processed by others, we will let you know when it's been submitted. Thank you.

David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Wednesday, July 06, 2016 2:43 PM To: Filippi, David; HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hi David,

Thank you for getting back to me, I'm glad that you spoke with Les, I just didn't believe he would want those acres layered and not on his land.

I spoke to the extension folks and it looks like an extension takes approximately 6 months, maybe a little less. Then hopefully we will be able to process the permit amendments. With just a place of use change it would just be a 30 day comment period when submitted and then a final order and superseding permit could go out.

Let me know if you need any additional information or have any questions, and again thanks to both you and Les for responding so quickly.

Have a most excellent day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: Filippi, David [mailto:david.filippi@stoel.com]

Sent: Tuesday, July 05, 2016 9:36 AM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

Hello Sarah,

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David E. Filippi

Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 24, 2016 2:25 PM

To: les

Cc: Filippi, David

Subject: RE: Permit Amendment

Hi Les,

Thank you for contacting me so quickly.

I want to clarify the reason I sent the email out, I didn't want your water rights to become "stacked" (layered) your priority date is 2004 whereas Zerba is 2003, I just thought you would want your water rights moved to your place of use.

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If you are going to submit the application, let me know and I will also put Zerba on a one month hold.

Have a wonderful day.

Sarah

16

From: les [mailto:les@lifeswheat.com]
Sent: Friday, June 24, 2016 1:13 PM

To: Sarah A Henderson Cc: Filippi, David

Subject: Permit Amendment

Hello Sarah,

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My primary focus will shift from the current well construction nearing completion on another point of appropriation on the property to harvest soon. If you can provide me the paperwork I will try to facilitate the process by releasing all interest. What more can I do?

Les Peterson

From: Filippi, David <david.filippi@stoel.com>

Sent: Tuesday, July 05, 2016 9:36 AM

To: HENDERSON Sarah A

Cc: les

Subject: RE: Permit Amendment

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David.

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Stoel Rives LLP | 760 SW Ninth Ave., Suite 3000 | Portland, OR 97205

Direct: (503) 294-9529 | Fax: (503) 220-2480 | david.filippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 24, 2016 2:25 PM

To: les

Cc: Filippi, David

Subject: RE: Permit Amendment

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If you are going to submit the application, let me know and I will also put Zerba on a one month hold.

Have a wonderful day.

Sarah

From: les [mailto:les@lifeswheat.com]
Sent: Friday, June 24, 2016 1:13 PM

To: Sarah A Henderson Cc: Filippi, David

Subject: Permit Amendment

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Les Peterson

From:

HENDERSON Sarah A

Sent:

Friday, June 24, 2016 2:25 PM

To:

'les'

Cc:

Filippi, David

Subject:

RE: Permit Amendment

Attachments:

T-11630; Final Order Approving apoa.pdf; Correcting Order approving apoa only.pdf;

permit amendment application.pdf

Hi Les,

Thank you for contacting me so quickly.

I want to clarify the reason I sent the email out, I didn't want your water rights to become "stacked" (layered) your priority date is 2004 whereas Zerba is 2003, I just thought you would want your water rights moved to your place of use.

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To: Sarah A Henderson Cc: Filippi, David

Subject: Permit Amendment

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Les Peterson

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Sent: Friday, June 24, 2016 1:13 PM

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Cc: Filippi, David

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Les Peterson

From: HENDERSON Sarah A

Sent: Thursday, June 23, 2016 4:36 PM

To: les@lifeswheat.com; defilippi@stoel.com

Cc: mreid@eaest.com; SILBERNAGEL Greg M; mzerba@zerbacellars.com

Subject: Permit Amendment - Zerba and Peterson

Good Afternoon,

In June 2014 there was an understanding that a second permit amendment from Les Peterson would be submitted to the Department with a change in place of use for the "land swap" with Cecil Zerba. To date that has not been accomplished.

I am ready to process the Cecil Zerba permit amendment. Because Les Peterson permit amendment has not yet been submitted, if I proceed with the Cecil Zerba permit amendment the "to lands" (on the Zerba permit amendment) will become "married" (layered) with Les Petersons permit (water right) currently on Zerba's land.

I would like to proceed with this not happening but cannot do so without Les Peterson permit amendment.

I plan on issuing a final order for Cecil Zerba permit amendment around July 1, 2016.

Please contact me at 503-986-0890 or email me at <u>sarah.a.henderson@wrd.state.or.us</u> to let me know how you are planning to proceed.

Thank you.
Sarah

Sarah Henderson Transfer Specialist, Transfer and Conservation Division
Nater Resources Department 725 Summer St. NE, Suite A Salem, Oregon 97301 Ph: 503.986.0890 Fax: 503.986.0901
Email: sarah.a.henderson@state.or.us Web: http://www.wrd.state.or.us

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
6/28/2016	92

BIII To

Peterson Farms Les Peterson 1415 Highland Road Walla Walla, WA 99362

P.O. No.	Terms	Che.	Project
	Due on receipt		

Frac Tank Delivery	Quantity	Description	Rate	Amount
	1 1,782 165 68 720 4 5 20 1	Frac Tank Delivery Frac Tank Rental 1 month 1,782 gals Diesel Fuel used for Aux compressors 5/25/16 - 6/3/16 165 gals Air Drilling foam @ \$27.00/gal 68 30# bags N Seal Loss Circulation Material 720 50# bags Bentonite @ \$12.25/bag 4 5gal buckets Polymer Drilling fluid Additive @ \$256.06/bucket 5 50#bags Soda Ash 20 1/2 # bags loss circulation material @ \$9.65/bag Water Truck Rental 1 week 6/24/16 - 6/30/2016 Cat Skid Steer Rental 1 month Mud Recycle System 54 hrs @ \$150.00/hr	1,485.20 1,176.00 2.14 27.00 120.05 12.25 256.06 40.00 9.65 1,584.00 2,800.00 150.00	20,720.00 1,485.20 1,176.00 3,813.48 4,455.00 8,163.40 8,820.00 1,024.24 200.00 193.00 1,584.00 2,800.00 8,100.00 12,625.00
		the winder of the property of the property of the state o	in a state of the	ment top which the
				1. 20 1. 10 1.

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Invoice #
5/25/2016	82

BIII To

Peterson Farms Les Peterson 1415 Highland Road Walla Walla, WA 99362

P.O. No.	Terms	Project
	Due on receipt	

Quantity	Description	Rate	Amount
53 2 3,826	Drill 19" casing hole Air Rotary from 300' to 800' @ \$148.00/ft Drill 19" casing hole from 800' to 900' with roller bit 53 hours at \$550/hr Aux Compressor Rental X 2 @ \$10,180.00/ca 3826 gals Diesel Fuel used for Aux Compressors thru May 24, 2016 105 gals Drilling fluid @ 27.00/gal 960' 16" x .375 wall casing ordered @ current steel price of \$54.25	148.00 550.00 10,180.00 2.14 27.00 54.25	74,000.00 29,150.00 20,360.00 8,187.64 2,835.00 52,080.00
			Taxon Section 1
			4.5

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice

Invoice #:

29565

Invoice Date:

03/21/2016

Due Date:

03/31/2016

Purchase Order #:

To: Les Peterson

License: 116200

1415 Highland Rd Walla Walla WA 99362 Job # 5812

Project: Peterson, Les 564 Spoffard Rd

Milton Freewater

97862

Customer # 3011

Description		74.	Unit	Quanity	Price	Amount
3/15/16: Mob D8N and	l start huilding water h	olding pond	- 1			
Mob/D8N	i start outtaing water it	ording pond.	Hrs	1.00	\$200.00	200.00
D8N/4.5 hrs			Hrs	4.50	\$200.00	900.00
3/15/16: Finish buildin	g water holding pond.					
D8N/4 hrs	01		Hrs	4.00	\$200.00	800.00
No Charge for Demobi	ng D8N			4.		a di



Non-Taxable Amount: 1,900,00 Taxable Amount: 0.00

Sales Tax:

0.00

Amount Due:

1,900.00

Please Pay This Amount

\$ 1,900.00

A service charge of 18:00

% per annum will be charged on all amounts

overdue on regular statement dates.

Please make check payable to Humbert Asphalt, Inc.

Zollman's Larry Burd Well Drilling, LLC

P.O. Box 1542 Pendleton, OR 97801

Invoice

Date	Involce #		
5/3/2016	81		

BIII To

Peterson Farms Les Peterson 1415 Highland Road Walla Walla, WA 99362

AND THE RESIDENCE OF THE PARTY				
P.O. No.	Terms	Project		
1/-	Due on receipt			

Quantity	Description	Rate	Amount
0.5 100 100 1 15 1 200 50 15 2 1 0.5	Start Card Mobilization Drill 24" surface hole from 0' to 100' 20" Casing from + 2' to 98' Surface Seal 22 bags Bentonite 15 yards cement grout Cement Grout Pump equipment and labor Drill 19" hole from 100' to 300' 50 gallons drilling fluid 15 gallons drilling Polymer Soda Ash 50# bag 16 inch float shoe/plug Cat Skid Steer 2 weeks Aux Compressor Rentals (2) + transport 578 gallons diesel fuel for Aux Compressors	225.00 1,000.00 175.00 59.54 500.00 400.00 500.00 148.00 27.00 51.23 40.00 6,200.00 2,800.00 10,180.00	225.00 500.00 17,500.00 5,954.00 500.00 6,000.00 500.00 29,600.00 1,350.00 768.45 80.00 6,200.00 1,400.00 20,360.00 1,323.62
		Total	\$92,261.07

Hambert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

License: 116200

Les Peterson 1415 Highland Rd Walla Walla WA 99362 Invoice

29566 Invoice #:

Invoice Date: 03/21/2016 Due Date: 03/31/2016

Purchase Order #:

Job # 5812

Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR 97862

Customer # 3011

Description	Unit	Quanity	Price	Amount
Tkt # 22538/16.53 tons of common borrow delivered 3/18/16	Ton	16.53	\$10.00	165.30
Tkt # 22539/15.28 tons of common borrow delivered 3/18/16	Ton	15.28	\$10.00	152.80
Tkt # 22540/18.44 tons of common borrow delivered 3/18/16	Ton	18.44	\$10.00	184.40
Tkt # 22542/16.04 tons of common borrow delivered 3/18/16	Ton	16.04	\$10.00	160.40
Tkt # 22545/16.25 tons of common borrow delivered 3/18/16	Ton	16.25	\$10.00	162.50
Tkt # 22546/18.09 tons of common borrow delivered 3/18/16	Ton	18.09	\$10.00	180.90
Tkt # 22549/18.12 tons of common borrow delivered 3/18/16	Ton	18.12	\$10.00	181.20
Tkt # 22550/14.84 tons of common borrow delivered 3/18/16	Ton	14.84	\$10.00	148.40
Tkt # 22551/20.10 tons of common borrow delivered 3/18/16	Ton	20.10	\$10.00	201.00
Tkt # 22552/14.89 tons of common borrow delivered 3/18/16	Ton	14.89	\$10.00	148.90
Tkt # 22553/14.60 tons of common borrow delivered 3/18/16	Ton	14.60	\$10.00	146.00
Tkt # 22555/18.45 tons of common borrow delivered 3/18/16	Ton	18.45	\$10.00	184.50
Tkt # 22536/17:35 tons of common borrow delivered 3/18/16	Ton	17.35	\$10.00	173.50
Tkt # 22561/15.41 tons of common borrow delivered 3/18/16	Ton	15.41	\$10.00	154.10
Tkt # 22562/20.38 tons of common borrow delivered 3/18/16	Ton	20.38	\$10.00	203.80
Tkt # 22563/17.82 tons of common borrow delivered 3/18/16	Ton	17.82	\$10.00	178.20
Tkt # 22564/15.25 tons of common borrow delivered 3/18/16	Ton	15.25	\$10.00	152.50
Tkt # 22565/20.18 tons of common borrow delivered 3/18/16	Ton	20.18	\$10.00	201.80
Tkt # 22566/17.79 tons of common borrow delivered 3/18/16	Ton	17.79_	\$10.00	177.90
Torks	*	325.81	9	952,45

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00 Sales Tax: 0.00 Amount Due: . 9,952.45

Please Pay This Amount

\$ 9,952.45

A service charge of 18.00

% per annum will be charged on all amounts

overdue on regular statement dates.

Please make check payable to Humbert Asphalt, Inc.

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

License: 116200

To: Les Peterson 1415 Highland Rd Walla Walla WA 99362

Invoice

Invoice #: 29566

Invoice Date: 03/21/2016 Due Date: 03/31/2016

Purchase Order #:

Job# 5812

Project: Peterson, Les 564 Spoffard Rd

Milton Freewater OR 97862

Customer# 3011

Description	Unit	Quanity	Price	Amount
Tkt # 22510/15.39 tons of common borrow delivered 3/17/16	Ton	15.39	\$10.00	153.90
Tkt # 22511/13.81 tons of common borrow delivered 3/17/16	Ton	13.81	\$10.00	138.10
Tkt # 22512/12.25 tons of common borrow delivered 3/17/16	Ton	12.25	\$10.00	122.50
Tkt # 22513/15.05 tons of common borrow delivered 3/17/16	Ton	15.05	\$10.00	150.50
Tkt # 22514/15.86 tons of common borrow delivered 3/17/16	Ton	15.86	\$10.00	158.60
Tkt # 22515/15.03 tons of common borrow delivered 3/17/16	Ton	15.03	\$10.00	150.30
Tkt # 22516/15.00 tons of common borrow delivered 3/17/16	Ton	15.00	\$10.00	150.00
3/18/16: Build Road		102.3	,	
850G Cat/5 hrs	Hrs	5.00	\$100.00	500.00
Big Hamm Roller/3 hrs	Hrs	3.00	\$90.00	270.00
Tkt # 22522/14.42 tons of common borrow delivered 3/18/16	Ton	14:42	\$10:00	144.20
Tkt # 22523/15.18 tons of common borrow delivered 3/18/16	Ton	15.18	\$10.00	151.80
Tkt # 22524/11.87 ions of common borrow delivered 3/18/16	Ton	11.87	\$10.00	118.70
Ttk # 22525/13.50 tons of common borrow delivered 3/18/16	Ton	13.50	\$10.00	135.00
Tkt # 22526/14.22 tons of common borrow delivered 3/18/16	Ton	14.22	\$10.00	142.20
Tkt # 22529/13.72 tons of common borrow delivered 3/18/16	Ton	13.72	\$10.00	137.20
Tkt # 22530/17.53 tons of common borrow delivered 3/18/16	Ton	17.53	\$10.00	175.30
Tkt # 22531/15.83 tons of common borrow delivered 3/18/16	Ton	15.83	\$10.00	158.30
Tkt # 22535/16.40 tons of common borrow delivered 3/18/16	Ton	16.40	\$10.00	164.00
Tkt # 22536/15.66 tons of common borrow delivered 3/18/16	Ton	15.66	\$10.00	156.60
Tkt # 22537/18,89 tons of common borrow delivered 3/18/16	Ton	18.89_	\$10.00	188.90
		167.22	61	094.35

18 londs

 Non-Taxable Amount:
 9,952.45

 Taxable Amount:
 0.00

 Sales Tax:
 0.00

 Amount Due:
 9,952.45

Please Pay This Amount

\$ 9,952.45

A service charge of 18.00 % per annum will be charged on all amounts overdue on regular statement dates.

Please make check payable to Humbert Asphalt, Inc.

Humbert Asphalt, Inc. 84899 Hwy 11 Milton-Freewater OR 97862 541-938-3174

Invoice #:

29566

Invoice

Invoice Date:

03/21/2016

Due Date:

03/31/2016

Purchase Order #:

Job# 5812

Project: Peterson, Les

564 Spoffard Rd

Milton Freewater OR 97862

Walla Walla WA 99362

Customer # 3011

License: 116200

Les Peterson

1415 Highland Rd

Description	Unit	Quanity	Price	Amount
3/15/16: Mark out for locates and mob backhoe.				
Mob/Backhoe 1 hr	Hrs	1.00	\$100.00	100.00
Labor/2 hrs	Hrs	2.00	\$60.00	120.00
3/17/16: Build Road		-		
850G Cat/3 hrs	Hrs	3.00	\$100.00	300.00
Big Hamm Roller/1 hrs	Hrs	1.00	\$90.00	90.00
Backhoe/3 hrs	Hrs	3.00	\$100.00	300.00
Dump Truck # 65/3 hrs	Hrs	3.00	\$100.00	300.00
Tkt # 22495/13.93 tons of 2 1/2"-0 delivered 3/17/16	Ton	13.93	\$10.75	149.75
Tkt # 22498/15.05 tons of common borrow delivered 3/17/16	Ton	15.05	\$10.00	150.50
Tkt # 22499/15.83 tons of common borrow delivered 3/17/16	Ton	15.83	\$10.00	158.30
Tkt # 22500/13.74 tons of common borrow delivered 3/17/16	Ton	13.74	\$10.00	137.40
Tkt # 22501/15.00 tons of common borrow delivered 3/17/16	Ton	15.00	\$10.00	150.00
Tkt # 22502/18.98 tons of common borrow delivered 3/17/16	Ton	18.98	\$10.00	189.80
Tkt # 22503/15.89 tons of common borrow delivered 3/17/16	Ton	15.89	\$10.00	158.90
Tkt # 22504/15.24 tons of common borrow delivered 3/17/16	Ton	15.24	\$10.00	152.40
Tkt # 22505/17.12 tons of common borrow delivered 3/17/16	Ton	17.12	\$10.00	171.20
Tkt # 22506/15.54 tons of common borrow delivered 3/17/16	Ton	15.54	\$10.00	155.40
Tkt # 22507/15.65 tons of common borrow delivered 3/17/16	Ton	15.65	\$10.00	156.50
Tkt # 22508/16.42 tons of common borrow delivered 3/17/16	Ton	16.42	\$10.00	164.20
Tkt # 22509/12.39 tons of common borrow delivered 3/17/16	Ton	12.39	\$10.00	123.90
200,78		200.78	3	228.25

102.39 Please Pay This Amount

Non-Taxable Amount: 9,952.45 Taxable Amount: 0.00 Sales Tax: 0.00

\$ 9,952.45

9,952.45

A service charge of 18.00

% per annum will be charged on all amounts

overdue on regular statement dates.

Amount Due:

Please make check payable to Humbert Asphalt, Inc.



engineers | landscape architects | planners | surveyors

HDJ Design Group 314 W 15th Street Vancouver, WA 98660-2927

> Les Peterson 1415 Highland Road Walla Walla, WA 99362

Invoice number

4288-00-001

Date

02/27/2018

Project 4288-00 LES PETERSON - WELL LOCATION SURVEY

HDJ Project Manager Greg E. Flowers

Services and Expenses for the month of February 2016:

Summary of Services:

POA Staking Complete.

Labor

Amount 505.00

Invoice total

505.00

Aging Summary

Invoice Number	Inve	oice Date	Outstanding	Current	Over 30	Over 60	Over 90	Over 120
4288-00-001	02/	27/2016	505.00	505.00	ESPECIAL AND SERVICE	W FINE		
	Tota	al	505.00	505.00	0.00	0.00	0.00	0.00

Please make checks payable to HDJ Design Group, PLLC. To ensure proper credit, please include the INVOICE NUMBER on your check.

DUE UPON RECEIPT 1.5% per month will be assessed on past due accounts.

W. 4.23.16



ZOLLMAN'S LARRY BURD WELL DRILLING, LLC

PO Box 1542, Pendleton, OR 97801 www.zollmanswelldrilling.com • zollmanslbwd@yahoo.com

July 5, 2016

Les Peterson 1415 Highland Rd Walla Walla, WA 99362

Re: Current Well Construction on Irrigation Well Permit G-17294, Start Card 1029943

Les,

I am writing this letter to document the current construction phase we are at in the building of your Irrigation well East of Milton-Freewater, Oregon.

Construction on this well started March 31, 2016.

Current drilling depth of the 19inch diameter casing hole is 1040ft. and we are drilling in a basalt aquifer that needs to be sealed per the direction of the local well inspector Erik Thomasser. Erik has been on site to help make sure the well meets the requirements of the permit.

The well has a 20inch surface hole, cased and sealed into basalt with cement grout to a depth of 100ft. Another casing hole with a 19inch diameter is currently being drilled to meet the permit requirement of casing and sealing to 950ft. Since we have been in an aquifer that has been open for almost 200ft. and still in a vesicular basalt aquifer zone we have had to change drilling techniques from air drilling to mud drilling. This drilling has continued past the 950ft. depth because of the continuing aquifer. This will allow us to case and seal using a cement grout through this aquifer to seal it off from the aquifer you will be using.

There have been two Oregon Water Resource Department Employees we have been working with on this project:

Locally – Erik Thomasser, Regional Well Inspector from Pendleton office 541-278-5456

Salem – Jen Woody, Umatilla Basin Critical Water 503-986-0855

Sincerely,

Garry L. Zollman

Oregon license 1881

Pendleton 541.276.3681 Hermiston 541.567.3088 Milton-Freewater 541.938.5135

Toll Free 800.953.3681 Fax 541.276.0209

@ Help

	Orego	on Water Resou	rces Department			報	Main	0	Help
WHD	Starte	card Data				0	Return	3	Contact Us
Well Cons			RRY BURD WELL DRILLING	G LLC					
		umber: 102994	13						
Owner Inf Company		n				1			
First	IEC		Last PETERSON		17	,			
,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,		IGHLAND RD	Name (LIZICOIT			1			
Street2				7					
		WALLA	State Washington	V	Zip 99362	1			
Home Phone	509-52	2-2124			Work Phone	7	>		
Type of W	Nork			1					
	quired [New	No Fee Required	Alterat	tion				
	[Conversion	1	Aband	lonment				
	[Deepening	1	1					
Origina	Card#		Orlginal Well Tag#	-		7			
				1					
Construc		. (4 - COMPANY 4 TO A STATE OF				
	Propose	nt 3/15/2016	Existing/ Proposed 1200	7 7	iameter (inches) 16	_			
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Use			7						
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Therm	nal	□Injection	Livestock	Oth	er.				
Monito	oring	Piezometer	Dewatering						
Proposed	Well L	ocation							
	-	1/4 MI. NE DIAGO	ONAL FROM INTERSECTIO	N OF	SPOFFORD RE). P	AND	1	
Street ac	of well	MILTON CEM						1	
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C	County [Umatilla 🗸	Township 5.00 N V	Ra	nge 36.00	E	Section	n 5	
	QQ/Q	NE V SE V	Lattitude	Longit	ude				
	Taxlot 8	801							

OWNER PLEASE NOTE: This is not a water right application. The owner is responsible for obtaining a water right through the Water Resources Department, if required. The Oregon Health Division requires plans to be submitted and approved prior to construction if the well is to be used as a public system.

November 30,2015

Oregon Water Resources Department Attention: Water Right Issues

RE: Application #G-17294 in the name of Les Peterson

Please consider this my formal request for a one year extension in the deadline for completing construction and putting the water to use for my water right. It is my strong desire to have use of water for diversification of crops, increased production, and above all the capability to produce crops annually. I have over thirty seven years of farming experience of which none is of any use in this situation.

The requirements of my permit dictate that to attain full beneficial use, as I wish to do, an automatic reduction in the market of well drillers with the capability to accomplish the job becomes immediate. Following a market search, I have conducted negotiations with Zollman Well Drilling resulting in agreement that their services would be used. Unfortunately others came to the same conclusion and my position in the chain of jobs has not yet become job one.

At this point in time I am requesting a commitment from you that the financial and employment resources which will be significant are not in vain due to time constraints. Simply put the job may well be started but incomplete by the current deadline.

No one can say for certain but a one year extension should allow for many variables to be overcome, i.e. weather.

Let me know what you know about the situation and any thoughts regarding my actions.

Thank You

Les Peterson

1415 Highland Road

Walla Walla, Wa. 99362

Lu Petro

les@lifeswheat.com

RECEIVED BY OWRD

DEC 1 7 2015

SALEM, OR

From: Sent: To: Cc: Subject:	HENDERSON Sarah A Tuesday, December 16, 2014 10:12 AM les@lifeswheat.com; defilippi@stoel.com; MReid@gsiws.com; mzerba@zerbacellars.com SILBERNAGEL Greg M T-11844 Zerba and Permit G-17294 Peterson -
SentFromSession:	JOHNNY.hendersa.12/15/2014 7:29:08 AM
Good Afternoon Everyone,	
Just checking in on the progr	ress for the Zerba (T-11844) and Peterson (permit G-17294) land swap.
T-11844 has been published is ready to go.	in the newspaper and as soon as the Peterson permit amendment comes in, this application
Without the Peterson place	of use change permit amendment T-11844 cannot be approved.
	t needs to be submitted for the place of use change as was discussed back in <u>June</u> when the om the original T-11630 Peterson permit amendment.
Please let me know if there	is something I can help with to get the process moving for you all.
Thank you.	
Sarah	
*************	******
Sarah Henderson Tran	sfer Specialist, Transfer and Conservation Division
Ph: 503.986.0890 Fax: 50	725 Summer St. NE, Suite A Salem, Oregon 97301 3.986.0901 te.or.us Web: http://www.wrd.state.or.us

From: HENDERSON Sarah A Sent: Thursday, October 16, 2014 2:03 PM To: MReid@gsiws.com; defilippi@stoel.com Cc: mzerba@zerbacellars.com; les@lifeswheat.com; SILBERNAGEL Greg M Subject: Zerba and Peterson Attachments: 11844-draft-fo.pdf; G-17293-draft-superceding-permit-G-15704.pdf SentFromSession: JOHNNY.hendersa.10/16/2014 1:07:54 PM Good Afternoon Everyone, Just checking in on the progress for the Zerba (T-11844) and Peterson (permit G-17294) land swap. T-11844 has been published in the newspaper and as soon as the Peterson permit amendment and affidavit of publication comes in, this application is ready to go. Without the Peterson place of use change permit amendment T-11844 cannot be approved. Peterson permit amendment needs to be submitted for the place of use change as was discussed back in June when the place of use was removed from the original T-11630 Peterson permit amendment. I am attaching the DRAFT final order and superseding permit for T-11844 with all the conditions included in both documents. Please let me know if there is something I can help with to get the process moving for you all. Thank you. Sarah ************************* Sarah Henderson | Transfer Specialist, Transfer and Conservation Division Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301 Ph: 503.986.0890 | Fax: 503.986.0901 Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

HENDERSON Sarah A From: Friday, September 19, 2014 3:29 PM Sent: To: defilippi@stoel.com Cc: MReid@gsiws.com Subject: FW: T-11844 - Zerba SentFromSession: JOHNNY.hendersa.9/19/2014 7:31:42 AM Good Afternoon David, Just wanted to ask you if you and Les Peterson had received the corrected final order and superseding permit G-17294 for T-11630. Also, when you submit the permit amendment changing the place of use for the 40 acre swap, please put the application "Attn: Sarah Henderson". This way I will receive it and start on it immediately. Zerba is already being noticed in the newspaper so we would only have to wait for Petersons initial 30 day notice and the Watermaster review. Let me know if you have any questions, or if there is anything I can do to help. Thank you, have a wonderful weekend. Sarah From: HENDERSON Sarah A Sent: Friday, September 19, 2014 1:53 PM To: MReid@gsiws.com Subject: T-11844 - Zerba Hi Molly, Just an FYI - T-11844 will be published in Valley Herald on Sept 19 and 26. However, the final order cannot go out until Les Peterson (permit G-17294) submits a permit amendment for the 40 acre place of use swap. I have not seen one yet. Have a wonderful weekend. Sarah ****************************

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Subject: Start Date: Due Date: T-11630 - les peterson Thursday, April 10, 2014 Monday, August 25, 2014

Status:

Completed

Percent Complete:

100%

Date Completed:

Wednesday, September 10, 2014

Total Work: Actual Work: 0 hours 0 hours

Owner:

HENDERSON Sarah A

Categories:

My Transfers

T-11630 - les Peterson - pou/apoa - permit amendment -

- 1. File given to me on 4/10/14 Draft fo
- 2. Defic ltr to Kelly for pr layered permits 5/13/14 back 5/14/14
- 3. Sent defic ltr by email to les Peterson/applicant and david filippi/attorney deadline 6/16/14
- T-11844 (zerba permit amendment) submitted to resolve deficiency 6/17/14
- Draft fo and permit sent to david on 6/20/14
- Draft to Kelly for pr 6/20/14 back 6/24/14
- 7. Filippi amended app to omit pou change 6/30/14
- 8. Amended draft went out 6/30/14
- 9. Asked for quote from Kelly on 6/30/14 got quote on 7/9/14
- 10. \$\$\$ letter sent deadline 8/11/14
- 11. Recvd \$\$ 7/14/14
- 12. Deadline 8/13/14
- 13. NEED AFFFADAVIT
- 14. Affidavit rcvd 7/31/14
- 15. Fo to Kelly for pr 8/1/14 back 8/14/14
- FO TO DWIGHT FOR SIGNATURE 8/14/14
- 17. Wrong fo signed 8/15/14 POU/APOA
 - 1. Draft correcting order and correcting superseding permit
 - 2. Fo and permit to Kelly for pr 8/21/14
 - FO TO DWIGHT FOR SIGNATURE 8/25/14 (CORRECTING FO, SUPERCEDING PERMIT, REFUND)
 - 4. FO ISSUED 8/25/14 V93 P287 APOA ONLY



Water Resources Department

North Mall Office Building 725 Summer St NE, Suite A Salem, OR 97301 Phone (503) 986-0900 Fax (503) 986-0904 www.wrd.state.or.us

September 3, 2014

Les Peterson 1415 Highland Rd Walla Walla WA 99362

RE: Correcting Order T-117630

Enclosed is a new correcting and superseding final order. Also, enclosed is new correcting and superseding Permit G-17294 issued to correct a scrivener's error.

Please read the order carefully.

If you have any questions regarding this certificate please contact the transfer section at 503-986-0807.

Sincerely,

Code Holmes

Codi Holmes Water Right Services Support Transfer and Conservation Section

Enclosure

BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Transfer Application)	CORRECTING ORDER
T-11630, Umatilla County)	

Applicant

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

*Findings of Fact

The Department issued an order approving T-11630 on August 15, 2014. The order was
recorded at Special Order Volume 93, Pages 108 to 110. The order erroneously approved a
change in place of use.

Now, therefore, it is ORDERED:

- The order approving T-11630, issued August 15, 2014, and recorded at Special Order Volume 93, Pages 108 to 110 is amended to approve additional points of appropriation only. All other terms and conditions of the order remain unchanged.
- Permit G-17294, in the name of Les Peterson, is issued to replace Permit G-17266 and incorporate corrections approved by this order. Permit G-17266, in the name of Les Peterson, is no longer of any force or effect.
- 3. All other terms and conditions of Permit G-17294 remain the same.

Dated at Salem, Oregon this 25 day of August, 2014.

Dwight French, Water Right Services Division Administrator, for Director, Oregon Water Resources Department

SEP 0 4 2014

Mailing date:

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 137-004-080 and OAR 690-01-005, you may 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.

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

This correcting superseding permit is issued to correct an error in a change in place of use and describes additional points of appropriation proposed under Permit Amendment Application T-11630 and approved by Special Order Vol. 93, Pages 108-110 entered August 15, 2014, and correcting order approved by Special Order Vol. 93, Page 281, entered August 25 2014. This permit supersedes Permit G-17266.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: THREE WELLS IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	4	sw sw	WELL 1: 480 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 4
5 N	36 E	WM	5	NE SE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE E1/4 CORNER OF SECTION 5
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

		IRRIGA	TION		
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	4	NE NW	40.0
5 N	36 E	WM	4	SE NW	40.0
5 N	36 E	WM	4	NE SW	40.0
5 N	36 E	WM	4	NW SW	40.0
5 N	36 E	WM	4	SW SW	40.0
5 N	36 E	WM	4	SE SW	40.0
5 N	36 E	WM	9	NE NE	20.0
5 N	36 E	WM	9	NW NE	40.0
5 N	36 E	WM	9	NE NW	40.0
5 N	36 E	WM	9	SE NW	10.0
				Total	350.0

Permit Amendment T-11630 Conditions

The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.

Well construction in the Columbia River Basalts is limited to development of one aquifer.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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:

- Associate each measurement with an owner's well name or number and a Department well log ID; and
- 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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the Watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made on or before April 22, 2016. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued Hugsst 25, 2014

Dwight Fronch, Water Right Services Division Administrator, for

Director, Oregon Water Resources Department



Water Resources Department

North Mall Office Building 725 Summer St NE, Suite A Salem, OR 97301 Phone (503) 986-0900 Fax (503) 986-0904 www.wrd.state.or.us

August 18, 2014

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

REFERENCE: Permit Amendment Application T-11630

Enclosed is a copy of the order approving your Permit Amendment application.

Also enclosed is a superseding permit that incorporates the amendments approved by the final order contained herein. Please read this document and abide by the requirements.

If you have any questions related to the approval of this permit amendment, you may contact your caseworker by telephone at (503) 986-0890 or by e-mail at Sarah.A.Henderson@wrd.state.or.us

Sincerely,

Codi Holmus

Water Rights Services Support

Transfer and Conservation Section

cc: Tony G. Justus, Watermaster Dist. # 5 (via email)

David Filippi, Attorney

Enclosure

BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of Permit Amendment)	FINAL ORDER
T-11630, Umatilla County)	APPROVING ADDITIONAL POINTS
)	OF APPROPRIATION, AND A
)	CHANGE IN PLACE OF USE

Authority

ORS 537.211 establishes the process in which a water right permit holder may submit a request to change the point of appropriation and/or place of use authorized under an existing water right permit.

Applicant

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

Findings of Fact

- On July 1, 2013, LES PETERSON filed an application for additional points of appropriation and change in place of use under Permit G-16846. The Department assigned the application number T-11630.
- Notice of the application for the permit amendment was published in the Department's weekly notice on July 9, 2013, and in the Walla Walla Union-Bulletin newspaper on July 20 and 27, 2014, pursuant to ORS 540.520(5). No comments were filed in response to the notices.
- On May 12, 2014, the Department contacted the applicant and David Filippi by written
 correspondence via e-mail, to notify the applicant and applicant's attorney of the layered
 water rights present at the location of the lands being transferred in the application. The
 Department requested that the deficiency be resolved by June 16, 2014.
- On June 17, 2014, permit amendment application T-11844 in the name of Farmers Produce Outlet Inc., Cecil and Marilyn Zerba, was accepted by the Department to be worked concurrently with T-11630, to resolve the deficiency.

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 137-004-080 and OAR 690-01-005 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.

 Permit Amendment Application T-11630 proposes two additional points of appropriation, described as follows with the approximate distances from the existing point of appropriation:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances	~Distance from authorized well
5 N	36 E	WM	5	NE SE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE E1/4 CORNER OF SECTION 5	1712 FEET
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4	0.89 MILE

2. Permit Amendment Application T-11630 also proposes to change the place of use of the permit to:

Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	4	NE NW	40.0
5 N	36 E	WM	4	SENW	40.0
5 N	36 E	WM	4	NE SW	40.0
5 N	36 E	WM	4	NW SW	40.0
5 N	36 E	WM	4	SE SW	40.0
5 N	36 E	WM	5	NE SE	40.0
5 N	36 E	WM	9	NE NE	20.0
5 N	36 E	WM	9	NW NE	40.0
5 N	36 E	WM	9	NE NW	40.0
5 N	36 E	WM	9	SE NW	10.0
				Total	350.0

Permit Amendment Review Criteria

- 6. The changes would not result in injury to other water rights.
- 7. The proposed place of use is owned and/or controlled by the permit holder.
- 8. The changes do not enlarge the permit.
- 9. The changes do not alter any other terms of the permit.
- 10. The proposed place of use is contiguous to the authorized place of use.

Conclusions of Law

The additional points of appropriation and change in place of use proposed by Permit Amendment Application T-11630 are consistent with the requirements of ORS 537.211.

Now, therefore, it is ORDERED:

 The additional points of appropriation and change in place of use proposed by Permit Amendment Application T-11630 are approved.

- Permit G-17266, in the name of Les Peterson, is issued to replace Permit G-16846, and incorporates the amendments approved by this order. Permit G-16846, in the name of LES PETERSON, is no longer of any force or effect.
- The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.
- 4. The proposed wells shall be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.
- 5. Well construction in the Columbia River Basalts is limited to development of one aquifer.
- 6. Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
 - B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
 - C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
 - D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.
- 7. Water shall be acquired from the same aquifer as the original point of appropriation.
- 8. The former place of use shall no longer be irrigated as part of this permit.
- 9. All other terms and conditions of Permit G-17266 remain the same.

Dated at Salem, Oregon this 15 day of August, 2014.

Dwight French, Water Right Services Division Administrator, for

Director, bregon Water Resources Department

Mailing Date: AUG 19 2014

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

This superseding permit is issued to describe an amendment for additional points of appropriation and a change in place of use proposed under Permit Amendment Application T-11630 and approved by Special Order Vol. 93, Page 108, entered AUGUST 15,2014. This permit supersedes Permit G-16846.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: THREE WELLS IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	4	sw sw	WELL 1: 480 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 4
5 N	36 E	WM	5	NE SE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE E1/4 CORNER OF SECTION 5
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

IRRIGATION							
Twp	Rng	Mer	Sec	Q-Q	Acres		
5 N	36 E	WM	4	NE NW	40.0		
5 N	36 E	WM	4	SENW	40.0		
5 N	36 E	WM	4	NE SW	40.0		
5 N	36 E	WM	4	NWSW	40.0		
5 N	36 E	WM	4	SESW	40.0		
5 N	36 E	WM	5	NE SE	40.0		
5 N	36 E	WM	9	NE NE	20.0		
5 N	36 E	WM	9	NW NE	40.0		
5 N	36 E	WM	9	NE NW	40.0		
5 N	36 E	WM	9	SE NW	10.0		
				Total	350.0		

Permit Amendment T-11630 Conditions

The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.

Well construction in the Columbia River Basalts is limited to development of one quifer.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the Watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made on or before April 22, 2016. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

Dwight French, Water Right Services Division Administrator, for

Director, Oregon Water Resources Department

MUST 15, ZOIL

From: HENDERSON Sarah A

Sent: Friday, July 11, 2014 1:32 PM

To: les@lifeswheat.com; defilippi@stoel.com
Subject: T-11630 Newspaper Notice Fee Request

Attachments: 11630-newspaper-notice-payment-request.pdf

SentFromSession: JOHNNY.hendersa.7/11/2014 7:35:36 AM

Good Afternoon,

Attached is the letter requesting fees for the newspaper public notice. As soon as the Department receives the fees for this permit amendment application newspaper notice the newspaper is notified to publish for two weeks, the final order and superseding permit is issued after the last date of publication.

If you have any questions please let me know.

Thank you and have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: HENDERSON Sarah A

Sent: Monday, June 30, 2014 1:34 PM

To: 'Filippi, David'
Cc: les@lifeswheat.com

Subject: RE: T-11630 - Draft Final Order and Draft Superseding Permit

SentFromSession: JOHNNY.hendersa.6/30/2014 7:42:50 AM

Hi David,

Thank you for the comments and finding those typos!

Concerning your number 4 – extending the c-date for the permit. This cannot be done through the permit amendment application. 537.211(4) That can only be done through the Extension of Time application for Permits. (also - if this was a Regular transfer application with a certificated right it could have been done.)

If you need information on extension of time applications for permits, you can contact Steve Parrett Steve.W.Parrett@wrd.state.or.us or 503-986-0825. (I think he is out until July 2)

I will get a quote to you and Les as soon as the Union Bulletin gets back to me. Thank you again, and have a wonderful day.

Sarah

From: Filippi, David [mailto:DEFILIPPI@stoel.com]

Sent: Monday, June 30, 2014 9:02 AM

To: HENDERSON Sarah A Cc: les@lifeswheat.com

Subject: RE: T-11630 - Draft Final Order and Draft Superseding Permit

Hello Sarah,

Thank you for the opportunity to review the draft FO and draft amended permit for T-11630. We have a few comments:

- 1) With the withdrawal of the POU change from T-11630 (sent to you a few minutes ago), we understand you will modify both the FO and the amended permit accordingly.
- 2) There are several minor typos/edits in the draft FO. Nothing substantive, but just passing these along:

On p. 1, in the notice box on the bottom of p. 1, OAR 137-004-080 should be OAR 138-004-0080, and OAR 690-01-005 should be OAR 690-001-0005.

On p. 2, numbering is off, such that para. 2 should be renumbered to para. 6, and then all following paragraph numbers should change accordingly. (At the same time this paragraph should be deleted with the withdrawal of the POU change, so just noting the need to update paragraph numbering in the final version.)

On p. 3, item 9, "G-17266" should be replaced with G-16846"

- 3) The draft FO and draft permit include new conditions regarding well casing/sealing requirements and aquifer development limits. The language in both should be clarified to make clear that these new requirements only apply to the new POA 2 and POA 3, and do not apply to the previously approved POA 1.
- 4) Finally, we wanted to raise the potential of extending the completion date beyond 4/22/16 (see last p. of permit). Things have been pending on this permit amendment for some time, and it would seem appropriate to provide Les with additional time to complete development and put water to beneficial use. Considering weather constraints, the availability of the well driller, etc., we would propose re-setting the permit development date five years out from the date the permit amendment is approved.

Please let me know if you have questions or would like to discuss further. Thank you.

David

David E. Filippi Stoel Rives LLP (503) 294-9529

From: Filippi, David

Sent: Friday, June 20, 2014 3:57 PM

To: HENDERSON Sarah A Cc: les@lifeswheat.com

Subject: RE: T-11630 - Draft Final Order and Draft Superseding Permit

Thank you Sarah. We will aim to get you comments on these and a decision on whether we're pulling the POU out by Tuesday of next week. Understand you will be out on Monday. Thank you for your work on this.

David E. Filippi

Stoel Rives LLP | 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

Direct: (503) 294-9529 | Fax: (503) 220-2480 | defilippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 20, 2014 3:53 PM

To: Filippi, David Cc: les@lifeswheat.com

Subject: T-11630 - Draft Final Order and Draft Superseding Permit

Good Afternoon David,

Attached is the *Draft Final Order* and *Draft Superseding Permit* for T-11630 in the name of Les Peterson. I look forward to hearing from you sometime next week to let me know if there will need to be amendments or such.

Thank you for explaining the issues and timelines. Have a wonderful weekend.

From: Filippi, David <DEFILIPPI@stoel.com>
Sent: Monday, June 30, 2014 8:49 AM

To: HENDERSON Sarah A

Cc: Les Peterson (les@lifeswheat.com)

Subject: T-11630

Hello Sarah,

Per our recent discussions, and as Les Peterson's representative in this matter, Les wishes to withdraw the requested POU change from his transfer application T-11630. Les is doing this with the understanding that OWRD may move forward with the remaining requests included in application T-11630 (the requested APOAs) without any delay associated with the transfer application T-11844 filed by Farmers Outlet Produce Inc./Cecil and Marilyn Zerba, regarding permit G-15704. Once an amended permit (with the two new APOAs included) is issued to Les, Les intends to file a further permit amendment application focused solely on the POU change, which we understand will then track with the POU change requested in T-11844.

Please let me know if you have any questions or need anything further.

David

David E. Filippi Stoel Rives LLP (503) 294-9529

From: Filippi, David <DEFILIPPI@stoel.com>
Sent: Friday, June 20, 2014 3:57 PM

To: HENDERSON Sarah A
Cc: les@lifeswheat.com

Subject: RE: T-11630 - Draft Final Order and Draft Superseding Permit

Thank you Sarah. We will aim to get you comments on these and a decision on whether we're pulling the POU out by Tuesday of next week. Understand you will be out on Monday. Thank you for your work on this.

David E. Filippi

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Direct: (503) 294-9529 | Fax: (503) 220-2480 | defilippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Friday, June 20, 2014 3:53 PM

To: Filippi, David Cc: les@lifeswheat.com

Subject: T-11630 - Draft Final Order and Draft Superseding Permit

Good Afternoon David,

Attached is the *Draft Final Order* and *Draft Superseding Permit* for T-11630 in the name of Les Peterson. I look forward to hearing from you sometime next week to let me know if there will need to be amendments or such.

Thank you for explaining the issues and timelines. Have a wonderful weekend.

Sarah

Sarah Henderson Transfer Specialist, Transfer and Conservation Division
Water Resources Department 725 Summer St. NE, Suite A Salem, Oregon 97301 Ph: 503.986.0890 Fax: 503.986.0901
Email: sarah.a.henderson@state.or.us Web: http://www.wrd.state.or.us

From: les peterson <les@lifeswheat.com>
Sent: Thursday, June 19, 2014 10:54 AM

To: 'HENDERSON Sarah A'

Subject: RE: T-11630 Permit Amendment for Les Peterson

Sarah,

Thanks for the update. Information requested: Union Bulletin Box 1358 Walla Walla, Wa. 99362

1-800-423-5617

Les

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Thursday, June 19, 2014 10:13 AM
To: Filippi, David; MReid@gsiws.com
Cc: Les Peterson (les@lifeswheat.com)

Subject: RE: T-11630 Permit Amendment for Les Peterson

Hi Again,

Just wanted to let you both know I made an error in the email I sent to you. Permit Amendments do not have the 30 day comment period after the newspaper notice. All we need is the affidavit from the newspaper after the 2 weeks of publication. Sorry about the confusion.

Sarah

From: HENDERSON Sarah A

Sent: Thursday, June 19, 2014 9:22 AM To: Filippi, David; MReid@gsiws.com

Cc: Les Peterson (<u>les@lifeswheat.com</u>); <u>mzerba@zervacellars.com</u> Subject: RE: T-11630 Permit Amendment for Les Peterson

Good Morning David, and Molly,

- 1. Yes a Permit Amendment application has been filed by Mr. Zerba
- 2. Yes this satisfies the deficiency letter for the Les Peterson Application
- Yes these two applications will need to be issued concurrently
 - I will be the caseworker for Mr. Zerba's application as well, therefore would grab it immediately because I am working on Les Peterson's and need it worked on now, the only slight hold up on the application would be waiting for the Watermaster and Groundwater reviews to be done, and the initial 30 day notice period (I think will start on June 24, 2014).

- Both applications must also be published in a local newspaper for 2 consecutive weeks because there is more than ¼ mile between the new and the authorized points of appropriation. (This means that I would need the name of a newspaper you would like to publish in and then the Department gets a quote, then I let you know the quote for publication, then as soon as the \$\$ for the newspaper publication is received, we notify the newspaper to publish and then 30 days after the last date of publication the final order can be issued (if no protests.)
- David If you decided to amend the application for Peterson to take out the place of use and only have the additional poa's (still has to be noticed in newspaper) and then submit an additional application with just a pou (pou only not noticed in newspaper), that new application would still need to be worked concurrently with Mr. Zerba's application. The \$1000 application fee would have to be submitted with the new application. We no longer move \$\$\$ from one file to another (fiscal related). The overpayment on the current application would be refunded around the time of the final order of the current application.

I will be sending a copy of the Draft Final Order and superseding Permit very soon, almost done - (David)

The Zerba Draft Final Order and superseding Permit as soon as the WM and GW reviews are finished. (Molly)

Please let me know if you have any other questions or concerns.

Thank you and have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division

Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Ph: 503.986.0890 | Fax: 503.986.0901

Email: sarah,a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: Filippi, David [mailto:DEFILIPPI@stoel.com]

Sent: Monday, June 16, 2014 9:25 AM

To: HENDERSON Sarah A

Cc: Les Peterson (les@lifeswheat.com)

Subject: RE: T-11630 Permit Amendment for Les Peterson

Hello Sarah,

I've had an opportunity to review everything with Les, and Les has also had an opportunity to review things with Cecil Zerba, the holder of overlapping permit. Here's where I understand things currently stand:

1) Permit G-15704 is held by Farmers Outlet Produce Inc./Cecil and Marilyn Zerba. The currently authorized POU under Permit G-15704 includes 40 acres which are located in T5N, R36E, NE SE of Sec 5. This is the same location as the TO lands included in Les Peterson's T-11630. As we understand it, the Zerbas have filed their own permit amendment application to move the subject 40 acres under Permit G-15704 off of the TO lands under T-11630. A copy of the application is attached. Les received this copy from Cecil Zerba, but it doesn't yet appear on WRIS. Note that the TO lands for the new permit amendment application for Permit G-15704 are the same as the FROM lands included in T-11630. As background, this 40-acre "swap" of POU

under T-11630 and the permit amendment application for G-15704 reflects a land swap (via a boundary line adjustment) that Les and Cecil have had in the works for some time.

- 2) In short, I believe the Zerbas' new permit amendment application should satisfy your option B from your May 12, 2014 letter, even though we are not amending T-11630 to include the POU change for Permit G-15704. Rather, it's a stand-alone permit amendment application being pursued by the Zerbas. Please let me know if you agree.
- 3) And then finally, we have some concerns regarding timing. With the permit amendment application filed for G-15704, will OWRD be able to proceed with issuing the preliminary determination for T-11630, and ultimately the final transfer order? Or will we need to wait to line up the approval of T-11630 with the approval of the permit amendment for G-15704? Our concern is that Les would like to move forward with drilling POA 2 and/or POA 3 under T-11630 as soon as possible, and our understanding is that the only thing holding up the T-11630 approval is the overlapping POU issue. If Les would prefer not to wait, we would like to explore removing the POU change currently proposed as part of T-11630, and simply proceeding with the POA additions. If we were to do that, then Les would immediately file a new permit amendment application to continue pursuing the same POU change, but at that point, his POU change would be lined up timing-wise with the permit amendment application that the Zerbas just filed for Permit G-15704. We would appreciate your thoughts about this.

Thank you.

David.

David E. Filippi

Stoel Rives LLP | 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

Direct: (503) 294-9529 | Fax: (503) 220-2480 | defilippi@stoel.com | www.stoel.com

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Wednesday, May 14, 2014 10:58 AM

To: Filippi, David

Subject: FW: T-11630 Permit Amendment for Les Peterson

Good Morning David, I am forwarding this email to you, I had the wrong email address for you. This is in regard to the permit amendment application for Les Peterson.

From: HENDERSON Sarah A

Sent: Wednesday, May 14, 2014 10:52 AM

To: les@lifeswheat.com

Cc: delfilippi@stoel.com; JUSTUS Tony G

Subject: T-11630 Permit Amendment for Les Peterson

Good Morning Mr. Peterson,

I am the caseworker for your Permit Amendment application. Attached is a deficiency letter explaining a problem that will need to be addressed before the Permit Amendment Application T-11630 can be approved. Please read the letter carefully and respond by the deadline given in the letter.

Also attached is the affidavit for partial cancellation and diminution.

If you have any questions or concerns please feel free to contact me at 503-986-0890 or email at Sarah.A.Henderson@wrd.state.or.us.

From: HENDERSON Sarah A

Sent: Thursday, June 19, 2014 9:22 AM

To: 'Filippi, David'; MReid@gsiws.com

Cc: Les Peterson (les@lifeswheat.com); 'mzerba@zervacellars.com'

Subject: RE: T-11630 Permit Amendment for Les Peterson

SentFromSession: JOHNNY.hendersa.6/19/2014 7:47:04 AM

Good Morning David, and Molly,

1. Yes a Permit Amendment application has been filed by Mr. Zerba

2. Yes this satisfies the deficiency letter for the Les Peterson Application

- 3. Yes these two applications will need to be issued concurrently -
 - I will be the caseworker for Mr. Zerba's application as well, therefore would grab it immediately because I am working on Les Peterson's and need it worked on now, the only slight hold up on the application would be waiting for the Watermaster and Groundwater reviews to be done, and the initial 30 day notice period (I think will start on June 24, 2014).
 - Both applications must also be published in a local newspaper for 2 consecutive weeks because there is more than ¼ mile between the new and the authorized points of appropriation. (This means that I would need the name of a newspaper you would like to publish in and then the Department gets a quote, then I let you know the quote for publication, then as soon as the \$\$ for the newspaper publication is received, we notify the newspaper to publish and then 30 days after the last date of publication the final order can be issued (if no protests.)
 - David If you decided to amend the application for Peterson to take out the place of use and only have the additional poa's (still has to be noticed in newspaper) and then submit an additional application with just a pou (pou only not noticed in newspaper), that new application would still need to be worked concurrently with Mr. Zerba's application. The \$1000 application fee would have to be submitted with the new application. We no longer move \$\$\$ from one file to another (fiscal related). The overpayment on the current application would be refunded around the time of the final order of the current application.

I will be sending a copy of the Draft Final Order and superseding Permit very soon, almost done - (David)

The Zerba Draft Final Order and superseding Permit as soon as the WM and GW reviews are finished. (Molly)

Please let me know if you have any other questions or concerns.

Thank you and have a wonderful day.

Sarah

Sarah Henderson | Transfer Specialist, Transfer and Conservation Division
Water Resources Department | 725 Summer St. NE, Suite A | Salem, Oregon 97301

Email: sarah.a.henderson@state.or.us | Web: http://www.wrd.state.or.us

From: Filippi, David [mailto:DEFILIPPI@stoel.com]

Sent: Monday, June 16, 2014 9:25 AM

To: HENDERSON Sarah A

Cc: Les Peterson (les@lifeswheat.com)

Subject: RE: T-11630 Permit Amendment for Les Peterson

Hello Sarah,

I've had an opportunity to review everything with Les, and Les has also had an opportunity to review things with Cecil Zerba, the holder of overlapping permit. Here's where I understand things currently stand:

- 1) Permit G-15704 is held by Farmers Outlet Produce Inc./Cecil and Marilyn Zerba. The currently authorized POU under Permit G-15704 includes 40 acres which are located in T5N, R36E, NE SE of Sec 5. This is the same location as the TO lands included in Les Peterson's T-11630. As we understand it, the Zerbas have filed their own permit amendment application to move the subject 40 acres under Permit G-15704 off of the TO lands under T-11630. A copy of the application is attached. Les received this copy from Cecil Zerba, but it doesn't yet appear on WRIS. Note that the TO lands for the new permit amendment application for Permit G-15704 are the same as the FROM lands included in T-11630. As background, this 40-acre "swap" of POU under T-11630 and the permit amendment application for G-15704 reflects a land swap (via a boundary line adjustment) that Les and Cecil have had in the works for some time.
- 2) In short, I believe the Zerbas' new permit amendment application should satisfy your option B from your May 12, 2014 letter, even though we are not amending T-11630 to include the POU change for Permit G-15704. Rather, it's a stand-alone permit amendment application being pursued by the Zerbas. Please let me know if you agree.
- 3) And then finally, we have some concerns regarding timing. With the permit amendment application filed for G-15704, will OWRD be able to proceed with issuing the preliminary determination for T-11630, and ultimately the final transfer order? Or will we need to wait to line up the approval of T-11630 with the approval of the permit amendment for G-15704? Our concern is that Les would like to move forward with drilling POA 2 and/or POA 3 under T-11630 as soon as possible, and our understanding is that the only thing holding up the T-11630 approval is the overlapping POU issue. If Les would prefer not to wait, we would like to explore removing the POU change currently proposed as part of T-11630, and simply proceeding with the POA additions. If we were to do that, then Les would immediately file a new permit amendment application to continue pursuing the same POU change, but at that point, his POU change would be lined up timing-wise with the permit amendment application that the Zerbas just filed for Permit G-15704. We would appreciate your thoughts about this.

Thank you.

David.

David E. Filippi

Stoel Rives LLP | 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

From: HENDERSON Sarah A [mailto:sarah.a.henderson@state.or.us]

Sent: Wednesday, May 14, 2014 10:58 AM

To: Filippi, David

Subject: FW: T-11630 Permit Amendment for Les Peterson

Good Morning David, I am forwarding this email to you, I had the wrong email address for you. This is in regard to the permit amendment application for Les Peterson.

From: HENDERSON Sarah A

Sent: Wednesday, May 14, 2014 10:52 AM

To: les@lifeswheat.com

Cc: delfilippi@stoel.com; JUSTUS Tony G

Subject: T-11630 Permit Amendment for Les Peterson

Good Morning Mr. Peterson,

I am the caseworker for your Permit Amendment application. Attached is a deficiency letter explaining a problem that will need to be addressed before the Permit Amendment Application T-11630 can be approved. Please read the letter carefully and respond by the deadline given in the letter.

Also attached is the affidavit for partial cancellation and diminution.

If you have any questions or concerns please feel free to contact me at 503-986-0890 or email at Sarah.A.Henderson@wrd.state.or.us.

Thank you.

Sarah

Sarah Henderson OWRD



Water Resources Department

North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

May 12, 2014

VIA E-MAIL

Les Peterson 1415 Highland Road Walla Walla, WA 99362

REFERENCE: Permit Amendment Application T-11630

We are examining your permit amendment application. There is a problem that needs to be resolved before we can continue processing your application.

As you noted on your application, Permit G-15704 is associated with the "to" lands in this application. Because Permit G-15704 is for irrigation, those 40 acres on the "to" lands must be voluntarily cancelled, diminished, before this permit amendment application can be approved. The options that you have are listed below, please choose one:

- Submit affidavit of voluntary cancellation or diminution from the landowner for the 40 acres on Permit G-15704; or
- b) Amend your transfer application to include concurrent changes in Permit G-15704. Please be aware that you must submit a separate Part 4 of the application and application map and submit additional fees, and consent from the holder of Permit G-15704.

Please submit one of the above by June 16, 2014, to Sarah Henderson, Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1271. If you have any questions, please contact me at 503-986-0890, or Sarah.A.Henderson@wrd.state.or.us.

Sincerely,

Sarah Henderson

Transfers and Conservation Section

Conal Henderson

cc: Tony Justus, Watermaster, District 05 (via email)

David Filippi, Attorney (via email)

enclosures

Application for Extension of Time for a Water Right Permit (NON-Municipal/NON Quasi-Municipal water Use)



Oregon Water Resources Department 725 Summer Street NE, Suite A Salem Oregon 97301 (503) 986-0900 www.wrd.state.or.us

Criteria for a Permit Extension of Time

The Department can accept requests for an extension of time on permits to (1) complete construction, and/or to (2) apply water to beneficial use.

In order to approve a permit extension request the Department must be able to find:

- 1) Construction has begun:
 - A. For Groundwater Permits

 Construction of the well began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.
 - B. For Surface Water or Reservoir Permits

 Construction of the water system began within 5 years of the date the permit was issued or by the actual construction date specified in the permit.

The Department will also confirm that:

2) A required fish screen, fish passage or fish by-pass device was installed before or prior to diversion of any water. An exception to the need to confirm installation prior to diversion of any water would be a waiver submitted to the Department from ODFW stating that a fish screen, fish passage or fish by-pass device was not required, provided your permit allows for a waiver.

If you have questions, please call the Department at (503)-986-0900 and ask to speak with a permit extension specialist.

Instructions are in Attachment A.

TO THE DIRECTOR OF THE OREGON WATER RESOURCES DEPARTMENT A separate extension application must be submitted for <u>each</u> permit as per OAR 690-315-0020(2).

I, <u>Les Peterson</u> NAME OF PERMIT HOLDER	[OAR 690-315-0020(1)	and (3)(a)]					
1415 Highland Rd ADDRESS	Walla Walla CITY	WA STATE	99362 ZIP				
(509) 522-2124 PHONE	./	les@lifeswheat E-MAIL ADDRES	AND THE PARTY OF T				
the permit holder of: Applic	ation Number <u>G-1</u>	6359					
		17294 (which resulte	ed from permit				
amendment T-11630, which amend		r G-16846) AR 690-315-0020(3)(b))					
	1						
do hereby request that the time in	which to:	7					
installation of the equipmen on Month: 4 Day: 22 Year: 2	complete construction (of diversion/appropriation works and/or purchase and installation of the equipment necessary to the use of water), which time now expires on Month: 4 Day: 22 Year: 2016, be extended to October 1, 2026, [OAR 690-315-0020(3)(I)]						
N/A (Check this box if the p	ermit does not sp	ecify a date by when o	construction must				
and/or the time in which to:							
apply water to full beneficial use under the terms and conditions of the permit, which time now expires on Month: 4 Day: 22 Year: 2016, be extended to October 1, 2026. [OAR 690-315-0020(3)(I)]							
I am the permit holder, or have written author Time), to apply for an extension of time under extension application are grounds for OWRD t	this permit, I understan	nd that false or misleading s	tatements in this				
- Jus Kuturson		16					
Signature	Date						
LES PETERSON Printed Name	Permit Hold Title	ler					

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Application for an Extension of time for a Permit

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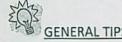
Before submitting your Application for Extension of Time, make sure the following items are included:

- This completed Application for Extension of Time.
- Statutory fee of \$575.
- Signature page (Second page of this Application for Extension of Time).
- All supporting documentation and/or evidence referenced in the Application for Extension of Time.

MAIL COMPLETED APPLICATION along with the Supporting documents and/ or evidence

\$575 STATUTORY FEE TO:

Water Resources Department
Attn: Water Right Permit Extensions
725 Summer Street NE, Suite A
Salem, Oregon 97301



- Permit holders of municipal or quasi-municipal water use permits DO NOT use this form. The
 correct form is APPLICATION FOR EXTENSION OF TIME FOR MUNICIPAL AND QUASI-MUNICIPAL WATER USE
 PERMITS, available at the following link:
 http://www.oregon.gov/owrd/PUBS/docs/forms/fillable_muni_quasi_ext_app_form_2014.doc
- Request the reasonable amount of time necessary to fully complete construction of the water
 project and/or to fully use the permitted quantity of water under the terms and conditions of
 your permit. Should this request be approved, it will be OWRD's expectation that you will
 complete your project within the new time period allowed. Future extensions may not be
 granted.
- A separate APPLICATION FOR EXTENSION OF TIME must be submitted for each permit. OAR 690-315-0020(2).
- An instruction sheet, Instructions for Completing an Application for Extension of Time for a
 Water Right Permit (Attachment A), provides details that will help you answer each question on
 the application. Permit extensions are evaluated under OAR Chapter 690, Division 315. These
 rules may be viewed at:
 http://arcweb.sos.state.or.us/pages/rules/oars 600/oar 690/690 315.html
- You may provide OWRD with any additional information or evidence that will aid us in making our decision. Please note that OWRD may require other information that is necessary to evaluate the application. OAR 315-0020(3)(n).

- After careful review of the Application for Extension of Time, you may contact OWRD at (503) 986-0900, to ask questions and request assistance from a Permit Extensions Specialist in the Water Rights Services Division.
- An Application for an Extension of Time will be reviewed for completeness. OWRD will return
 any incomplete or deficient applications to the applicant. OAR 690-315-0040(1)(a).

Reference Materials Needed to Complete this Application:

- The water right permit. If needed, a copy of the water right permit can be downloaded from the Department's Website at http://apps.wrd.state.or.us/apps/wr/wrinfo/ (using the link to the Water Rights Information System (WRIS). Or, a copy of the permit (or other documents) may be requested by water right application number from the Water Rights Division at 503-986-0900 (copy fees will apply).
- Documentation which demonstrates compliance with permit conditions (for example, well
 construction logs; static water level measurement reports; annual water use reports; ODFW
 fish screen certification; a plan to monitor the effect of water use on ground water aquifers
 utilized under the permit; etc.).

Questions to complete this application for an Extension of Time
Please see the instruction sheet to help you answer these questions.

1.	Beginning Construction within required deadlines. OAR 690-315-0020(3)(d)
For Gro	undwater Permits
	Has construction of the point of appropriation (well) authorized under this permit begun?
	⊠ Yes □ No
	Date construction began Month: March Day: 31 Year: 2016
1	Details of construction and attach documentation: See attached documentation.
	Start Card 1029943
1	Letter from Gary Zollman to Les Peterson, dated July 5, 2016
For Sur	face/Reservoir Permit
	Has construction of the water system begun? Yes No
	Date construction began Month: Day: Year:
	Details of construction and attach documentation:

OAR 690-315-0020(3)(A)(e)(A)

2. Permits typically contain standard or special conditions that must be fully satisfied to lawfully develop and use permitted water. Review the permit subject to this extension to identify which of the conditions listed in the 2nd column are contained within It. Using the extra row labeled "other" to specify any other additional conditions specified in a final order approving a permit amendment or

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Application for an Extension of time for a Permit

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prior extension of time. In the 1st column check the box for each condition (row) identified as relevant. In the 3rd column check "Yes" if you have completed or met the permit condition. Check "No" if the condition is not yet satisfied. In the 4th column, give the date when the condition was satisfied or will be satisfied. Attach any pertinent documentation. Note: a pump test condition does not need to be addressed here however; you must submit the results of the test to the Department for approval prior to certification.

CHART-A

		CHART-A	The second secon	CONTRACTOR OF THE PROPERTY OF THE PARTY OF T
100		Permit Conditions in this Permit	Have Completed or	Date satisfied/ or will
10	Service II	Ground water	Met?	be satisfied
	Checkbox	Check those included on this permit		PROF. LESSEN
			Yes X No	Before water use begins, 3/1/2017
-		Installation of a meter/totalizing flow meter	TES A NO	Following the first year
				of water use, ending
		Submittal of annual water usage report	Yes X No	10/31/2017
		Submittal of Initial static water level measurement	☐ Yes X No	Following completion of construction, within 30 days of measurement as measured between 2/1/2017 and 3/31/2017
				30 days from
				measurement as measured between
		Submittal of annual static water level measurements in the month		2/1/2018 and
		required	Yes X No	3/31/2018
		Submittal of Seven consecutive static water level measurements in		
	П	the month required	Yes No	
T				At time that well
		Special well construction standards	Yes X No	construction is completed
-		Submittal of a monitoring plan	Yes No	completed
-				
4		Other (Specify):	Yes No	
1		Other (Specify):	Yes No	
100	CNOTED BY AND THE	Other (Specify):	Yes No	THE CANADA PROPERTY OF THE SAME AND
25.50	All Control	Surface Water or Reservoir		
-		Installation of a meter/ totalizing flow meter/ in-line meter	Yes No	
L		Installation a staff gauge	Yes No	
		Installation of a fish screen	Yes No	
		Installation of a fish by-pass device	Yes No	
		Installation of a fish passage	Yes No	
		Installation of an outlet gate/pipe/ conduit	Yes No	
		Submittal of a letter from ODFW that fish screen, fish by-pass		
		device, and or fish passage is not required	Yes No	
		Submit as-built plans and specification	☐ Yes ☐ No	
		Submittal of a letter from an engineer prior to storage	Yes No	

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Application for an Extension of time for a Permit

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1 0	Other (Specify):	Yes No	
	Other (Specify):	☐ Yes ☐ No	
П	Other (Specify):	☐ Yes ☐ No	

If you have NOT complied with Permit conditions, explain the reasons why and indicate a date certain, when you will be in compliance.

Well construction was ongoing as of the April 22, 2016 completion date contained in the Permit G-17294, and as such, not all permit conditions had been fulfilled. I intend to be in full compliance with all permit conditions by the end of the requested extension period, October 1, 2026.

[OAR 690-315-0020(3)(e)]

3. Provide evidence of physical work made toward completion of the water system, and of progress made toward making beneficial use of water within the permitted time period (CHART-B); and if applicable, within the time period of the most recent extension granted (CHART-C). CHART-B (below) must be completed for all Application for Extension of Time requests. Use chronological order. (this does NOT include planning, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land, or planting crops)

CHART-B

DATE	WORK ACCOMPLISHED BEFORE PERMIT WAS ISSUED List any work done before the permit was issued – eg, well drilled.	COST*
	None. No work was performed prior to permit Issuance.	
DATE	WORK ACCOMPLISHED AFTER PERMIT WAS ISSUED and PRIOR TO DATE SPECIFIED IN PERMIT FOR COMPLETE APPLICATION OF WATER List work/actions done during the permitted time period.	COST*
4/22/11 (date original permit G- 16846 signed) 8/25/14 (date amended permit signed, per T-11630)	Date the permit was signed - find date above signature on last page of permit.	
2/27/16	Surveyor location survey	-505.00
3/17/16	Construction of access road to well location site and pad for parking and mobilization for POA-2	9952.45
3/17/16	Construction of holding ponds to enable well construction drilling for POA-2	1900.00
3/31/16	Start of well drilling for POA-2 by Zollman Drilling	

4/22/2016	Date the permit specified complete application of water to the use shall be made- all permits contain this date.	
DATE	WORK ACCOMPLISHED AFTER the date the permit specified complete application of water <u>COMPETE ONLY IF THIS IS YOUR 1st APPLICATION FOR AN EXTENSION OF TIME.</u> List work done after the date specified in the permit for complete application of water up to the date of this Application for Extension of Time.	COST*
Ongoing from 4/22/16 through end of June 2016	Continuation of well construction (See invoices attached from Zollman's Larry Burd Well Drilling, LLC dated 5/3, 5/25, and 6/28/16. Note that some expenses from 5/3/16 invoice were incurred prior to 4/22/16)	354,033.03
	Total Cost for Chart-B 366,390.48	

^{*} If exact cost is not known, you must provide your best estimate.

4. If this is <u>not</u> your 1st Application for Extension of Time request, fill out CHART-C below in addition to CHART-B above. *Use chronological order*.

CHART-C

	CHART-C	
DATE	WORK ACCOMPLISHED <u>DURING</u> THE LAST EXTENSION PERIOD List all work done during the last authorized extension period.	OST*
	"Extended From" date for complete application of water used in the 1 st (or the most recent) Application for Extension of Time.	
	N/A. This is my first application for extension of time request.	
	"Extended To" date for complete application of water resulting from the 1st (or the most recent) Application for Extension of Time.	
DATE	WORK ACCOMPLISHED AFTER THE LAST EXTENSION PERIOD EXPIRED List all work done after the last authorized date for complete application of water up to the date of this Application for Extension of Time:	
	N/A.	
建筑 [1]	Total Cost of Chart-C	

^{*} If exact cost is not known, you must provide your best estimate. [OAR 690-315-0020(3)(f)]

5. Cost of project to date: <u>366,390.48</u>

(The total combined cost from CHART-B and CHART-C) [OAR 690-315-0020(f)]

beneficia TIP: Re	l use ur eport <u>th</u>	nder this ne rate us	permit and	d/or prio Unless f	r extensions	able) of <u>wate</u> of time (if an use has been	y) made t	o date.
						or R-XXXX): as specified i	n the pern	nit.
Maximur	ո rate <u>ւ</u>	used to d	ate =	_ cfs (cub	olc feet per s	econd) or,		
Maximur	m rate <u>u</u>	used to d	ate =	_ gpm (g	allons per mi	inute) or,	1	
Acre-fee	t stored	to date	= AF					
TIP: Incl	7. For Ground Water Permit Extensions (e.g. G-XXXX): TIP: Include information from ALL wells that pertain to this permit, including drilled wells not currently used.							
	CHART-D							
					IF	DRILLED		
Well # as 1 Identified on Permit 1	Water User's Well #	Has this well been drilled?	Well Log Number e.g. MORR 50473	Well Tag Number e/g # 27566 or N/A	Is the actual drilled location authorized on this permit or on a permit amendment? (See 8 below)	Maximum Instantaneous rate used to date from this well under this permit only (CFS or GPM)	is this well authorized or utilized under any OTHER water rights?	If yes, provide the Permit, Certificate, or Transfer No.
POA 2	POA 2	Yes X	N/A	N/A	Yes X No 🗌	Not yet irrigating	Yes 🗌 No X	-
POA 1	POA 1	Yes No X			Yes 🗌 No 🔲		Yes 🗌 No 🔲	

[OAR 690-315-0020(3)(e)(B)]

8. If the drilled location of a well is not authorized on this permit, please specify its location below, or provide a map showing its location.

Yes 🗌

No 🗌

Yes 🗌

No 🗌

Yes 🗌 No 🔲

Yes | No |

Has or will a Permit	Amendment Application been/be filed? Yes No	
If a Permit Amenda	nent Application has been filed: Transfer No. T	
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Total instantaneous rate from all wells utilized under this permit

No X Yes

No X Yes

No

POA 3

POA 3

	Actual location: -0020(3)(e)(C)]	Well #_	Actual location:
		of acres irrigate	d to date under this permit (if applicable).
			ear since permit issuance, and provide a
	e application map iden		
Total acre	s irrigated to date: N/A		
Ground W	ater Permits: Please s	pecify which wel	lls are being utilized for this irrigation.
Well#	Acres	Well #	Acres
		4	
Well #	Acres	Well #	Acres
	5-0020(3)(i)(j)]		
10. Pro	ovide a summary of you	ur future plans a	nd schedule to complete the construction of

the water system, and/or apply water to full beneficial use under the terms and conditions

CHART-E

	CHARI-E	
APPROXIMATE DATE RANGE (projected)	WORK OR ACTION TO BE ACCOMPLISHED (projected)	ESTIMATED COST (projected)
Fall 2016	Complete well construction, including casing, electric, etc. for POA 2	250,000.00
2026	Additional well construction for POA 1 and/or POA 3 (if necessary)	500,000.00
2026	Complete delivery infrastructure to all authorized POU, including electrical installation, equipment, pumps, etc.	500,000.00
Year: 2026	Date Intend to apply water to full beneficial use under the terms and conditions of this permit.	
	Total Cost	1,250,000.00

[OAR 690-315-0020(3)(g)]

of the permit.

11. Estimated remaining cost to complete the project: <u>1,2500,000.00</u> (The total cost from CHART-E)

[OAR 690-315-0020(3)(h)]

12. Describe the reasons why the construction was not completed, and/or water was not beneficially used within permit time limits. Provide supporting information for the reason(s) that best fits your circumstances. Include any additional unforeseen events and/or other governmental regulation or requirements.

Actual construction was not started until early 2016. This was primarily due to the length of time to complete a prior transfer application (to add additional POAs to the permit), to arrange financing, to select and schedule a drilling contractor, and to prepare the site for construction.

[OAR 690-315-0020(3)(k)]

13. <u>Justify the time requested</u> to complete the project and/or apply the water to full beneficial use. Include any other information or evidence to establish that the requested amount of time is sufficient and that you will be able to complete the project within the amount of time requested.

Once construction of the existing well is completed, I will need additional time to put the irrigation delivery system in place. In addition, I anticipate the need to file a further permit amendment to address a land exchange with a neighbor, as I will need to move 40 acres of authorized POU from lands I no longer own to lands that I acquired as part of the exchange. Meanwhile, my neighbor will also need to move 40 acres of authorized POU he has under his own water right permit from lands I now own to lands that he now owns as a result of the exchange. (See T-11844.) Finally, depending on the production of the well currently under construction, I may develop one or both of the additional authorized POAs. I anticipate full build out of my system no later than October 2026.

[OAR 690-315-0020(3)(m)(n)]

14. Provide any other information you wish OWRD to consider while evaluating your Application for Extension of Time.

I anticipate that additional unforeseen circumstances may occur. As such, I am requesting the maximum allowed time to complete construction and application of water to beneficial use.

Attach permit, and documentation to the application.

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

This correcting superseding permit is issued to correct an error in a change in place of use and describes additional points of appropriation proposed under Permit Amendment Application T-11630 and approved by Special Order Vol. 93, Pages 108-110 entered August 15, 2014, and correcting order approved by Special Order Vol. 93, Page 281, entered August 15, 2014. This permit supersedes Permit G-17266.

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: THREE WELLS IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATION:

Twp	Rng	Mer	Sec	Q-Q	Measured Distances
5 N	36 E	WM	4	sw sw	WELL 1: 480 FEET NORTH AND 130 FEET EAST FROM THE SW CORNER OF SECTION 4
5 N	36 E	WM	5	NESE	WELL 2: 590 FEET SOUTH AND 475 FEET WEST FROM THE EI/4 CORNER OF SECTION 5
5 N	36 E	WM	4	NE NW	WELL 3: 915 FEET SOUTH AND 100 FEET WEST FROM THE N1/4 CORNER OF SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

		IRRIGA	TION	- Awares - Comment	
Twp	Rng	Mer	Sec	Q-Q	Acres
5 N	36 E	WM	4	NE NW	40.0
5 N	36 E	WM	4	SENW	40.0
5 N	36 E	WM	4	NESW	40.0
5 N	36 E	WM	4	NW SW	40.0
5 N	36 E	WM	4	SW SW	40.0
5 N	36 E	WM	4	SE SW	40.0
5 N	36 E	WM	9	NE NE	20.0
5 N	36 E	WM	9	NW NE	40.0
5 N	36 E	WM	9	NENW	40.0
5 N	36 E	WM	9	SE NW	10.0
				Total	350.0

Permit Amendment T-11630 Conditions

The combined quantity of water diverted at the new points of appropriation, together with that diverted at the old point of appropriation, shall not exceed the quantity of water lawfully available at the original point of appropriation.

Water shall be acquired from the same aquifer as the original point of appropriation.

Wells 2 and 3 are to be continuously cased and continuously sealed to a depth greater than 950 feet at a minimum.

Well construction in the Columbia River Basalts is limited to development of one aquifer.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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
- 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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

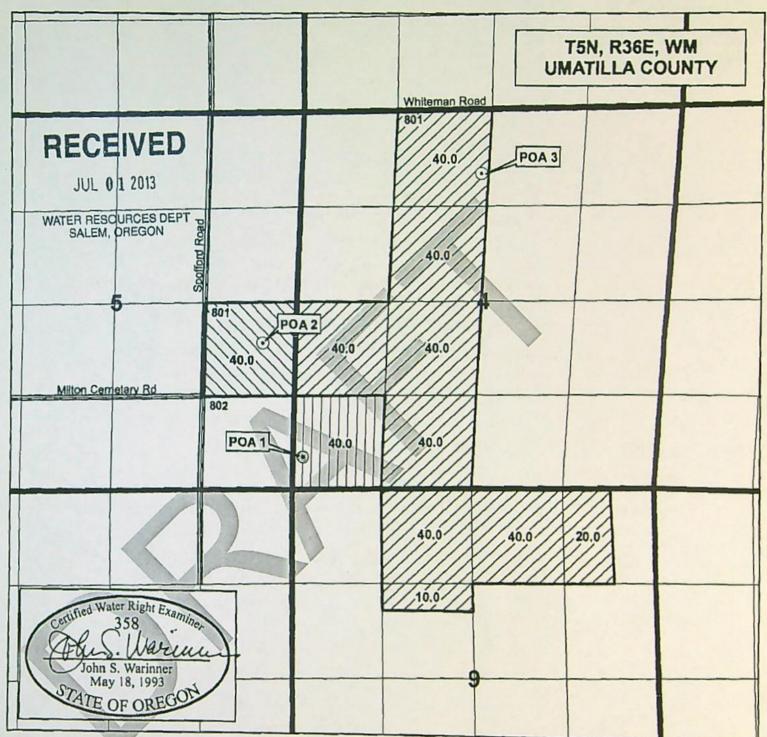
If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

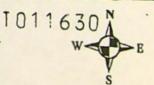


POA (Authorized)

POA 1 is authorized well in SW SW Sec 4, located 480 ft N and 130 ft E from SW Corner of Sec 4.

POA (Additional)

POA 2 is proposed well in NE SE Sec 5, located 590 ft S and 475 ft W from E 1/4 Corner of Sec 5. POA 3 is proposed well in NE NW Sec 4, located 915 ft S and 100 ft W from N 1/4 Corner of Sec 4.



1 in = 1320 ft

POU (unchanged)

POU remains unchanged for most quarter-quarter sections.

POU (From)

SW SW of Sec 4 (40 ac) will not be irrigated under this water right,

POU (To)

NE SE of Sec 5 (40 ac) will be irrigated under this water right.

PERMIT AMENDMENT MAP

App G-16359 and Permit G-16846 Change POU and Add POAs

in the name of LES PETERSON

Revised: 28 DEC 2012

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the Watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made on or before April 22, 2016. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued August 25, 2014

Dwight Fronth, Water Right Services Division Administrator, for

Director, Oregon Water Resources Department

BEFORE THE WATER RESOURCES DEPARTMENT OF THE STATE OF OREGON

In the Matter of the Proposed Water)	FINAL ORDER APPROVING A
Management and Conservation Plan for the)	WATER MANAGEMENT AND
City of Milton-Freewater, Umatilla County)	CONSERVATION PLAN

Authority

OAR Chapter 690, Division 086, establishes the process and criteria for approving water management and conservation plans required under the conditions of permits, permit extensions and other orders of the Department.

Findings of Fact

- The City of Milton-Freewater (City) submitted a draft Water Management and Conservation Plan (plan) to the Water Resources Department (Department) on November 30, 2010. The required statutory fee for review of the plan was received by the Department on December 20, 2010. The plan was required by the final order issued on March 24, 2005, approving the City's last plan.
- The Department published notice of receipt of the plan on December 28, 2010, as required under OAR Chapter 690, Division 086. Timely comments were received from Stoel Rives, LLP on behalf of Joe Frazier and Les Peterson on January 27, 2011.
- The Department provided comments on the plan to the City on March 4, 2011 and April 27, 2011. In response to the Department's comments, the City submitted revisions to the plan on April 18, 2011 and May 31, 2011.
- 4. Statements made in the revised plan indicate the City may request certification of water use Permits G-4924 (Well No. 1) and G-12582 (Well No. 9) for purposes of redundancy within their water distribution system. Upon review of these permits, the Department found that the last authorized date for the complete application of water to beneficial use under these permits is October 1, 1999.

Without the issuance of a final order approving an extension of time for these permits, the issuance of any water right certificate would be limited to the maximum instantaneous rate of diversion, consistent with the permit conditions, in which water was appropriated for beneficial use for not less than 4 hours within an 8 hour period between the dates that the permits were issued and October 1, 1999.

This is a final order in other than a 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 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.

5. The Department reviewed the revised plan, as well as the comment received, and finds that the plan is consistent with the relevant requirements under OAR Chapter 690, Division 086.

Conclusion of Law

The Water Management and Conservation Plan submitted by the City of Milton-Freewater is consistent with the criteria in OAR Chapter 690, Division 086.

Now, therefore, it is ORDERED:

- The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until June 17, 2021, unless this approval is rescinded pursuant to OAR 690-086-0920.
- The City of Milton-Freewater shall submit an updated plan meeting the requirements of OAR Chapter 690, Division 086 (effective November 1, 2002) within 10 years and no later than June 17, 2020.
- 3. The City of Milton-Freewater shall submit a progress report containing the information required under OAR 690-086-0120(4) by June 17, 2016.

Dated at Salem, Oregon this 30 day of June, 2011.

Dwight French, Water Right Services Administrator for PHILLIP C. WARD, DIRECTOR

Mailing date: JUL 0 8 2011

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

Oregon Water Resources Department Water Rights Services Division

Water Rights Application Number G-16359

Superseding Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On December 30, 2004, Les Peterson submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on June 7, 2005.

A timely protest was filed by David Filippi, on behalf of the applicant.

On April 15, 2011, the protest was withdrawn.

A Settlement Agreement was signed by Les Peterson and the Department as of April 15, 2011.

On April 22, 2011, the Department issued a Final Order Incorporating Settlement Agreement approving Application G-16359 and issued Permit G-16846.

On June 21, 2011, on its own motion, the Department issued a Summary Order reconsidering the Final Order issued April 22, 2011. The Department's reconsideration was for the purpose of facilitating a settlement agreement and was limited to the Final Order only and the issue of the application of certain provisions of the Umatilla Basin Program. The Department's reconsideration did not include or extend to the issuance of Permits G-16846.

A second Settlement Agreement was signed by Les Peterson, Joe Frazier, Seven Hills Properties, LLC, the City of Milton-Freewater, and the Department as of June 30, 2011. The terms of the Settlement Agreement are hereby incorporated into this Final Order.

This document supersedes the April 22, 2011 Final Order Incorporating Settlement Agreement.

The proposed use would not impair or be detrimental to the public interest.

Order

This document supersedes the April 22, 2011 Final Order Incorporating Settlement Agreement.

Application G-16359 is therefore approved pursuant to the June 30, 2011 Settlement Agreement, and Permit G-16846 remains in effect.

DATED June 30, 2011

for Phillip C. Ward, Director Water Resources Department

Mailing List for Superseding FO Incorp SA Copies

Application #G-16359

Original mailed to applicant with claim of beneficial use form:

LES PETERSON
1415 HIGHLAND RD
WALLA WALLA, WA 99362

Copies sent to:

1. WRD - File # G-16359 V

2. WRD - Ken Stahr

FO and Map Copies sent to (remember to reduce copy margins):

3. WRD - Watermaster District #: 5

4. WRD - Regional Manager: NC

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

5. City of Milton-Freewater, PO Box 6, 722 S Main, Milton-Freewater OR 97862

Steven Applegate Consulting, 3395 Huckleberry Ct S, Salem OR 97302

A. Martha Pagel, Schwabe, Williamson & Wyatt,

530 Center St. NE, STE 400, Salem OR 97301

David Filippi, Stoel Rives, LLP, Attorneys at Law,
 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204

CASEWORKER: Kerry Kavanagh

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

name of Joe Frazier, Applicant and) MILTON-F MANAGEN	IENT AGREEMENT ING APPLICATIONS G-16364, G-16359, AND FREEWATER WATER MENT AND VATION PLAN
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The Oregon Water Resources Department (the "Department"), Seven Hills Properties, LLC, ("Seven Hills"), Joe Frazier, Les Peterson, and the City of Milton-Freewater (the "City") (collectively the "Parties") do hereby stipulate and agree as follows:

A. Background for Applications G-17395, G-16364, G-16359

- 1. On April 22, 2011, the Department issued three Final Orders and three permits, Permit G-16843 in the name of Seven Hills Properties, LLC, Permit G-16845 in the name of Joe Frazier, and Permit G-16846 in the name of Les Peterson. On June 21, 2011, the Department issued a Summary Order reconsidering the three Final Orders. The Department's reconsideration was for the purpose of facilitating this Settlement Agreement and was limited to the Final Orders only and the issue of the application of certain provisions of the Umatilla Basin Program. The Department's reconsideration did not include or extend to the issuance of Permits G-16843, G-16845, and G-16846.
- On December 20, 2010, the City of Milton-Freewater submitted a Water Management and Conservation Plan (WMCP) to update a previously approved WMCP.
- The Department, the City, and applicants Seven Hills, Frazier and Peterson have agreed
 to resolve issues related to concerns about the issuance of the three Final Orders and the
 approval of the WMCP in this Settlement Agreement.

B. Terms of the Agreement

- OWRD will issue new Final Orders for Permits G-16843, G-16845 and G-16846, in the
 form of Superseding Final Orders Incorporating Settlement Agreement by June 30, 2011,
 deleting the paragraph referencing OAR 690-507-0030(3)(a)(B) in the application
 history. OWRD will also issue the Final Order approving the City's Water Management
 and Conservation Plan by June 30, 2011 (simultaneously with the issuance of the other
 Final Orders.)
- The Superseding Final Order Incorporating Settlement Agreement for Application G-17395 shall reflect the agreement of the Parties that Permit G-16843 does not authorize the withdrawal of any additional water beyond that authorized under Certificate 86441.

Page 1 of 3 – SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND MILTON-FREEWATER WATER MANAGEMENT AND CONSERVATION PLAN.

- 3. The Department is implementing a new standard operating procedure to remind entities that an update of a WMCP needs to be submitted. The notification will be sent approximately one year prior to the date for submittal of the WMCP update, as specified in the final order that previously approved the WMCP.
- 4. Each Party to this Settlement Agreement agrees that the interpretation of OAR 690-507-0030(3)(a)(B) is in dispute among the Parties, and that for purposes of compromise and settlement of the issues the Parties agree that the Superseding Final Orders Incorporating Settlement Agreement can be issued simultaneously with the Final Order approving Milton-Freewater's WMCP by June 30, 2011.
- 5. Each Party to this Settlement Agreement agrees that this Settlement Agreement sets no precedent regarding the interpretation of the above rule for any future application.
- 6. Until the WMCP is final, which includes a period of 60 days after the final order on the WMCP is issued, OWRD will provide notice to Milton-Freewater of any new ground water application that would be subject to OAR 690-507-0030(3)(a)(B), and will provide notice to applicants that the same rule may result in denial of the application upon completion of the approval of Milton-Freewater's updated WMCP.
- OWRD has provided to each Party to this Settlement Agreement a written memorandum 7. of OWRD's view of the criteria that will be used to determine enforcement of the decline conditions in Permits G-16843, G-16845, and G-16846, and the circumstances under which OWRD will regulate groundwater based on priority date and interference. Seven Hills, Frazier, Peterson, and the City do not, and have not been asked to, consent to, approve of, or waive any rights with respect to OWRD's views contained in the memorandum. In particular, OWRD has indicated in the memorandum that it interprets the decline conditions in the Permits as providing OWRD with authority to require the water user to reduce the rate of withdrawal or discontinue use as OWRD deems necessary, beyond the reduction in rate or volume of withdrawal the water user would otherwise undertake. Seven Hills, Frazier, and Peterson strongly disagree with and dispute the OWRD's interpretation of the decline conditions on this point. OWRD acknowledges this disagreement, and expressly agrees that neither this Settlement Agreement nor the memorandum in any way preclude Seven Hills, Frazier, or Peterson from challenging OWRD's interpretation in any and all administrative and judicial forums that Seven Hills, Frazier, and Peterson may deem necessary or appropriate. Similarly, OWRD reserves the option to update or modify the memorandum if necessary to accurately reflect OWRD policies, procedures, and requirements.
- Each Party to this Settlement Agreement waives any and all rights to request reconsideration of, or petition for judicial review of, or appeal the following: the Final Order on Milton-Freewater's WMCP, this Settlement Agreement, the Superseding Final Orders Incorporating Settlement Agreement and the Permits for Applications G-17395, G-16364, and G-16359.

for Phillip C. Ward, Director

Oregon Water Resources Department

- Each Party to this Settlement Agreement represents, warrants, and agrees that the person
 who executed this Agreement on its behalf has the full right and authority to enter into
 this Agreement on behalf of that Party and bind that Party to the terms of this Settlement
 Agreement.
- Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity
 to review and request changes to the Settlement Agreement, and that it has signed this
 Settlement Agreement of its own free will and accord.
- 3. Each Party to this Settlement Agreement certifies that it has read the entire Settlement Agreement, including the draft Superseding Final Orders Incorporating Settlement Agreement, and understands and agrees with the contents thereof.
- Each Party to this Settlement Agreement understands and agrees that this Agreement and all documents incorporating it by reference set forth the entire Agreement of the parties.
- 5. Each Party to this Settlement Agreement agrees that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
- This Settlement Agreement may be signed in counterparts.

Seven Hills Properties, LLC	Date .
Joe Frazier	Date
Les Peterson	Date
City of Milton-Freewater	Date
Dwight/Brench, Water Right Services Administrator	6/30/2011

Page 3 of 3 – SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND MILTON-FREEWATER WATER MANAGEMENT AND CONSERVATION PLAN.

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Oregon Water Resources Department

Seven Hills Properties, LLC	Date
Joe Frazier	Date
Les Peterson	Date ·
City of Milton-Freewater	Darg Darg 27, 201
Dwight French, Water Right Services Administrator, for Phillip C. Ward, Director	Date

Page 3 of 3 – SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND
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Seven Hills Properties, LLC	Date
Joe Frazier	6/27/11 Date
Les Peterson	Date
City of Milton-Freewater	Date
Dwight French, Water Right Services Administrator, for Phillip C. Ward, Director	Date

Page 3 of 3 -- SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND MILTON-FREEWATER WATER MANAGEMENT AND CONSERVATION PLAN.

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Seven Hills Properties, LLC	6/25/2011 Date
Joe Frazier	Date
Les Peterson	Date
City of Milton-Freewater	Date
Dwight French, Water Right Services Administrator, for Phillip C. Ward, Director Oregon Water Resources Department	Date

Page 3 of 3 – SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND MILTON-FREEWATER WATER MANAGEMENT AND CONSERVATION PLAN.

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Date
Date
b-25-2011 Date
Date
Date

Page 3 of 3 – SETTLEMENT AGREEMENT REGARDING APPLICATIONS G-17395, G-16364, G-16359, AND MILTON-FREEWATER WATER MANAGEMENT AND CONSERVATION PLAN.

MEMO

To: Mike Ladd and Tony Justus CC: Martha Pagel, David Filippi

From: Doug Woodcock, FSD Administrator June 23, 2011

RE: Permits G-16843, G-16845, and G-16846: Criteria used to determine enforcement of the decline conditions and circumstances under which the Department will regulate groundwater

This memorandum was prepared pursuant to a Settlement Agreement involving the Applicants/Permit Holders ("Applicants") for the three above-referenced ground water permits, the City of Milton-Freewater ("City"), and the Oregon Water Resources Department ("OWRD.") The purpose of the memorandum is to provide an explanation to the Applicants and City as to how OWRD interprets certain conditions appearing in each of the water right permits, and how OWRD intends to regulate groundwater, in the event such interpretation or regulation becomes necessary.

Pursuant to the Settlement Agreement, the Applicants and the City have not been asked to consent to, approve of, or waive any rights with respect to the OWRD interpretation and guidance provided in the memorandum. Similarly, OWRD reserves the option to update or modify this memorandum if necessary to accurately reflect OWRD policies, procedures, and requirements.

Condition in the Permits:

"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
- 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."

In the event that annual water-level measurements for a well or wells reveal a water-level decline specified in the condition language above, in addition to reporting the annual static water levels for each well on the permit to the Department within 30 days of the measurements, the water user shall also report what action the water user will take in response to the decline event. The Department may require the water user to reduce the rate of withdrawal or discontinue the use as the Department deems necessary.

In the event a neighboring well with senior priority reports a decline of 25 feet or more, the Department, subject to staff availability, will investigate whether hydraulic interference from one or more of the permitted wells has led to the decline. If the Department determines that hydraulic interference has led to a decline of 25 or more feet in any neighboring well with senior priority, the Department will notify the water user that the event described in Condition D listed above has occurred, and that the water user shall discontinue use, or reduce the rate or volume of withdrawal from the well or wells at issue.

Oregon Water Resources Department Water Right Services Division

Water Rights Application Number G-16359 Water Rights Application Number G-16364 Water Rights Application Number G-17395

Summary Order

On April 22, 2011, the Department issued a Final Order Incorporating Settlement Agreement approving Application G-16359 and issued Permit G-16846 in the name of Les Peterson.

On April 22, 2011, the Department issued a Final Order Incorporating Settlement Agreement approving Application G-16364 and issued Permit G-16845 in the name of Joe Frazier.

On April 22, 2011, the Department issued a Final Order approving Application G-17395 and issued Permit G-16843 in the name of Seven Hills Properties, LLC.

Oregon Administrative Rule 137-004-0080(5) states "within 60 calendar days after the date of the order, the agency may, on its own initiative, reconsider the final order." Pursuant to this rule, Oregon Water Resources Department is reconsidering the final orders issued on April 22, 2011 approving applications G-16359, G-16364 and G-17395. The Department's reconsideration is for the purpose of facilitating a settlement agreement and is limited to the Final Orders only and the issue of the application of certain provisions of the Umatilla Basin Program. The Department's reconsideration does not include or extend to the issuance of Permits G-16846, G-16845, and G-16843.

Pursuant to OAR 137-004-0080(7) the existing final orders and permits remain in effect during reconsideration until stayed or changed. The permits also remain in effect and are not subject to stay or change as a result of this Summary Order.

Pursuant to OAR 137-004-0080(8) the Department will issue a Final Order modifying or confirming the April 22, 2011 Final Orders for each application.

Dated June 21, 2011

Dwight French, Water Right Services Administrator

for Phillip C. Ward, Director

Oregon Water Resources Department

Mailing List for Summary Order on Recon

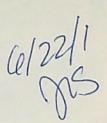
Application #G-16359

Original mailed to applicant:

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

Copies sent to:

- 1. WRD File # G-16359
- 2. WRD Ken Stahr
- 3. WRD Watermaster District #: 5
- 4. WRD Regional Manager: NC



Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

- 5. City of Milton-Freewater, PO Box 6, 722 S Main, Milton-Freewater OR 97862
- 6. Applegate, Steve

Steven Applegate Consulting, 3395 Huckleberry Ct S, Salem OR 97302

- 7. Martha Pagel, Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301
- David Filippi, Stoel Rives, LLP, Attorneys at Law,
 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204

CASEWORKER: Kerry Kavanagh Prepared by Patricia McCarty 6/22/11

STATE OF OREGON REMITTANCE ADVICE

TO SIGN UP FOR DIRECT DEPOSIT PAYMENT SERVICE AND RECEIVE CONVENIENT, ELECTRONIC PAYMENTS, LOG-ON TO http://egov.oregon.gov/DAS/SCD/SFMS/ach.shtml ON THE INTERNET. CLICK ON: FORMS AND BROCHURES THEN SELECT DIRECT DEPOSIT (ACH) AUTHORIZATION FORM.

Mailed 5/6/11

WARRANT NO.
122209020

WATER RESOURCES DEPARTMENT

INVOICE DATE

INVOICE NO.

(503) 986-0926 EXT.

TE INVOICE DESCRIPTION AGY DOCUMENT
76077 / G-16359 REVENEU REFUND 690 VP033043

50.00

AMOUNT

04/28/11

WARRANT AMOUNT 50.00

VENDOR NAME:

STEVE APPLEGATE

FOLD ON PERFORATION LINE BELOW | BEFORE DETACHING.

STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: A WELL IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30; 2004

WELL LOCATION: SW ¼ SW ¼, SECTION 4, T5N, R36E, W.M.; 480 FEET NORTH & 130 FEET EAST FROM SW CORNER, SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE ¼ NW ¼ 40.0 ACRES

SE % NW % 40.0 ACRES

NE ¼ SW ¼ 40.0 ACRES NW ¼ SW ¼ 40.0 ACRES

SW 1/4 SW 1/4 40.0 ACRES

SE % SW % 40.0 ACRES

SECTION 4

NE 1/4 NE 1/4 20.0 ACRES

NW 1/4 NE 1/4 40.0 ACRES

NE ¼ NW ¼ 40.0 ACRES

SE ¼ NW ¼ 10.0 ACRES

SECTION 9

TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued April 22, 2011

for Phillip C. Ward, Director Water Resources Department

Twiothy Wall.

Mailing List for FO incorp SA & Permit Copies

Application #G-16359

Original mailed to applicant with claim of beneficial use form:

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

Copies sent to:

1. WRD - File # G-16359

2. WRD - Ken Stahr

By: Mailed

on: 4241

FO and Map Copies sent to (remember to reduce copy margins):

3. WRD - Watermaster District #: 5

4. WRD - Regional Manager: NC

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

5. City of Milton-Freewater, PO Box 6, 722 S Main, Milton-Freewater OR 97862

6. Applegate, Steve

Steven Applegate Consulting, 3395 Huckleberry Ct S, Salem OR 97302

7. Martha Pagel, Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301

8. David Filippi,

Stoel Rives, LLP, Attorneys at Law, 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204

CASEWORKER: Kerry Kavanagh

Oregon Water Resources Department Water Rights Services Division

Water Rights Application Number G-16359

Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On December 30, 2004, Les Peterson submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on June 7, 2005, proposing to deny the application because the use is not allowable under Oregon Administrative Rule (OAR) 690-507-0030(3)(a)(B).

A timely protest was filed by David Filippi, on behalf of the applicant.

On April 15, 2011, the protest was withdrawn.

A Settlement Agreement was signed by all parties as of April 15, 2011. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the classification of proposed use.

The proposed well for G-16359 is located in the basalt reservoir within a five-mile radius of the City of Milton-Freewater (City) municipal wells. Under OAR 690-507-0030(3)(a)(B), ground water use from the basalt reservoir within a five-mile radius around any municipal well of the City of Milton-Freewater could be limited to only municipal uses, group domestic uses, or statutorily exempt ground water uses if the City has an approved water management and conservation plan in effect. The City's water management and conservation plan was no longer in effect as of October 2, 2010; therefore OAR 690-507-0030(3)(a)(B) will not affect this application.

The proposed use of irrigation is allowable under OAR 690-507-0030(3)(a)(A).

Order

Application G-16359 is therefore approved with these modifications to the Proposed Final Order and pursuant to the Settlement Agreement, and Permit G-16846 is issued as limited by the conditions set forth therein.

DATED April 22, 2011

for Phillip C. Ward, Director Water Resources Department

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

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STOEL RIVES LLP

627215 s and UCC Fees

Client Number 66249

Matter Number

1

Client Name

Peterson Farms

RECEIVED **OVER THE COUNTER**

Matter Name

Water

RECEIVED

Amount

400.00

APR 18 2011

WATER RESOURCES DEPT

SALEM, OREGON

Date

April 15, 2011

Payee

Oregon Water Resources Department, G-16359 Permit Fee

Description

Peterson G-16359 Permit Fee

Attorney Number and initials

392/DEF

approved by:





900 S.W. Fifth Avenue, Suite 2600 Portland, Oregon 97204 main 503:224:3380 fax 503:220.2480 www.stoel.com

April 15, 2011

DAVID E. FILIPPI Direct (503) 294-9529 defilippi@stoel.com

VIA OVERNIGHT DELIVERY

Ms. Patricia McCarty Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301

RE: Permit for ground water application G-16359 (Peterson)

Dear Ms. McCarty:

Enclosed please find a check in the amount of \$400 for the outstanding fees associated with the above-referenced application.

Sincerely

David E. Filippi

Enclosure

RECEIVED OVER THE COUNTER

RECEIVED

APR 18 2011

WATER RESOURCES DEPT SALEM, OREGON

FO Checklist

Application #: G-16359 Applicant: LES PETERSON Name and/or address has changed or been assigned □ Yes → No If new: Respond to significant comments, issues, or disputes related to the proposed use of water. N/A Affected landowner(s) have been notified □N/A □ Yes □ No, send a letter to landowners before FO issuance. Verify names/addresses of affected landowners, and those who commented and/or paid \$10 fee. PFO conclusions require modification due to typos, errors or omission of conditions Pres INO

If so: <u>OAR 690-507-0030</u> (3)(a)(13) no longer applies because City of M-F doesn't have WICP in effect - expired Oct 1, 2010; IRRIGALLOWED VNW OAR 690 -607-9030 (3)(A)(A)

Within North Umpqua settlement reach and issuing permit, spreadsheet has been updated PN/A Pyes SWW If GW and interference, copy form for Stahr. . N/A Fees Water Amount (Q) Base Fee 1st CFS/AF \$300 / \$500 \$700 / \$1000 Addl @ ____ Addl @ Add'l POD/POA use + (base) (Q) (total exam fee) 900 EXAM FEE REQUIRED RECORDING FEE REQUIRED EXAM FEE PAID RECORDING FEE PAID ASTILL OWED X STILL OWED FO w/ permit # 9-16846 FO w/ draft permit; still needed: __ FO to deny fees refund \$ 4-18-11 WRD ree'ld 9400 for permit recording fee 4-15-11 WRD ree'ld signed gettlement agreement easement st water contract approved dam plans & specs __ land use approval ___ well construction approval

The purpose of this checklist is to be used as a working document by Department staff to aid in the production of the related Initial Review, Proposed Final Order, or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above. The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.

Name: Kerry Kavanagh

Date: 4/13/2011

Peer Reviewer: Jeana Eastman we 411311

Patricia McCarty

From: Filippi, David [DEFILIPPI@stoel.com]

Sent: Friday, April 15, 2011 8:24 PM

To: Patricia McCarty (patricia.e.mccarty@state.or.us)

Cc: 'Les Peterson'

Subject: Peterson settlement agreement Attachments: Peterson settlement agrmt.pdf

Hello Patricia,

Please find attached a signed copy of the Peterson settlement agreement. Per our discussion today, Les has signed and dated the settlement agreement, and then hand-corrected the application number in several places, and then initialed each change. I understand that you will have Dwight also initial each of these changes. Also, I sent to your attention today a check in the amount of \$400 for the outstanding fees, as described in the draft FO. It should arrive on Monday. Please let me know if you need anything further.

David.

David E. Filippi

Stoel Rives LLP | 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

Direct: (503) 294-9529 | Fax: (503) 220-2480 | defilippi@stoel.com | www.stoel.com



Water Resources Department

North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

VIA FIRST-CLASS MAIL 4-15-11

April 14, 2011

Les Peterson 1415 Highland Road Walla Walla, WA 99362

David Filippi Stoel Rives, LLP 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

Re: Application G-16359

Dear Mr. Peterson and Mr. Filippi:

Enclosed are a settlement agreement, draft final order and draft permit for the above application. Please review them and if they are satisfactory, sign the settlement agreement and mail it back to me. After the settlement agreement is received, the caseworker will process the permits.

If you have any questions, please contact me at the number below.

Sincerely,

Patricia McCarty

Protest Program Coordinator

Patricia Mc Carty

Water Rights Division Phone: 503-986-0820

enc.

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right)
Application G-16359 in the Name of) SETTLEMENT
Les Peterson) AGREEMENT

The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

A. Background

- On December 30, 2004, Les Peterson submitted to the Department an application for a groundwater permit (Application G-16359).
- 2. On February 18, 2005, the Department issued Initial Review Determinations (the "Initial Review") regarding Application G-16364. The Initial Review stated: "The use of 4.38 cubic feet per second from a well in Birch Creek Basin for irrigation use on 350 acres is allowable from March 1 through October 31 of each year." The Initial Review also explained that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater (the "City") were approved before the Proposed Final Order ("PFO") protest deadline for the application passed.
- The public comment period for Application G-16364 closed on March 22, 2005. No written comments were received during the 30-day period.
- 4. On March 24, 2005, the Department approved the City's WMCP. The final order approving the WMCP stated: "The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2010, unless this approval is rescinded pursuant to OAR 690-086-0920."
- On June 7, 2005, the Department issued a PFO that recommended denial of Application G-16359 on the basis that, following approval of the City's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well.
- On July 22, 2005, Les Peterson submitted a timely protest and request for hearing ("Protest"). The City of Milton-Freewater submitted a timely request for standing.
- On September 2, 2010, Les Peterson (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the PFOs issued by the Department regarding their respective applications.
- 8. As of October 2, 2010, the City's WMCP was no longer in effect.

 The Department and Les Peterson agree that the issues raised in the Protest can be resolved solely on the following terms.

B. Consent

- Les Peterson hereby acknowledges that he has read and understands the terms of this
 Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement
 and draft Permit for Application G-16364 which are hereby incorporated by reference as
 if set forth fully herein.
- Les Peterson understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
- Les Peterson understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitute the complete and final resolution of the protest to G-16364.
- Les Peterson waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application G-16364 issued by OWRD.

C. Terms of the Agreement

- Upon signing this Settlement Agreement, Les Peterson withdraws his Protest and his request for a consolidated contested case hearing.
- OWRD will issue a Final Order Incorporating Settlement Agreement consistent with this
 Agreement and will issue a Permit consistent with the attached draft Permit.
- 3. Each Party to this Settlement Agreement represents, warrants, and agrees that the person who executed this Agreement on its behalf has the full right and authority to enter into this Agreement on behalf of that Party and bind that Party to the terms of this Settlement Agreement.
- 4. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
- Each Party to this Settlement Agreement certifies that it has read the entire Settlement
 Agreement, including the draft Final Order Incorporating Settlement Agreement and draft
 Permit, and understands and agrees with the contents thereof.
- The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.

7. This Settlement Agreement may be signed in counter	riparts.
Les Peterson	Date
Dwight French, Water Right Services Administrator, for Phillip C. Ward, Director Oregon Water Resources Department	April 14, 2011 Date

Oregon Water Resources Department Water Rights Services Division

Proposed Final Order may be addressed.

Water Rights Application Number G-16359

Draft Final Order Incorporating Settlement Agreement

Hearing and Appeal Rights
Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the

ORS 536.075 allows for additional appeal rights for other than contested case. 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On December 30, 2004, Les Peterson submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on June 7, 2005, proposing to deny the application because the use is not allowable under Oregon Administrative Rule (OAR) 690-507-0030(3)(a)(B).

A timely protest was filed by David Filippi, on behalf of the applicant.

On _____, 2011, the protest was withdrawn.

A Settlement Agreement was signed by all parties as of _______, 2011. The terms of the Settlement Agreement have been incorporated into this Final Order and a copy of the Settlement Agreement is included below.

The proposed use would not impair or be detrimental to the public interest, but the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the classification of proposed use.

The proposed well for G-16359 is located in the basalt reservoir within a five-mile radius of the City of Milton-Freewater (City) municipal wells. Under OAR 690-507-0030(3)(a)(B), ground water use from the basalt reservoir within a five-mile radius around any municipal well of the City of Milton-Freewater could be limited to only municipal uses, group domestic uses, or statutorily exempt ground water uses if the City has an approved water management and conservation plan in effect. The City's water management and conservation plan was no longer in effect as of October 2, 2010; therefore OAR 690-507-0030(3)(a)(B) will not affect this application.

The proposed use of irrigation is allowable under OAR 690-507-0030(3)(a)(A).

Order

Application G-16359 is therefore approved with modifications to the Proposed Final Order. Upon payment of outstanding fees in the amount of \$400, a permit shall be issued authorizing the proposed water use.

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

DATED

- - - DRAFT - - -

for Phillip C. Ward, Director Water Resources Department

This document was prepared by Kerry Kavanagh. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

COUNTY OF UMATILLA

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: A WELL IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION OF 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATION: SW 1/4 SW 1/4, SECTION 4, T5N, R36E, W.M.; 480 FEET NORTH & 130 FEET EAST FROM SW CORNER, SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each vear.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 NW 1/4 40.0 ACRES SE 1/4 NW 1/4 40.0 ACRES NE 1/4 SW 1/4 40.0 ACRES NW 1/4 SW 1/4 40.0 ACRES SW 1/4 SW 1/4 40.0 ACRES

SE 1/4 SW 1/4 40.0 ACRES

SECTION 4

TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS (CONTINUED):

NE ¼ NE ¼ 20.0 ACRES NW ¼ NE ¼ 40.0 ACRES NE ¼ NW ¼ 40.0 ACRES SE ¼ NW ¼ 10.0 ACRES SECTION 9

TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.
- C. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where any meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

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 between February 1 and March 31. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial February/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.

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.

STANDARD CONDITIONS

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 be subject to cancellation, unless the Department authorizes the change in writing.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements an alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The well(s) shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

The use may be restricted if the quality of downstream waters decreases to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged land-use plan.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

for Phillip C. Ward, Director Water Resources Department

Mailing List for FO Copies

Application #G-16359

Original mailed to applicant with claim of beneficial use form:

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362

Copies sent to:

- 1. WRD File # G-16359
- 2. WRD Ken Stahr

By:	Copies Mailed
	(SUPPORT STAFF)
on:	
	(DATE)

FO and Map Copies sent to (remember to reduce copy margins):

- 3. WRD Watermaster District #: 5
- 4. WRD Regional Manager: NC

Copies sent to Other Interested Persons (CWRE, Agent, Commenter, etc.)

- 5. City of Milton-Freewater, PO Box 6, 722 S Main, Milton-Freewater OR 97862
- Applegate, Steve
 Steven Applegate Consulting, 3395 Huckleberry Ct S, Salem OR 97302
- 7. Martha Pagel, Schwabe, Williamson & Wyatt, 530 Center St. NE, STE 400, Salem OR 97301
- David Filippi,
 Stoel Rives, LLP, Attorneys at Law, 900 SW Fifth Avenue, Suite 2600, Portland, OR 97204

CASEWORKER: Kerry Kavanagh

Kerry Kavanagh

From: Marc Norton

Sent: Tuesday, April 12, 2011 12:53 PM

To: Jeana Eastman; Mike Zwart

Cc: Kerry Kavanagh

Subject: RE: quick review/discussion on G-16359, G-16364, and G-17395

Hello Jeana and Kerry,

Please use 7N with water level to be measured in February or March. Irrigation begins in March sometimes, depending on the year. Any questions, call or e-mail.

Marc

From: Jeana Eastman

Sent: Monday, April 11, 2011 5:27 PM

To: Marc Norton; Mike Zwart

Cc: Kerry Kavanagh; Jeana Eastman

Subject: quick review/discussion on G-16359, G-16364, and G-17395

Hi Marc / Mike -

I'm writing for a quick review/discussion (hopefully!) on G-16359, G-16364, and G-17395.

All are within a 5-mi radius of M-F's city wells, however, M-F's wmcp has expired and the Dept has decided to proceed with permits for these apps since the 5-mi radius rule no longer applies.

In 2005, Mike reviewed G-16359 and G-16364 and recommended "7d, Feb 15 - Mar 15".

In 2010, Marc reviewed G-17395 and recommended "7n".

Today Dwight shared his opinion that all three permits have the same condition, and that his hope is that "7n" would be the agreed-upon condition.

I'm requesting that you two review/discuss this as appropriate and let me know the condition(s) GW recommends for all three apps.

Please let me know if you have questions. Thanks,

Jeana Eastman Water Rights Caseworker voice 503,986,0859

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right)
Application G-16359 in the Name of) SETTLEMENT
Les Peterson) AGREEMENT

The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

A. Background

- 1. On December 30, 2004, Les Peterson submitted to the Department an application for a groundwater permit (Application G-16359).
- 2. On February 18, 2005, the Department issued Initial Review Determinations (the "Initial Review") regarding Application G-16364? The Initial Review stated: "The use of 4.38 cubic feet per second from a well in Birch Creck Basin for irrigation use on 350 acres is allowable from March 1 through October 31 of each year." The Initial Review also explained that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater (the "City") were approved before the Proposed Final Order ("PFO") protest deadline for the application passed.
- The public comment period for Application G-16364 closed on March 22, 2005. No written comments were received during the 30-day period.
- 4. On March 24, 2005, the Department approved the City's WMCP. The final order approving the WMCP stated: "The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2010, unless this approval is rescinded pursuant to OAR 690-086-0920."
- 5. On June 7, 2005, the Department issued a PFO that recommended denial of Application G-16359 on the basis that, following approval of the City's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well.
- On July 22, 2005, Les Peterson submitted a timely protest and request for hearing ("Protest"). The City of Milton-Freewater submitted a timely request for standing.
- On September 2, 2010, Les Peterson (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case bearing for their respective protests to the PFOs issued by the Department regarding their respective applications.
- As of October 2, 2010, the City's WMCP was no longer in effect.

 The Department and Les Peterson agree that the issues raised in the Protest can be resolved solely on the following terms.

B. Consent

- 1. Les Peterson hereby acknowledges that he has read and understands the terms of this Agreement, and the terms of the draft Final Order Incorporating Settlement Agreement and draft Permit for Application G-16364 which are hereby incorporated by reference as if set forth fully herein.
- Les Peterson understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
- 3. Les Peterson understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitute the complete and final resolution of the protest to G-16364. 59
- 4. Les Peterson waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application G-16364 issued by OWRD.

C. Terms of the Agreement

- Upon signing this Settlement Agreement, Les Peterson withdraws his Protest and his request for a consolidated contested case hearing.
- OWRD will issue a Final Order Incorporating Settlement Agreement consistent with this
 Agreement and will issue a Permit consistent with the attached draft Permit.
- Each Party to this Settlement Agreement represents, warrants, and agrees that the person
 who executed this Agreement on its behalf has the full right and authority to enter into
 this Agreement on behalf of that Party and bind that Party to the terms of this Settlement
 Agreement.
- 4. Each Party to this Settlement Agreement certifies that it has had a reasonable opportunity to review and request changes to the Settlement Agreement, and that it has signed this Settlement Agreement of its own free will and accord.
- Each Party to this Settlement Agreement certifies that it has read the entire Settlement
 Agreement, including the draft Final Order Incorporating Settlement Agreement and draft
 Permit, and understands and agrees with the contents thereof.
- The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.

7. This Settlement Agreement may be signed in counterparts.

Les Peterson

April 15, 2011

Dwight French, Water Right Services Administrator,

for Phillip C. Ward, Director

Oregon Water Resources Department

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right)	
Application G-16359 in the Name of)	SETTLEMENT
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The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

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- deadline for the application passed.

 3. The public comment period for Application G-16364 closed on March 22, 2005. No written comments were received during the 30-day period.
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 The Department and Les Peterson agree that the issues raised in the Protest can be resolved solely on the following terms.

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- Les Peterson understands and agrees that this Agreement and all documents incorporated by reference set forth the entire Agreement of the parties.
- Les Peterson understands and agrees that this Agreement and the Final Order Incorporating Settlement Agreement and Permit issued pursuant to this Agreement constitute the complete and final resolution of the protest to G-16364.
- Les Peterson waives any and all rights to petition for judicial review of this Agreement, waives any and all rights to request reconsideration, petition for judicial review or appeal the Final Order Incorporating Settlement Agreement for Application G-16364 issued by OWRD.

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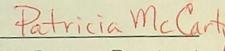
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 who executed this Agreement on its behalf has the full right and authority to enter into
 this Agreement on behalf of that Party and bind that Party to the terms of this Settlement
 Agreement.
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- Each Party to this Settlement Agreement certifies that it has read the entire Settlement
 Agreement, including the draft Final Order Incorporating Settlement Agreement and draft
 Permit, and understands and agrees with the contents thereof.
- The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.

This Settlement Agreement may be signed in counterparts.

April 15, 2011

Dwight French, Water Right Services Administrator,

for Phillip C. Ward, Director Oregon Water Resources Department





Water Resources Department

North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

March 4, 2011

City of Milton-Freewater Attn: Linda Hall, City Manager PO Box 6 Milton-Freewater, OR 97862

SUBJECT: Water Management and Conservation Plan

Dear Ms. Hall:

Our Department has completed a review of the City of Milton-Freewater's Water Management and Conservation Plan (WMCP) submitted on November 30, 2010. The associated fee of \$1600 for review of the WMCP was received by the Department on December 12, 2010.

Pursuant to OAR 690-086-0905 [2002], the Department published notice of the availability of the plan for review on December 28, 2010. Comments were received from David E. Filippi of Stoel Rives, LLP on behalf of Joe Frazier and Les Peterson on January 27, 2011, by the 30-day public comment period deadline. A copy of the comments received are attached for your reference.

Overall, the City's plan was good and includes most of the elements required by OAR 690-086 [2002]. Our main concerns about the plan revolve around the need to address all of the City's water rights and the need for clarification regarding the use of Well No. 1 under Permit G-4924.

Based on information provided in Section 5.3 and Section 5.4 (Pg. 5-3 & 5-4) of the City's WMCP, it appears the City plans to utilize water from Well No. 1 to meet its 20-year projected demands for water. At this time, the City's water rights on Well No. 1 are as follows: Certificate 12070 for 673 gpm (1.5 cfs), and Permit G-4924 for 898 gpm (2.0 cfs). Permit G-4924 has not yet certificated and the authorized date for the complete application of water to beneficial use under the permit has expired. Therefore, if in the next 20 years, the City plans to access any water from Well No. 1 under Permit G-4924, then the required items under OAR 690-086-1070(5)(a)(b)(c), (6) and (7) must be addressed. Additionally, the City may need to submit an Application for a Permit Extension of Time for Permit G-4924.

Furthermore, the authorized date for the complete application of water to beneficial use from Well No. 9 under Permit G-12582 has expired, so a Permit Extension of Time may be necessary for this permit as well.

WMCP Review March 4, 2011 Page 2 of 3

If the City intends to apply for any Permit Extension(s) of Time under OAR 690-315, you should be aware that the date for submittal of a WMCP set forth in the conditions of a final order approving that Extension of Time may result in a different submittal deadline than the one resulting from this review. The results of our review are provided in the attached worksheet.

At this time, there are two alternatives available to the City in response to this review. The City may choose to:

- Identify information in the draft plan that we may have missed that would alter the results of the review and provide a basis for concluding that the plan is fully consistent with OAR Chapter 690, Division 86 [2002]; or
- Modify the draft plan to address the deficiencies identified in the attached comments and worksheet.

Please notify us by Monday, April 4, 2011, of the alternative you wish to pursue or if you would like additional time to evaluate these alternatives. If you select to modify your plan under Alternative 2, please indicate the date by which you can submit the additional information. If you do not notify us by Friday, June 3, 2011, of the alternative you wish to pursue, we will issue a proposed final order on your water management and conservation plan as we understand it now.

We appreciate your cooperation in this effort and your commitment to water conservation. If you have any questions, please do not hesitate to contact me at 503-986-0880.

Sincerely,

Lisa J. Jafamillo

Water Management and Conservation Analyst

Field Services Division

Enclosures:

OWRD's completed Review Matrix

Copy of comments received on WMCP

cc: WMCP File

Mike Ladd, North Central Regional Manager Tony Justus, District #05 Watermaster Patricia McCarty, WRD Protest Coordinator

Anderson, Perry & Assoc., 1901 N. Fir Street, La Grande, OR 97850

Martha Pagel, Schwabe, Williamson & Wyatt, The Equitable Center, 530 Center Street NE, Suite 400, Salem, OR 97301
David Filippi, Stoel Rives, LLP, 900 SW Fifth Ave., Suite 2600, Portland, OR 97204

Water Resources Department

Municipal Water Management and Conservation Plan (WMCP) Review Worksheet (OAR Chapter 690, Division 086 - 2002)

Supplier:	City of Milton-Freewater
Reviewer:	Lisa Jaramillo
Date:	February 17, 2011
Reason for submittal of the WMCP:	Submitted as an update to a previously approved WMCP.

water supply or delivery contracts;

ORS 536.050(1)(u) - Fees for Water M	anagement and Conservation Plans	
\$800 – for examination of a Plan submitted by a municipal water supplier serving a population of 1,000 or fewer; or \$1600 – for examination of a Plan submitted by a municipal water supplier serving a population of more than 1,000.	Meets the requirement. \$1600 paid on 12-20-2010. 2009 population served = 6,465	
OAR 690-086-0125 - Additional Requir	rements	
(5) A list of the affected local governments to whom the draft plan was made available pursuant to 0120(8) and a copy of any comments on the plan provided by the local governments;	Meets the requirement. See: Section ES.1 (Pg. ES-1) Shared with Umatilla County.	
(6) A proposed date for submittal of an updated plan within no more than 10 years based on the proposed schedule for implementation of conservation measures, any relevant schedules for other community planning activities, and the rate of growth or other changes expected by the water supplier; or an explanation of why submittal of an updated plan is unnecessary and should not be required by the Department; and	Meets the requirement. See: Section ES.2 (Pg. ES-3)	
(7) If the municipal water supplier is requesting additional time to implement metering as required under OAR 690-086-0150(4)(b) or a benchmark established in a previously approved plan, documentation showing additional time is necessary to avoid unreasonable and excessive costs.	Does not apply. See: Seotion 3.4 (Pg. 3-2) The system is fully metered.	
OAR 690-086-0140 – Water Supplier Description		
(1) A description of the supplier's source(s) of water; including diversion, storage and regulation facilities; exchange agreements; intergovernmental cooperation agreements; and	Meets the requirement. See: Sections 2.2, 2.5 & 2.7 (Pg. 2-2-2-12), Figures 2-10 & 2-11 and the North and South Water System Maps.	

See also: Section 1.1 (Pg. 1-1)

(2) A delineation of the current service areas and an estimate of the population served and a description of the methodology(ies) used to make the estimate; Clarification is needed to fully meet the requirement. See: Section 2.1 (Pg. 2-1 & 2-2) and Figure 1-1 2009 population served = 6,465

▶ The City's WMCP indicates that, "The present service area consists of the developed lands within the boundaries of the City Limits and some areas outside the City Limits within the Urban Growth Boundary." The WMCP also indicates that, "The 2009 preliminary population estimate for the City of Milton-Freewater is 6,465."

Based upon the above statements, it is unclear whether the population figure refers to only the population within the boundaries of the City Limits or whether it also includes the population outside the City Limits but within the Urban Growth Boundary.

 In order to fully meet the requirement, please clarify whether the 2009 population figure of 6,465 represents the entire population served, both within and outside the City Limits boundary.

(3) An assessment of the adequacy and reliability of the existing water supply considering potential limitations on continued or expanded use under existing water rights resulting from existing and potential future restrictions on the community's water supply;

Additional information is needed to fully meet the requirement.

See: Section 2.6 (Pg. 2-11 & 2-12)

See also: Section 2.5 (Pg. 2-9 - 2-11)

The Department understands that the City has not utilized its surface water rights from the Walla Walla River for almost 50 years due to rising operating costs associated with treatment of the water.

▶ However, because the City still holds several surface water rights, an assessment of the adequacy and reliability of the City's surface water supply should be provided.

NOTE regarding comments received:

The public comments received on the City's WMCP indicated additional information was needed, and focused on the need for an economic feasibility assessment for bringing Well No. 1 back online and the need for the WMCP to discuss how they would respond to a long-term power disruption at the wells.

The Department has determined, however, that the WMCP adequately addresses the City's plan for responding to a long-term power disruption at the wells (See: Water Curtailment Element – Section 4.3 on Pg. 4-2). Additionally, the Department has determined that an economic feasibility assessment for bringing Well No. 1 back online is not needed to satisfy this requirement.

(4) A quantification of the water delivered by the water supplier that identifies current and available historic average annual water use, peak seasonal use, and average and peak day use;

Additional information is needed to fully meet the requirement. See: Section 2.3 (Pg. 2-7-2-9) and Figures 2-1-2-9

- ▶ The text under "Peak Daily Demands" on Page 8 and the Table at the top of Page 2-9 appear to provide current average day and current peak day figures from Year 2009. In order to fully meet the requirement, however, please also provide the following information:
 - · Available historic average day use; and
 - · Available historic peak day use.
- ▶ The information provided in Figures 2-1 through 2-8 is great to represent current and historic monthly water use and peak seasonal use from the wells for the past decade. However, it is difficult to decipher Figures 2-2 through 2-8 because the "Month-Year" axis values show 5-digit numbers rather than a month and year value.
 - Please modify Figures 2-2 through 2-8 so the "Month-Year" axis values are clearly identified.
- ▶ Additionally, while Figures 2-1 through 2-8, appear to represent current and historic monthly water use and peak seasonal use from each well for the past decade and Figure 2-9 shows the percentage of the total water use supplied from each well for the past year, the WMCP does not appear to identify the City's average annual water use (as a total from all sources), nor does it identify the City's peak seasonal use (as a total from all sources).

In order to fully meet the requirement, please provide a quantification of the City's total water use as follows:

- · Current average annual water use;
- · Available historic average annual water use;
- Current peak seasonal use; and
- Available historic peak seasonal use.

GENERAL COMMENT - Pertaining to OAR 690-086-0140(5) below:

- The listing of water rights on Pages 2-4 through 2-7 of the City's WMCP needs clarification and additional information to address all of the items required by this section of the rules. In order to satisfy the rule requirements, please provide the following information, as specified in the Department's comments for OAR 690-086-0140(5) below.
- Additionally, the WMCP does <u>not</u> address all of the water rights held by the City. As part of the City's previously approved July 2000 WMCP, the City agreed to complete certain Work Plan activities. One of the Work Plan items required the City to provide a complete list of their current water rights, along with correct priority dates.

Therefore, in order to fully meet the requirement and satisfy the Work Plan established under the City's previous WMCP, the current October 2010 WMCP must discuss the City's other water rights, which are listed below:

- Application G-14665 / Permit G-13488 (No Certificate issued)
- Application R-69553 / Permit R-11219 (No Certificate issued)
- Application S-69266 / Permit S-50962 (No Certificate issued)
- Certificate 3285 (Application S-3982 / Permit S-2391)
- Certificate 12919 (Walla Walla River Decree)
- Certificate 15559 (Application S-11067 / Permit S-7830)
- Certificate 41022 (Application G-4667 / Permit G-4391)
- Certificate 82171 (Application S-55136 / Permit S-41598)
- Transfer T-8626 (Sp. Or. Vol. 58, Pg. 363-367)

NOTE: A tabular list incorporating all of the City's water rights and columns for all of the required items was created and attached for your review and reference. (An electronic copy of this water rights inventory table can be made available to you.)

(5) A tabular list of water rights held by the municipal water supplier that includes the following information:

(a) Application, permit, transfer, and certificate numbers (as applicable);

Clarification and additional information is needed to fully meet the requirement.

See: Table in Sec. 1.1 (Pg. 1-2) and Table in Sec. 2.2 (Pg. 2-4 - 2-7)

Section 1.1 Table (Pg. 1-2):

► Well No. 9 -

The "Certificate Number" identified for Well No. 9 is incorrect. No certificate has been issued yet. The numbers associated with Well No. 9 should be as follows:

Application: G-13494
Permit: G-12582
Certificate: N/A

Section 2.2 Table (Pg. 2-4-2-7):

► Well No. 1 -

The manner in which the water right numbers are presented in the Table is a little confusing. It should be made clear that a water right certificate has <u>not</u> yet been issued for the right associated with Application G-5389/Permit G-4924, as shown below:

Application: U-109
Permit: U-102
Certificate: 12070
Application: G-5389
Permit: G-4924
Certificate: N/A

► Well No. 9 -

The "Certificate Number" identified for Well No. 9 is incorrect. No certificate has been issued yet. The numbers associated with Well No. 9 should be as follows:

Application: G-13494Permit: G-12582Certificate: N/A

Additional Information Needed:

(b) Priority date(s);	Clarification and additional information is needed to fully meet the requirement.
	See: Table in Sec. 1.1 (Pg. 1-2) and Table in Sec. 2.2 (Pg. 2-4 – 2-7)
	Section 1.1 Table (Pg. 1-2):
	Well No. 9 — The "Priority Date" identified for Well No. 9 is incorrect. The priority date associated with Well No. 9 (authorized under Permit G-12582) should be as follows: • February 27, 1996
	Section 2.2 Table (Pg. 2-4 – 2-7): ▶ Well No. 9 – The "Priority Date" identified for Well No. 9 is incorrect. The priority date associated with Well No. 9 (authorized under Permit G-12582) should be as follows: • February 27, 1996
	Additional Information Needed: ▶ In addition to the above items, no description of the City's other water rights was found in the WMCP. In order to fully meet the requirement, the WMCP should also address this requirement in relation to the other water rights held by the City, as specified in the Department's "General Comment – Pertaining to OAR 690-086-0140(5)" above.
(c) Source(s) of water;	Additional information is needed to fully meet the requirement. See: Table in Sec. 1.1 (Pg. 1-2) and Table in Sec. 2.2 (Pg. 2-4 – 2-7)
	No description of the City's other water rights was found in the WMCP. In order to fully meet the requirement, the WMCP should also address this requirement in relation to the other water rights held by the City, as specified in the Department's "General Comment − Pertaining to OAR 690-086-0140(5)" above.

(d) Type(s) of beneficial uses specified in the right;

Additional information is needed to fully meet the requirement. See: Table in Sec. 1.1 (Pg. 1-2) and Table in Sec. 2.2 (Pg. 2-4 – 2-7)

Section 1.1 Table (Pg. 1-2):

► Well No. 1 -

The manner in which the "type of use" is presented in the Table is a little confusing. It should be made clear that the authorized type of use under each water right is as follows:

- Certificate: 12070 (Application U-109 / Permit U-102)
 Type of use = Domestic, Industrial, Commercial and Municipal
- Permit: G-4924 (Application G-5389)
 Type of use = Municipal Only

Section 2.2 Table (Pg. 2-4 - 2-7):

► Well No. 1 -

The manner in which the "type of use" is presented in the Table is a little confusing. It should be made clear that the authorized type of use under each water right is as follows:

- Certificate: 12070 (Application U-109 / Permit U-102)
 Type of use = Domestic, Industrial, Commercial and Municipal
- Permit: G-4924 (Application G-5389)
 Type of use = Municipal Only

Additional Information Needed:

(e) Maximum instantaneous and annual quantity of water allowed under each right;

Clarification and additional information is needed to fully meet the requirement.

See: Table in Sec. 1.1 (Pg. 1-2) and Table in Sec. 2.2 (Pg. 2-4 - 2-7)

Section 1.1 Table (Pg. 1-2):

▶ Well No. 9 -

The authorized "Rate" for Well No. 9 is incorrectly identified as 3.3 cfs (1,481 gpm). The maximum rate allowed under Permit G-12582 for Well No. 9 should be listed as follows:

• 3.34 cfs (1,499 gpm)

Section 2.2 Table (Pg. 2-4 - 2-7):

▶ Well No. 9 -

The authorized "Rate" for Well No. 9 is incorrectly identified as 3.3 cfs (1,481 gpm). The maximum rate allowed under Permit G-12582 for Well No. 9 should be listed as follows:

• 3.34 cfs (1,499 gpm)

Additional Information Needed:

▶ In addition to the above items, no description of the City's other water rights was found in the WMCP. In order to fully meet the requirement, the WMCP should also address this requirement in relation to the other water rights held by the City, as specified in the Department's "General Comment – Pertaining to OAR 690-086-0140(5)" above.

NOTE regarding comments received:

The public comments received on the City's WMCP focused on the maximum annual use from Well No. 4.

The Department has determined that no additional information for Well No. 4 is needed to meet this requirement because information is provided in the WMCP that clearly indicates the City is not currently using Well No. 4 (i.e., Not Active).

See Pg. 2-5 of WMCP.

(f) Maximum instantaneous and annual quantity of water diverted under each right to date;

Clarification and additional information is needed to fully meet the requirement.

See: Water Rights Table in Sec. 2.2 (Pg. 2-4 - 2-7) and Figure 2-9

- ▶ The Water Rights Table on Page 2-4 provides the "maximum instantaneous" and "maximum annual" quantities of water used to date from Well No. 1. However, in order to fully meet the requirement, please indicate how much of those quantities appropriated from Well No. 1 were drawn under Certificate 12070 and how much were drawn under Permit G-4924.
- ▶ The data provided in Figure 2-9 shows the City's annual water production over several years (2000-2008), as well as the portion of those annual totals supplied by each well as a percentage.
 - While this is good information, it would be helpful if the quantities (in million gallons) associated with those percentages were also shown.
 - Additionally, the annual quantity of water used under Well No. 1 needs to be broken down by water right. In order to fully meet the requirement, please indicate how much of the annual quantity supplied by Well No. 1 (as shown in Figure 2-9) was drawn under Certificate 12070 and how much was drawn under Permit G-4924.

Additional Information Needed:

(g) Average monthly and daily diversions under each right for the previous year, and if available for the previous five years; Clarification and additional information is needed to fully meet the requirement.

See: Figures 2-1 - 2-8

- ▶ The WMCP illustrates the City's monthly production from each well in Figures 2-1 2-8. This information is great, however, it is difficult to decipher Figures 2-2 through 2-8 because the "Month-Year" axis values show 5-digit numbers rather than a month and year value.
 - Please modify Figures 2-2 through 2-8 so the "Month-Year" axis values are clearly identified.
 - Additionally, the monthly quantity of water used under Well No. 1 needs to be broken down by water right. In order to fully meet the requirement, please indicate how much of the monthly quantities supplied by Well No. 1 (as shown in Figure 2-1) were drawn under Certificate 12070 and how much were drawn under Permit G-4924.
- ▶ There does not appear to be any information in the WMCP that describes the <u>average daily diversions</u> under <u>each water right</u>. In order to fully meet the requirement, please provide:
 - The <u>average daily diversions under each water right</u> for the previous year, and if available for the previous five years.

Additional Information Needed:

(h) Currently authorized date for completion of development under each right; and

Clarification and additional information is needed to fully meet the requirement.

See: Table in Sec. 2.2 (Pg. 2-4 - 2-7)

Section 2.2 Table (Pg. 2-4 - 2-7):

▶ Well No. 1 -

The manner in which the authorized completion date(s) are presented in the Table is a little confusing. While the WMCP accurately reflects that there is not an authorized completion date associated with Certificate 12070, it fails to identify that since a water right certificate has <u>not</u> yet been issued for the right associated with Permit G-4924 (Application G-5389), there <u>is</u> an authorized date for completion under that permit. The information in the WMCP should be made clear to reflect the following:

- Permit: G-4924 (Application: G-5389)
 Authorized Dates for Completion = October 1, 1999
- Certificate: 12070 (Application U-109 / Permit U-102)
 Authorized Date for Completion = N/A

▶ Well No. 9 -

The WMCP incorrectly indicates that there is <u>not</u> an "Authorized Date for Completion" for Well No. 9 under Permit G-12582 (Application G-13494).

Because this water right has <u>not</u> yet been certificated and it is still in the permit stage, the WMCP should identify the following completion dates as specified in the permit:

Permit: G-12582 (Application: G-13494):
 The authorized date for completion of construction is
 October 1, 1998, and the authorized date for the complete application of water to beneficial use is October 1, 1999.

Additional Information Needed:

(i) Identification of any streamflow-dependent species listed by a state or federal agency as sensitive, threatened or endangered that are present in the source, any listing of the source as water quality limited and the water quality parameters for which the source was listed, and any designation of the source as being in a critical ground water area.

Additional information is needed to fully meet the requirement. See: Water Rights Table in Section 2.2 (Pg. 2-4 – 2-7)

- ▶ In addition to the information provided in the Water Rights

 Table found in Section 2.2 of the WMCP, it appears that the

 Walla Walla River is also 303(d) listed by the Oregon Dept. of

 Environmental Quality (DEQ) for the following water quality

 parameters (which should be listed in the WMCP): Alkalinity,

 Chlorophyll a, E Coli, Flow Modification, Habitat Modification,

 Phosphate Phosphorus and Sedimentation.
- ➤ Furthermore, the City also holds water right Certificate 15559 which allows the use of 86.3 cfs from the South Fork Walla Walla River for the Development of Electrical Power and Municipal Use.

Based upon a brief review of the DEQ's website, it appears that the South Fork Walla Walla River is 303(d) listed for the following water quality parameters (which should be listed in the WMCP): Alkalinity, Ammonia, Chloride, Chlorophyll a, Dissolved Oxygen, E Coli, Flow Modification, Habitat Modification, pH, Phosphate Phosphorus and Temperature.

(6) A description of customers served including other water suppliers and the estimated numbers; general water use characteristics of residences, commercial and industrial facilities, and any other uses; and a comparison of the quantities of water used in each sector with the quantities reported in the water supplier's previously submitted water management and conservation plan and progress reports; Additional information is needed to fully meet the requirement. See: Section 2.4 (Pg. 2-9)

The City's WMCP identifies the different customer classes, the number of accounts in each customer class, total water use annually, average annual use by account and the percentage of total water use in each sector. In order to fully meet the requirement, however, please address the following:

- ▶ In regard to the Residential sector:
 - Please provide a general overview of the typical residential user, including general lot sizes, landscaping, and typical water use patterns, if available.
- ▶ In regard to the Commercial (small and large), Public (small and large), and Industrial sectors:
 - Please provide any information on the water use patterns of the different customer classes, noting any typical fluctuations (daily, seasonally or annually);
 - Please identify whether there are any special demands for water; and
 - Please identify whether there is any current or planned use of water recycling or reuse?
- ▶ Please provide a comparison of the quantities of water used in each sector with the quantities reported in the City's previously submitted WMCP.

(7) Identification and description of interconnections with other municipal supply	Meets the requirement.
systems;	See: Section 2.7 (Pg. 2-12)
(8) A schematic of the system that shows the	Meets the requirement.
sources of water, storage facilities, treatment facilities, major transmission and distribution lines, pump stations, interconnections with other municipal supply systems, and the existing and planned future service area; and	See: Figures 1-1, 2-10 & 2-11, and the North and South Water System Maps
(9) A quantification and description of system	Additional information is needed to fully meet the requirement.
leakage that includes any available information regarding the locations of significant losses.	See: Section 2.8 (Pg. 2-13 & 2-14)
	▶ Great job on reducing unaccounted-for water figures in 2006 and 2008 (9.8% and 8.4%, respectively). However, is there any more information that can be provided as to the possible reason for the spike in 2007 to 19.8% unaccounted-for water?
	2004 = 22.6% unaccounted-for water
	2005 = 20.2% unaccounted-for water
	2006 = 9.8% unaccounted-for water 2007 = 19.8% unaccounted-for water
	2007 = 19.8% unaccounted-for water 2008 = 8.4% unaccounted-for water
	It may be beneficial to review the City's current leak detection
	program to evaluate whether it is adequate to ensure more consistent unaccounted-for water figures in the future.
O+D (00 00(0150 - W) / C /	
OAR 690-086-0150 – Water Conservati (1) A progress report on the conservation	
measures scheduled for implementation in a water management and conservation plan previously approved by the Department, if any;	Meets the requirement. See: Section 3.4, Section 3.6 and Section 3.7 (Pg. 3-2 – 3-6) and Appendices B, C, D and E
	NOTE: While the Department was able to review the City's previous July 2000 WMCP to determine which conservation measures were scheduled for implementation and compare that against the information provided in current October 2010 WMCP, it would be helpful in the future to more clearly indicate in a single location the following: 1) Identify which conservation measures were scheduled for implementation as a result of the previous WMCP; 2) Identify which measures were actually implemented and which measures were not implemented; and 3) For those measures not implemented, a description of the reason(s) why it was not implemented.
(2) A description of the water supplier's water use measurement and reporting program and a	Meets the requirement.
statement that the program complies with the measurement standards in OAR Chapter 690, Division 85, that a time extension or waiver has been granted, or that the standards are not applicable;	See: Section 3.2 (Pg. 3-1) and Section 3.5 (Pg. 3-4)

(3) A description of other conservation measures, if any, currently implemented by the water supplier, including any measures required under water supply contracts; Additional information is needed to fully meet the requirement. See: Section 3.5 and Section 3.6 (Pg. 3-4 & 3-5)

- ▶ The WMCP states that, "The City has implemented a low water use landscaping program on City projects." However, there is no description of what the program consists of.
 - In order to fully meet the requirement, please a brief description of the main elements of City's low water use landscaping program for City projects.

(4) A description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of each of the following conservation measures that are required of all municipal water suppliers:

 (a) An annual water audit that includes a systematic and documented methodology for estimating any un-metered authorized and unauthorized uses; Additional information is needed to fully meet the requirement. See: 3.4 (Pg. 3-3)

- ► The WMCP clearly identifies that the City has been performing an annual water audit for the past several years, however, the following additional information is needed in order to fully meet the requirement:
 - Please describe the City's systematic and documented methodology for estimating any un-metered authorized and unauthorized uses.

If the City does not currently have in place a systematic and documented methodology for estimating any un-metered authorized and unauthorized uses, a five-year benchmark to implement such a methodology could be established.

(b) If the system is not fully metered, a program to install meters on all un-metered water service connections. The program shall start immediately after the plan is approved and shall identify the number of meters to be installed each year with full metering completed within five years of approval of the water management and conservation plan;

Does not apply.

See: Section 3.4 (Pg. 3-2) See also: Section 3 (Pg. 3-1)

The system is fully metered.

(c) A meter testing and maintenance program;

Meets the requirement.

See: Section 3 (Pg. 3-1) and Section 3.4 (Pg. 3-3)

See also: Table of 2010 Conservation Benchmarks (Pg. 3-6)

NOTE regarding comments received:

The public comments received on the City's WMCP indicated additional information was needed to meet this requirement.

The Department has determined, however, that no additional information is needed to meet this requirement because, while the City does not have formal written meter testing and maintenance program, the City performs an annual water audit and public works staff documents water use trends for customer meters via monthly meter readings. When residential meters are demonstrating erroneous readings, the meters are tested and/or replaced, as required. The City has regularly replaced up to 50 meters per year.

Additionally, the City has a contract with a private company to provide testing on larger meters once every three years.

Furthermore, the City has been selected by the Department of Energy to participate in a regional smart grid project. As part of this project water meters in the City will be replaced between November 2010 and July 2012. The new meters have a 20-year warranty and testing of the meters will take place ten years after installation. Benchmarks have also been established for this work on Pg. 3-6 of the WMCP.

(d) A rate structure under which customers' bills are based, at least in part, on the quantity of water metered at the service connections;

Meets the requirement.

See: Section 3.3 (Pg. 3-2) and Section 3.7 (Pg. 3-5 – 3-7)

NOTE regarding comments received:

The public comments received on the City's WMCP indicated additional information was needed to meet this requirement.

The Department has determined, however, that no additional information is needed to meet this requirement because, while the City uses a decreasing block rate structure, water users have to use over 500,000 gallons of water in a single month before the water rate structure decreases.

(e) If the annual water audit indicates that system leakage exceeds 10 percent, a regularly scheduled and systematic program to detect leaks in the transmission and distribution system using methods and technology appropriate to the size and capabilities of the municipal water supplier; and

Meets the requirement.

See: Section 3.4, Section 3.5 and Section 3.6 (Pg. 3-3 – 3-5) and Appendix B

NOTE regarding comments received:

The public comments received on the City's WMCP indicated additional information was needed to meet this requirement.

Because the most recent unaccounted-for water figures in 2008 were 8.4%, the Department has determined that this requirement is satisfied. The Department did provide additional comments, however, under OAR 690-086-0140(9) above.

(f) A public education program to encourage efficient water use and the use of low water use landscaping that includes regular communication of the supplier's water conservation activities and schedule to customers; Meets the requirement.

See: Section 3.4 (Pg. 3-3 & 3-4)

NOTE: Including conservation messages and tips on monthly water bills is another effective and inexpensive way to educate the public about different types of conservation issues.

Additionally, the WMCP demonstrates the City is committed to promoting low water use landscaping. The Department has a plant guide available for download with full color photos and tips on WaterWise landscaping in Central and Eastern Oregon. The plant guide can be accessed at:

http://www.wrd.state.or.us/OWRD/docs/Central and Eastern Oregon XeriGuide 2005 update.pdf

(5) If the supplier proposes to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i), a description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of:

A system-wide leak repair or line replacement program to reduce system leakage to no more than 15 percent or sufficient information to demonstrate that system leakage currently is no more than 15 percent.

Does not apply.

The City is not requesting to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i).

NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s).

(6) If the supplier serves a population greater than 1,000 and proposes to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i), or if the supplier serves a population greater than 7,500, a description of the specific activities, along with a schedule that establishes five-year benchmarks, for implementation of each of the following measures; or documentation showing that implementation of the measures is neither feasible nor appropriate for ensuring the efficient use of water and the prevention of waste: (a) A system-wide leak repair program or line Does not apply. replacement to reduce system leakage to 15 The City serves a population of 6,465 and is not proposing to percent, and if the reduction of system leakage to expand or initiate diversion of water under an extended permit for 15 percent is found to be feasible and which resource issues have been identified under OAR 690-086appropriate, to reduce system leakage to 10 percent; 0140(5)(i). NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s). (b) Technical and financial assistance programs Does not apply. to encourage and aid residential, commercial and The City serves a population of 6,465 and is not proposing to industrial customers in implementation of expand or initiate diversion of water under an extended permit for conservation measures; which resource issues have been identified under OAR 690-086-0140(5)(i). **NOTE:** While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s). (c) Supplier financed retrofitting or replacement Does not apply. of existing inefficient water using fixtures, The City serves a population of 6,465 and is not proposing to including distribution of residential conservation expand or initiate diversion of water under an extended permit for kits and rebates for customer investments in which resource issues have been identified under OAR 690-086water conservation; 0140(5)(i). NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s). (d) Adoption of rate structures, billing schedules, Does not apply. and other associated programs that support and The City serves a population of 6,465 and is not proposing to encourage water conservation; expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i). NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to

water under the permit(s).

(e) Water reuse, recycling, and non-potable water opportunities; and	Does not apply. The City serves a population of 6,465 and is not proposing to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i). NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s).
(f) Any other conservation measures identified by the water supplier that would improve water use efficiency.	Does not apply. The City serves a population of 6,465 and is not proposing to expand or initiate diversion of water under an extended permit for which resource issues have been identified under OAR 690-086-0140(5)(i).
	NOTE: While the City holds two permits that have had Extensions of Time approved in the past, those extensions have since expired. The City does not hold any permit(s) with current, extended timelines approved by a Final Order that limits the City's access to water under the permit(s).

OAR 690-086-0160 - Municipal Water Curtailment Element

(1) A description of the type, frequency and magnitude of supply deficiencies within the past 10 years and current capacity limitation. The description shall include an assessment of the ability of the water supplier to maintain delivery during long-term drought or other source shortages caused by a natural disaster, source contamination, legal restrictions on water use, or other circumstances;

Additional information is needed to fully meet the requirement.

See: Section 4.1 (Pg. 4-1)

See also: Section 4.3 (Pg. 4-1 & 4-2)

As part of the City's previously approved WMCP, the City agreed to complete certain Work Plan activities. One of the Work Plan items required the City to provide data that would support the accuracy of the assumption that the rate of decline in the well static water levels would decrease. See text below:

Section 4.1a (Pg. 15) of the previously approved July 2000 WMCP and Section 4.1 (Pg. 4-1) of the current October 2010 WMCP both state that, "...The City's supply wells are deep basalt wells that have performed adequately in the past and continue to do so. The City has a regular schedule for upgrading the pumping equipment at each well, and modifies the pump set level, if required, to accommodate declining water levels in the area. With the reduction in area pumping rates, it is anticipated the rate of decline in static water levels will decrease. Static and pumping water level trends will be closely monitored by the City to help evaluate if a supply deficiency will occur in the future."

- ▶ It does not appear that the current October 2010 WMCP addresses this Work Plan item. Therefore, in order to fully meet the requirement and satisfy the Work Plan established under the City's previous WMCP, please provide either:
 - Data obtained from the City's monitoring of static and pumping water level trends along with an evaluation that addresses whether future supply deficiencies will occur or if the rate of decline in the well static water levels will decrease; or
 - An explanation of why the City did not complete the monitoring and evaluation necessary to support their assumption that the rate of decline in static water levels will decrease.

(2) A list of three or more stages of alert for potential shortage or water service difficulties. The stages shall range from a potential or mild alert, increasing through a serious situation to a critical emergency;

Meets the requirement.

See: Section 4.3 (Pg. 4-1 & 4-2), Table 4-1 and Appendix F

Four stages of alert.

(3) A description of pre-determined levels of severity of shortage or water service difficulties that will trigger the curtailment actions under each stage of alert to provide the greatest assurance of maintaining potable supplies for human consumption; and Meets the requirement.

See: Table 4-1

NOTE regarding comments received:

The public comments received on the City's WMCP indicated additional information was needed to meet this requirement.

Based upon the "Alert Level Triggers" specified in Table 4-1 of the City's WMCP, however, the Department has determined that no additional information is needed to meet this requirement.

(4) A list of specific standby water use curtailment actions for each stage of alert ranging from notice to the public of a potential alert, increasing through limiting nonessential water use, to rationing and/or loss of service at the critical alert stage.

Meets the requirement.

See: Table 4-1 and Appendix F

OAR 690-086-0170 - Municipal Water Supply Element

(1) A delineation of the current and future service areas consistent with state land use law that includes available data on population projections and anticipated development consistent with relevant acknowledged comprehensive land use plans and urban service agreements or other relevant growth projections;

Additional information is needed to fully meet the requirement. See: Section 5.1 (Pg. 5-1 & 5-2), Figure 1-1 and Figure 5-1 See also: Appendix G

The City's WMCP states, "If development occurs...significant water system improvements may be needed similar to improvements completed in 1999 for the south industrial park. Because of the unknown timeframe of such a development, it would be wise to complete a study specific to the development similar to the Southside Infrastructure Planning Study completed in 1999. Such a study could focus in a more detailed manner on the improvements needed to serve the particular area to be developed."

▶ Does the City have any plans to undertake such a study, and if so, when is the study scheduled to take place?

NOTE: It would be beneficial to include any information gained through performing such a study in the 5-year progress report and the next WMCP update.

(2) An estimated schedule that identifies when the water supplier expects to fully exercise each of the water rights and water use permits currently held by the supplier; Clarification and additional information is needed to fully meet the requirement.

See: Section 5.4 (Pg. 5-4)

Section 5.4 appears to indicate that the City has demonstrated full beneficial use for all of its water supply and that water right certificates have been issued.

This is not entirely accurate, as the City holds two Municipal water use permits for which the authorized dates for completion of development have expired and water right certificates have <u>not</u> yet been issued. Additionally, the City holds several other water rights and water use permits that have not been addressed.

▶ Please provide an estimated schedule that identifies when the City expects to fully exercise each of the following Municipal water use permits currently held by the City:

Well No. 1 – Only 673 gpm (1.5 cfs) of water under Well No. 1 has been certificated for Municipal Use, as evidenced by the issuance of Certificate 12070 on January 31, 1939.

 Use of 898 gpm (2.0 cfs) of water from Well No. 1 for Municipal Use, authorized under Permit G-4924, has <u>NOT</u> yet been certificated.

Well No. 9

- Use of 1,499 gpm (3.34 cfs) of water from Well No. 9 for Municipal Use, authorized under Permit G-12582, has NOT yet been certificated.
- ▶ Please address and provide an estimated schedule that identifies when the City expects to fully exercise each of the other water use permits currently held by the City, as specified in the Department's "General Comment Pertaining to OAR 690-086-0140(5)" above.

NOTE: The authorized dates for completion of development have expired and water right certificates have not yet been issued for the following water rights held by the City:

- Permit G-13488 (Application G-14665)
- Permit R-11219 (Application R-69553
- Permit S-50962 (Application S-69266)
- Transfer T-8626

(3) Based on the information in (1), an estimate of the water supplier's water demand projections for 10 and 20 years, and at the option of the municipal water supplier, longer periods;

Meets the requirement.

See: Section 5.2 and 5.3 (Pg. 5-2 – 5-4) and Appendix G See also: Section 2.3 – Water System Demands (Pg. 2-8), which provides an explanation of why 300 gpcd was selected for the City's planning purposes. (4) A comparison of the projected water needs and the sources of water currently available to the municipal water supplier and to any other suppliers to be served considering the reliability of existing sources; Meets the requirement.

See: Section 5.3 (Pg. 5-3 & 5-4)

GENERAL COMMENT - Pertaining to OAR 690-086-0170(5)(a)(b)(c), (6) and (7) below:

Based on information provided in Section 5.3 and Section 5.4 (Pg. 5-3 & 5-4) of the City's WMCP, it appears that the City of Milton-Freewater plans to utilize water from Well No. 1 to meet its 20-year projected demands for water (Year 2029).

At this time, the City's water rights on Well No. 1 are as follows: Certificate 12070 for 673 gpm (1.5 cfs), and Permit G-4924 for 898 gpm (2.0 cfs).

Because Permit G-4924 is NOT yet certificated......

If, in the next 20 years, the City plans to access any water from Well No. 1 under Permit G-4924, then the required items under OAR 690-086-1070(5)(a)(b)(c), (6) and (7) below must be addressed.

(5) If any expansion or initial diversion of water allocated under existing permits is necessary to meet the needs shown in (3), an analysis of alternative sources of water that considers availability, reliability, feasibility and likely environmental impacts. The analysis shall consider the extent to which the projected water needs can be satisfied through:

(a) Implementation of conservation measures identified under OAR 690-086-0150;

No description was found.

See: Section 5

If the City plans to utilize water from Well No. 1 under Permit G-4924 to meet their 20-year projected water demands, then the following additional information is needed to fully meet the requirement.

▶ Please provide an analysis that considers the extent to which the projected water needs can be satisfied through the implementation of conservation measures identified under OAR 690-086-0150.

(b) Interconnection with other municipal supply systems and cooperative regional water management; and No description was found.

See: Section 5

If the City plans to utilize water from Well No. 1 under Permit G-4924 to meet their 20-year projected water demands, then the following additional information is needed to fully meet the requirement.

Please provide an analysis that considers the extent to which the projected water needs can be satisfied through interconnection with other municipal supply systems and cooperative regional water management.

(c) Any other conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources.	No description was found. See: Section 5
)	If the City plans to utilize water from Well No. 1 under Permit G-4924 to meet their 20-year projected water demands, then the following additional information is needed to fully meet the requirement.
	▶ Please provide an analysis that considers the extent to which the projected water needs can be satisfied through any other conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources.
(6) If any expansion or initial diversion of water allocated under existing permits is necessary to meet the needs shown in (3), a quantification of	No description was found. See: Section 5
the maximum rate and monthly volume of water to be diverted under each of the permits;	If the City plans to utilize water from Well No. 1 under Permit G-4924 to meet their 20-year projected water demands, then the following additional information is needed to fully meet the requirement.
	▶ Please provide a quantification of the maximum rate and monthly volume of water to be diverted under each of the permits.
(7) For any expansion or initial diversion of water under existing permits, a description of mitigation actions the water supplier is taking to	No description was found. See: Section 5
comply with legal requirements including but not limited to the Endangered Species Act, Clean Water Act, Safe Drinking Water Act; and	If the City plans to utilize water from Well No. 1 under Permit G-4924 to meet their 20-year projected water demands, then the following additional information is needed to fully meet the requirement.
	▶ Please provide a description of mitigation actions the City is taking to comply with legal requirements including but not limited to the Endangered Species Act, Clean Water Act, Safe Drinking Water Act.
alternative sources of the additional water that con-	sary within the next 20 years to meet the needs shown in (3), an analysis of siders availability, reliability, feasibility and likely environmental impacts and a ater. The analysis shall consider the extent to which the need for new water rights
(a) Implementation of conservation measures identified under OAR 690-086-0150;	Does not apply. See: Section 5.3 (Pg. 5-3 & 5-4) and Section ES.2 (Pg. ES-3)
	The City is not requesting to acquire new water rights within the next 20 years to meet needs.
(b) Interconnection with other municipal supply systems and cooperative regional water	Does not apply.
management; and	See: Section 5.3 (Pg. 5-3 & 5-4) and Section ES.2 (Pg. ES-3)
	The City is not requesting to acquire new water rights within the next 20 years to meet needs.

(c) Any other conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources.	Does not apply. See: Section 5.3 (Pg. 5-3 & 5-4) and Section ES.2 (Pg. ES-3) The City is not requesting to acquire new water rights within the next 20 years to meet needs.
OAR 690-086-0130 - Approval Criteria	for Access to Water under an Extended Permit
(7) If during the next 20 years the maximum rate of authorized for diversion under the extension or pre-	of water diverted under an extended permit will be greater than the maximum rate eviously approved water management and conservation plan;
(a) The plan includes a schedule for development of any conservation measures that would provide water at a cost that is equal to or lower than the cost of other identified sources, unless the supplier has provided sufficient justification for the factors used in selecting other sources for development or the supplier serves a population of less than 1,000; (b) Increased use from the source is the most feasible and appropriate water supply alternative available to the supplier; and	Does not apply. See: Section 5 The City is not requesting to increase the maximum rate of water diverted under an extended permit. Does not apply. See: Section 5
	The City is not requesting to increase the maximum rate of water diverted under an extended permit.
(c) If mitigation is legally required to address limitations or restrictions on the development of permits for which resource issues are identified under OAR 690-086-0140(5)(i), the plan contains documentation that the supplier is complying with the mitigation requirements. The Department may consult with federal and state agencies in making this determination; and	Does not apply. See: Section 5 The City is not requesting to increase the maximum rate of water diverted under an extended permit.

February 7, 2003 – dp REVISED: July 1, 2010 - ljj

Patricia McCarty

From: Mike Ladd

Sent: Thursday, February 24, 2011 5:58 PM

To: Bill Fujii; Tom Paul; Dwight French; Tony Justus; Lisa Jaramillo; Patricia McCarty

Subject: RE: 5 mile radius

The Umatilla Basin Program rule was adopted in 1988 or 89.

In regards to Tom's second question "Also, do we have advice as to whether a city can have a plan in effect without having it first adopted by the Department?" I don't know if we have advice on this, but Doug Parrow and Mile Ladd (who's that character) penned a memo dated February 6, 1997 to Dwight French. Tom Paul actually signed for Mike Ladd. The memo states in the last sentence of the first paragraph the following "The Department has previously agreed the (that) we will not consider a city as having a full-time conservation program unless and until we have approved their water management and conservation plan under Division 86."

I hope this helps. Let me know if you have any questions or need a copy of this memo.

Michael F. Ladd

Acting Field Services Division Administrator Regional Manager North Central Region Oregon Water Resources 116 SE Dorion Pendleton, Oregon 97801 (541) 278-5456 (541) 278-0287 Fax Michael.F.Ladd@wrd.state.or.us

From: Bill Fujii

Sent: Thursday, February 24, 2011 5:24 PM

To: Tom Paul; Dwight French; Mike Ladd; Tony Justus; Lisa Jaramillo; Patricia McCarty

Subject: RE: 5 mile radius

Program 1980's vs WMCP 1990's - probably not an issue....

From: Tom Paul

Sent: Thursday, February 24, 2011 4:13 PM

To: Dwight French; Mike Ladd; Tony Justus; Lisa Jaramillo; Bill Fujii; Patricia McCarty

Subject: 5 mile radius

Something to keep in mind, the wording in the Umatilla Basin Program says: "(B) Ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Athena, Helix, Milton-Freewater, and Weston is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only

when the affected city(ies) have a full-time conservation program in effect." What is the date of this language in comparison to when the Water / Management Conservation rules were adopted? Also, do we have advice as to whether a city can have a plan in effect without having it first adopted by the Department?

Tom

Thomas J. Paul, Deputy Director Oregon Water Resources Department 725 Summer Street NE Salem, OR 97301 503-986-0882 (phone) 503-986-0903 (fax)

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Water)	
Management and Conservation Plan for the)	SETTLEMENT
City of Milton-Freewater, Umatilla County,)	AGREEMENT
Oregon)	

The Oregon Water Resources Department (the "Department"), the City of Milton-Freewater (the "City"), and Norm McKibben and Seven Hills Properties, LLC (collectively, "Seven Hills"), do hereby stipulate and agree as follows:

Background

- A. On August 21, 2000, the City submitted a proposed Water Management and Conservation Plan ("WMCP") to the Department for review and consideration. The proposed WMCP was modified in part on November 10, 2004.
- B. On December 6, 2004, OWRD issued a Proposed Final Order ("PFO") recommending approval of the City's proposed WMCP.
- C. On January 5, 2005, Seven Hills submitted a timely protest and appeal of the PFO for the City's WMCP.
- D. On or about October 5, 2004, Seven Hills filed an application for a groundwater permit (App. No. G-16322) (the "Seven Hills' Application"). The public comment period for the Initial Review of the Seven Hills' Application closed on December 30, 2004. Other than a submittal by Seven Hills in response to a request for additional information by the Department, no comments were filed during the Initial Review public comment period. On January 18, 2005, the Department issued a PFO for the Seven Hills' Application and a draft groundwater permit. The period within which to file a protest to the PFO for the Seven Hills' Application closes on March 4, 2005. Assuming no protests to the PFO for the Seven Hills' Application are filed, a final groundwater permit may be issued to Seven Hills as early as mid-March 2005.
- E. If the Department were to issue a final order approving the City's WMCP prior to the issuance of Seven Hills' groundwater permit, then the Seven Hills' Application would be subjected to a different classification under the Umatilla Basin Program rules in the midst of the review process. The application of a new and different classification could substantially alter and severely delay review of the Seven Hills' Application.
- F. The Department, the City, and Seven Hills agree that the issues raised in the Seven Hills' protest and appeal of the PFO recommending approval of the City's proposed WMCP can be resolved solely on the following terms.

Page 1 of 2 – SETTLEMENT AGREEMENT REGARDING PROPOSED WATER MANAGEMENT AND CONSERVATION PLAN FOR THE CITY OF MILTON-FREEWATER, UMATILLA COUNTY, OREGON

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Terms of the Agreement

- The City requests, and the Department, the City, and Seven Hills agree, that the
 Department will take no further action on the City's WMCP until the Department issues a
 final order approving the Seven Hills' Application and a final groundwater permit to
 Seven Hills. However, this Settlement Agreement does not bind the Department to issue
 a final order approving the Seven Hills' Application or to issue a final groundwater
 permit.
- Upon the Department's issuance of a final order approving the Seven Hills' Application and the issuance of a final groundwater permit to Seven Hills, Seven Hills agrees to withdraw its protest and appeal of the PFO for the City's WMCP. While Seven Hills agrees to the proposed conditions set forth in the PFO, Seven Hills reserves the right to challenge any final order related to the Seven Hills' Application to the extent that the final order is not consistent with the PFO and/or the draft groundwater permit.
- Upon Seven Hills' withdrawal of its protest and appeal of the PFO for the City's WMCP, the Department agrees to issue a final order approving the City's WMCP, with the final order substantially similar to the PFO recommending approval of the City's WMCP.
- 4. The City and Seven Hills request, and the Department, the City, and Seven Hills agree, that pending issuance of a final order approving the Seven Hills' Application and the issuance of a final groundwater permit to Seven Hills, the Department will hold the Seven Hills' protest and appeal of the PFO for the City's WMCP in abeyance, and the Department will take no action with respect to the Seven Hills' protest and appeal.
- Following Seven Hills' withdrawal of its protest and appeal of the PFO to the City's WMCP, the Department agrees to refund in full Seven Hills' protest fee.

R. L. Ry Foa Aform M.	EKIBBW 2 26 05
In his individual capacity and on behalf of	Date
Seven Hills Properties, LLC	
Howard Moss	Date
On behalf of the City of Milton-Freewater	
Dwight fred	3-3-05
Dwight)French	Date
On behalf of the Oregon Water Resources	
Department	

Page 2 of 2 – SETTLEMENT AGREEMENT REGARDING PROPOSED WATER MANAGEMENT AND CONSERVATION PLAN FOR THE CITY OF MILTON-FREEWATER, UMATILLA COUNTY, OREGON



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Terms of the Agreement

- The City requests, and the Department, the City, and Seven Hills agree, that the
 Department will take no further action on the City's WMCP until the Department issues a
 final order approving the Seven Hills' Application and a final groundwater permit to
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 permit.
- 2. Upon the Department's issuance of a final order approving the Seven Hills' Application and the issuance of a final groundwater permit to Seven Hills, Seven Hills agrees to withdraw its protect and appeal of the PPO for the City's WMCP. While Seven Hills agrees to the proposed conditions set forth in the PPO, Seven Hills reserves the right to challenge any final order related to the Seven Hills' Application to the execut dust the final order is not consistent with the PPO and/or the draft groundwater permit.
- Upon Seven Hills' withdrawal of its passest and appeal of the PFO for the City's WMCP,
 the Department agrees to leave a final order approving the City's WMCP, with the final
 order substantially similar to the PFO recommending approval of the City's WMCP.
- 4. The City and Seven Hills request, and the Department, the City, and Seven Hills agree, that panding insumes of a final order approving the Seven Hills' Application and the insumes of a final groundwater permit to Seven Hills, the Department will hold the Seven Hills' protest and appeal of the PPO for the City's WMCP in theymos, and the Department will take no action with respect to the Seven Hills' protest and appeal.
- Following Seven Hills' withdrawal of its protest and appeal of the PPO to the City's WMCP, the Department agrees to refund in full Seven Hills' protest for.

Norm McKibben Is his instividual capacity and on behalf of Seven Hills Properties, I.C.	Date
Del phine Palmer On behalf of the City of Milway-Preswerce	Date
Dwight French On behalf of the Orugon Water Resources Department	Date

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WATER RESOURCES DEPT SALEM, OREGON



BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right)	
Application G-16359 in the Name of)	SETTLEMENT
Les Peterson)	AGREEMENT

The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

Background

- A. On December 30, 2004, Applicant submitted to the Department an application for a groundwater permit (Application G-16359).
- B. On February 18, 2005, the Department issued Initial Review Determinations (the "Initial Review") regarding Application G-16359. The Initial Review stated: "The use of water from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507, the Umatilla Basin Program." (Emphasis added.) The Initial Review also explained that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater (the "City") were approved before the Proposed Final Order ("PFO") protest deadline for the application passed.
- C. The public comment period for Application G-16359 closed on March 24, 2005. No written comments were received during the 30-day period.
- D. On March 24, 2005, the Department approved the City's WMCP. The final order that approved the WMCP stated: "The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2010, unless this approval is rescinded pursuant to OAR 690-086-0920."
- E. On June 7, 2005, the Department issued a PFO that recommended denial of Application G-16359 on the basis that, following approval of the City's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well. The PFO provided no other basis for denial of Application G-16359.
- F. On July 21, 2005, Applicant submitted a timely protest and request for hearing ("Protest"). The City requested standing, as provided in ORS 537.621(6) and OAR 690-310-0160(2), to participate in any future contested case or other legal proceeding relative to Application G-16395.
- G. On September 2, 2010, Applicant (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the PFOs issued by the Department regarding their respective applications.

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- H. On October 1, 2010, the City's WMCP expired. The Department received a draft WMCP from the City on November 30, 2010, but the Department has not approved the draft WMCP. Therefore, the City does not have a WMCP in effect. Because the Department's approval of the City's WMCP was the sole reason the Department issued a PFO that recommended denial of Application G-16364, the Department may now approve Application G-16364 now that the WMCP is no longer in effect.
- The Department and Applicant agree that the issues raised in the Protest can be resolved solely on the following terms.

Terms of the Agreement

- Applicant agrees to withdraw his Protest and his request for a consolidated contested case hearing.
- Upon Applicant's withdrawal of his Protest and his request for a consolidated contested
 case hearing, the Department agrees to issue a final order approving Application G-16359
 in the form of Attachment A and a permit in the form of Attachment B.

Les Peterson	Date		
		**	
Phillip C. Ward, Director Oregon Water Resources Department	Date		

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ATTACHMENT A

DRAFT 2/4/11 4:19PM

Oregon Water Resources Department Water Rights/Adjudications Division

Water Rights Application Number G-16359

Final Order

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested by the applicant, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a Final Order in other han a 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application H story

On December 30, 2004, Les Peterson submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on June 7, 2005 that recommended denial of the application on the ground that the Umatilla Basin Program does not allow the proposed use.

On July 21, 2005, Les Peterson submitted a timely protest and request for hearing. The City of Milton-Freewater (City) requested standing to participate in any future contested case or other legal proceeding relative to Application G-16359, pursuant to ORS 537.621(6) and OAR 690-310-0160(2).

The Department's continuing evaluation reveals that the PFO requires modification because the City's Water Management and Conservation Plan (WMCP) expired on October 1, 2010.

The wells req ested under this application are located within a five-mile radius of the City's municipal we is. Under OAR 690-507-0060(3)(a)(B), groundwater use from the basalt reservoir within a five-nile radius around any municipal well of the City could be limited to only

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municipal uses, group domestic uses, or statutorily exempt groundwater uses if the City has an approved WMCP in effect. Because the City's WMCP expired on October 1, 2010, OAR 690-507-0030(3)(a)(B) does not affect this application. Therefore, the Umatilla Basin Program allows the proposed use.

The only basis for the PFO's recommended denial of the application was that the Umatilla Basin Program did not allow the proposed use. The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Les Peterson withdrew his protest and request for hearing on February ____, 2011, so no contested case hearing is required.

Order
Application G-16359 therefore is approved with the above modifications to the Proposed Final Order, and Permit G is issued as limited by the conditions set forth therein.
DATED February, 2011
Phillip C. Ward, Director
Water Resources Department
This document was prepared by If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at
If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights." If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.
If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.
Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

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ATTACHMENT B



STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND ROAD WALLA WALLA, WA 99362

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: WELL IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: IRRIGATION FROM MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATIONS:

SWSW, SECTION 4, T5N, R36E, W.M.; 480 FEET NORTH & 130 FEET EAST FROM SW CORNER, SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 NW 1/4 40.0 ACRES
SE 1/4 NW 1/4 40.0 ACRES
NE 1/4 SW 1/4 40.0 ACRES
NW 1/4 SW 1/4 40.0 ACRES
SW 1/4 SW 1/4 40.0 ACRES
SE 1/4 SW 1/4 40.0 ACRES
SECTION 4
NE 1/4 NE 1/4 20.0 ACRES
NW 1/4 NE 1/4 40.0 ACRES
NE 1/4 NW 1/4 40.0 ACRES
SE 1/4 NW 1/4 10.0 ACRES

FEB 0 7 2011
WATER RESOURCES DEPT
SALEM, OREGON

PERMIT G-_

PAGE 2

SECTION 9 TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured during the period February 15 through March 15. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

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Before Use of Water Takes Place

Initial and Annual Measurements

WATER RESOURCES DEPT SALEM, OREGON

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water Has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

(A) Identify each well with its associated measurement; and

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- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate of volume of withdrawal from, the well(s) if annual water level measurements reveal any of the following events:

- (A) An average water level decline of three or more feet per year for five consecutive years; or
- (B) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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.

STANDARD CONDITIONS

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.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements as alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

WATER RESOURCES DEPT
PERMIT GALEM, OREGON

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every 10 years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Complete application of the water shall be made within five years of the date of permit issuance. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued February , 2011

Phillip C. Ward, Director Water Resources Department

RECEIVED

FEB 07 2011

WATER RESOURCES DEPT SALEM, OREGON

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right)
Application G-16359 in the Name of) SETTLEMENT
Les Peterson) AGREEMENT

The Oregon Water Resources Department (the "Department") and Les Peterson ("Applicant") do hereby stipulate and agree as follows:

Background

- A. On December 30, 2004, Applicant submitted to the Department an application for a groundwater permit (Application G-16359).
- B. On February 18, 2005, the Department issued Initial Review Determinations (the "Initial Review") regarding Application G-16359. The Initial Review stated: "The use of water from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507, the Umatilla Basin Program." (Emphasis added.) The Initial Review also explained that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater (the "City") were approved before the Proposed Final Order ("PFO") protest deadline for the application passed.
- C. The public comment period for Application G-16359 closed on March 24, 2005. No written comments were received during the 30-day period.
- D. On March 24, 2005, the Department approved the City's WMCP. The final order that approved the WMCP stated: "The City of Milton-Freewater Water Management and Conservation Plan is approved and shall remain in effect until October 1, 2010, unless this approval is rescinded pursuant to OAR 690-086-0920."
- E. On June 7, 2005, the Department issued a PFO that recommended denial of Application G-16359 on the basis that, following approval of the City's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well. The PFO provided no other basis for denial of Application G-16359.
- F. On July 21, 2005, Applicant submitted a timely protest and request for hearing ("Protest"). The City requested standing, as provided in ORS 537.621(6) and OAR 690-310-0160(2), to participate in any future contested case or other legal proceeding relative to Application G-16395.
- G. On September 2, 2010, Applicant (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the PFOs issued by the Department regarding their respective applications.

- H. On October 1, 2010, the City's WMCP expired. The Department received a draft WMCP from the City on November 30, 2010, but the Department has not approved the draft WMCP. Therefore, the City does not have a WMCP in effect. Because the Department's approval of the City's WMCP was the sole reason the Department issued a PFO that recommended denial of Application G-16364, the Department may now approve Application G-16364 now that the WMCP is no longer in effect.
- The Department and Applicant agree that the issues raised in the Protest can be resolved solely on the following terms.

Terms of the Agreement

- Applicant agrees to withdraw his Protest and his request for a consolidated contested case hearing.
- Upon Applicant's withdrawal of his Protest and his request for a consolidated contested
 case hearing, the Department agrees to issue a final order approving Application G-16359
 in the form of Attachment A and a permit in the form of Attachment B.

Les Peterson	Date	
Ecs Teterson	Date	
Phillip C. Ward, Director Oregon Water Resources Department	Date	

ATTACHMENT A



Oregon Water Resources Department Water Rights/Adjudications Division

Water Rights Application Number G-16359

Final Order

Hearing and Appeal Rights

Under the provisions of ORS 537.170 and ORS 537.622, the applicant may request a contested case hearing by submitting the information required for a protest under ORS 537.153(6) or ORS 537.621(7) to the Department within 14 days after the date of mailing of this order as shown below. If a contested case hearing is requested by the applicant, the Department must schedule one. In the contested case hearing, however, only those issues based on the modifications to the Proposed Final Order may be addressed.

ORS 536.075 allows for additional appeal rights for other than contested case. This is a Final Order in other than a 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.

This statement of judicial review rights does not create a right to judicial review of this order, if judicial review is otherwise precluded by law. Where no changes have been made to a Proposed Final Order on a water right application and no protests have been filed during the protest period, the Final Order is not subject to judicial review.

Application History

On December 30, 2004, Les Peterson submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order (PFO) on June 7, 2005 that recommended denial of the application on the ground that the Umatilla Basin Program does not allow the proposed use.

On July 21, 2005, Les Peterson submitted a timely protest and request for hearing. The City of Milton-Freewater (City) requested standing to participate in any future contested case or other legal proceeding relative to Application G-16359, pursuant to ORS 537.621(6) and OAR 690-310-0160(2).

The Department's continuing evaluation reveals that the PFO requires modification because the City's Water Management and Conservation Plan (WMCP) expired on October 1, 2010.

The wells requested under this application are located within a five-mile radius of the City's municipal wells. Under OAR 690-507-0060(3)(a)(B), groundwater use from the basalt reservoir within a five-mile radius around any municipal well of the City could be limited to only

municipal uses, group domestic uses, or statutorily exempt groundwater uses if the City has an approved WMCP in effect. Because the City's WMCP expired on October 1, 2010, OAR 690-507-0030(3)(a)(B) does not affect this application. Therefore, the Umatilla Basin Program allows the proposed use.

The only basis for the PFO's recommended denial of the application was that the Umatilla Basin Program did not allow the proposed use. The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Les Peterson withdrew his protest and request for hearing on February ____, 2011, so no contested case hearing is required.

Order
Application G-16359 therefore is approved with the above modifications to the Proposed Final Order, and Permit G is issued as limited by the conditions set forth therein.
DATED February, 2011
Phillip C. Ward, Director
Water Resources Department
This document was prepared by If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions.
You can reach me at
If you have questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights." If you have previously filed a protest and want to know its status, please contact Patricia McCarty at 503-986-0820.
If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.
Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1266, Fax: 503-986-0901.

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ATTACHMENT B



STATE OF OREGON

COUNTY OF UMATILLA

PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS PERMIT IS HEREBY ISSUED TO

LES PETERSON 1415 HIGHLAND ROAD WALLA WALLA, WA 99362

The specific limits and conditions of the use are listed below.

APPLICATION FILE NUMBER: G-16359

SOURCE OF WATER: WELL IN BIRCH CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 350.0 ACRES

MAXIMUM RATE: 4.38 CUBIC FEET PER SECOND

PERIOD OF USE: IRRIGATION FROM MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: DECEMBER 30, 2004

WELL LOCATIONS:

SWSW, SECTION 4, T5N, R36E, W.M.; 480 FEET NORTH & 130 FEET EAST FROM SW CORNER, SECTION 4

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE ¼ NW ¼ 40.0 ACRES
SE ¼ NW ¼ 40.0 ACRES
NE ¼ SW ¼ 40.0 ACRES
NW ¼ SW ¼ 40.0 ACRES
SW ¼ SW ¼ 40.0 ACRES
SE ¼ SW ¼ 40.0 ACRES
SE ¼ SW ¼ 40.0 ACRES
SECTION 4
NE ¼ NE ¼ 20.0 ACRES
NW ¼ NE¼ 40.0 ACRES
NE ¼ NW ¼ 40.0 ACRES

SE 1/4 NW 1/4 10.0 ACRES

SECTION 9 TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a 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.
- B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured during the period February 15 through March 15. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water Has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

(A) Identify each well with its associated measurement; and

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- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate of volume of withdrawal from, the well(s) if annual water level measurements reveal any of the following events:

- (A) An average water level decline of three or more feet per year for five consecutive years; or
- (B) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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.

STANDARD CONDITIONS

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.

If substantial interference with a senior water right occurs due to withdrawal of water from any well listed on this permit, then use of water from the well(s) shall be discontinued or reduced and/or the schedule of withdrawal shall be regulated until or unless the Department approves or implements as alternative administrative action to mitigate the interference. The Department encourages junior and senior appropriators to jointly develop plans to mitigate interferences.

The wells shall be constructed in accordance with the General Standards for the Construction and Maintenance of Water Wells in Oregon. The works shall be equipped with a usable access port, and may also include an air line and pressure gauge adequate to determine water level elevation in the well at all times.

Where two or more water users agree among themselves as to the manner of rotation in the use of water and such agreement is placed in writing and filed by such water users with the watermaster, and such rotation system does not infringe upon such prior rights of any water user not a party to such rotation plan, the watermaster shall distribute the water according to such agreement.

PAGE 4

Prior to receiving a certificate of water right, the permit holder shall submit the results of a pump test meeting the department's standards, to the Water Resources Department. The Director may require water level or pump test results every 10 years thereafter.

Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

This permit is for the beneficial use of water without waste. The water user is advised that new regulations may require the use of best practical technologies or conservation practices to achieve this end.

By law, the land use associated with this water use must be in compliance with statewide landuse goals and any local acknowledged land-use plan.

The use of water shall be limited when it interferes with any prior surface or ground water rights.

Complete application of the water shall be made within five years of the date of permit issuance. If the water is not completely applied before this date, and the permittee wishes to continue development under the permit, the permittee must submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after complete application of water to the proposed use, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner (CWRE).

Issued February , 2011

Phillip C. Ward, Director Water Resources Department



900 S.W. Fifth Avenue, Suite 2600 Portland, Oregon 97204 main 503 224 3380 fax 503 220 2480 www.stoel.com

February 4, 2011

DAVID E. FILIPPI Direct (503) 294-9529 defilippi@stoel.com

VIA ELECTRONIC AND U.S. MAIL

Ms. Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
725 Summer Street NE, Suite A
Salem, OR 97301-1271

Re: Proposed settlement agreement for Application G-16359

Dear Patricia:

Les Peterson ("Peterson") requests that the Oregon Water Resources Department (the "Department") issue a final order approving Water Right Application No. G-16359 (the "Application"). As explained more fully in this letter, the Department issued a proposed final order in 2005 that recommended denial of the Application. The sole basis for the recommendation was that, following approval of the City of Milton-Freewater's Water Conservation and Management Plan ("WMCP"), the applicable basin plan prohibited the use of groundwater for agricultural purposes if the source of groundwater was a basalt reservoir within a five-mile radius of any municipal well. OAR 690-507-0060(3)(a)(B). However, the City's WMCP expired on October 1, 2010. Because no other basis exists for denying the Application, the Department should issue a final order approving the Application and issue a permit.

Enclosed you will find a proposed settlement agreement under which Peterson would agree to withdraw his protest of the Department's proposed final order regarding the Application in exchange for the Department's agreement to issue a final order approving the Application and issue a permit.

I. BACKGROUND

Peterson submitted the Application to the Department on December 30, 2004. On February 18, 2005, the Department issued its Initial Review Determinations (the "Initial Review") regarding the Application. The Initial Review stated: "The use of water from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507, the Umatilla Basin Program."



Ms. Patricia McCarty February 4, 2011 Page 2

The Initial Review also explained that the Department's conclusions were subject to change if a WMCP submitted by the City were approved before the proposed final order protest deadline for the Application passed. The public comment period for the Application closed on March 24, 2005, but the Department received no written comments by the deadline.

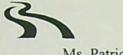
On March 22, 2005, the Department issued a final order approving a groundwater application submitted by Seven Hills Properties, LLC ("Seven Hills") and issued a final groundwater permit to Seven Hills. Like Peterson's application, the Seven Hills application proposed pumping groundwater within a five-mile radius of the City's municipal wells. Nevertheless, the Department issued the permit because the City's WMCP was not in effect.

On March 24, 2005, the Department approved the City's WMCP. Then, on June 7, 2005, the Department issued a proposed final order that recommended denial of the Application on the basis that, following approval of the City's WMCP, the applicable basin plan prohibited the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well. OAR 690-507-0060(3)(a)(B). The proposed final order provided no other basis for the denial.

On July 21, 2005, Peterson submitted a timely protest and request for hearing ("Protest"). The City requested standing, as provided in ORS 537.621(6) and OAR 690-310-0160(2), to participate in any future contested case or other legal proceeding relative to the Application.

On September 2, 2010, Peterson (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the proposed final orders issued by the Department regarding their respective applications.

The City's WMCP expired on October 1, 2010. Although the Department received a draft WMCP from the City on November 30, 2010, the draft WMCP has not been approved and, thus, the City does not have a full-time conservation program in effect.



Ms. Patricia McCarty February 4, 2011 Page 3

II. DISCUSSION

A. The City does not have a full-time conservation program in effect and OAR 690-507-0060(3)(a)(B) does not apply.

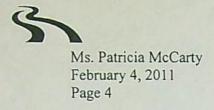
Based on the City's Petition for Reconsideration of Final Order and Permit for Application G-17395 ("Petition"), Peterson anticipates that the City will contend that OAR 690-507-0060(3)(a)(B) does apply because the City's existing conservation program is a full-time conservation program, regardless of whether it has been approved by the Department. That contention is wrong and it directly contradicts the 2005 settlement agreement between the Department, the City, and Seven Hills (the "Settlement Agreement"). See Settlement Agreement, In the Matter of Proposed Water Management and Conservation Plan for the City of Milton-Freewater, Umatilla County, Oregon (2005) (copy attached).

First, the City seems to assume that any program that it designates a "conservation program" necessarily satisfies OAR 690-507-0030(3)(a)(B) because the rule does not explicitly require an "approved" conservation program. However, mere absence of the word "approved" from the rule does not eliminate the Department's obligation to determine whether the City has "a full-time conservation program in effect." OAR 690-507-0030(3)(a)(B).

The rule provides cities with a powerful tool to protect municipal wells from interference. Yet, that tool is not absolute. In order to exercise it, a city must have "a full-time conservation program in effect." *Id.* This ensures that the city is doing its part to conserve water. The requirement would be meaningless if the Department lacked any role to play in determining whether a city's conservation program satisfied the rule. That is, a program that does not actually conserve water would not satisfy the rule. Further, use of the term "in effect" implies that the program must have an effect on water conservation. Thus, implicit in the rule is a requirement that the Department determine whether a City has such a program in effect.

Second, the City has already conceded that an approved WMCP is required before OAR 690-507-0030(3)(a)(B) applies. As part of the Settlement Agreement, the City (and the Department) stipulated and agreed to the following:

If the Department were to issue a final order approving the City's WMCP prior to the issuance of Seven Hills' groundwater permit, then the Seven Hills' Application would be subject to a different classification under the Umatilla Basin



Program rules in the midst of the review process. The application of a new and different classification could substantially alter and severely delay review of the Seven Hills' Application.

Thus, the City admitted and agreed that the applicability of OAR 690-507-0030(3)(a)(B) does depend on the Department's approval of a WMCP. Put differently, whatever conservation program the City had in effect prior to the approval of its WMCP in 2005 did not satisfy the requirement that the City "have a full-time conservation program in effect." OAR 690-507-0030(3)(a)(B). If approval of a WMCP means a conservation program is "in effect," then expiration of a WMCP means the conservation program is not "in effect." As such, the City has not had a full time conservation program in effect since October 1, 2010.

B. The Department should issue a final order approving the Application and granting the permit.

The Department's approval of the City's WMCP was the sole reason the Department recommended denial of the Application in its proposed final order. Because the City no longer has a WMCP in effect, the Department should now issue a final order approving the Application and issue a permit. Failure to approve the application and issue the permit would treat Peterson differently from Seven Hills.

Peterson's Protest of the proposed final order requires the Department to conduct a contested case hearing. See ORS 537.621(9)(b)(B). However, Peterson is willing to withdraw his Protest if the Department agrees to the enclosed proposed settlement agreement.

The City's request for standing pursuant to ORS 537.621(6) and OAR 690-310-0160(2) does not preclude the Department from issuing a final order. ORS 537.621(6) provides: "Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order." OAR 690-310-0160(2) simply parrots the language of ORS 537.621(6).

Neither ORS 537.621(6) nor OAR 690-310-160(2) gives the City the right to a contested case proceeding; they provide the City only the right to participate in a contested case proceeding if the Department holds such a proceeding. Only the *applicant* has a right to require that the Department hold a contested case proceeding. See ORS 537.621(9)(b)(B). This does not leave



Ms. Patricia McCarty February 4, 2011 Page 5

the City without an avenue to challenge a final order issued by the Department. Under ORS 537.621(6), the City may seek judicial review of the final order. See also ORS 537.625(2)(b).

III. CONCLUSION

For the foregoing reasons, Peterson requests that the Department agree to issue a final order approving the Application as proposed in the enclosed settlement agreement.

Very truly yours,

David E. Filippi

DEF/kct

cc: Tom Paul, OWRD (via email only)

Dwight French, OWRD (via email only)

Client (via email only)

Enclosure

BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Proposed Water)	
Management and Conservation Plan for the)	SETTLEMENT
City of Milton-Freewater, Umatilla County,)	AGREEMENT
Oregon)	

The Oregon Water Resources Department (the "Department"), the City of Milton-Freewater (the "City"), and Norm McKibben and Seven Hills Properties, LLC (collectively, "Seven Hills"), do hereby stipulate and agree as follows:

Background

- A. On August 21, 2000, the City submitted a proposed Water Management and Conservation Plan ("WMCP") to the Department for review and consideration. The proposed WMCP was modified in part on November 10, 2004.
- B. On December 6, 2004, OWRD issued a Proposed Final Order ("PFO") recommending approval of the City's proposed WMCP.
- C. On January 5, 2005, Seven Hills submitted a timely protest and appeal of the PFO for the City's WMCP.
- D. On or about October 5, 2004, Seven Hills filed an application for a groundwater permit (App. No. G-16322) (the "Seven Hills' Application"). The public comment period for the Initial Review of the Seven Hills' Application closed on December 30, 2004. Other than a submittal by Seven Hills in response to a request for additional information by the Department, no comments were filed during the Initial Review public comment period. On January 18, 2005, the Department issued a PFO for the Seven Hills' Application and a draft groundwater permit. The period within which to file a protest to the PFO for the Seven Hills' Application closes on March 4, 2005. Assuming no protests to the PFO for the Seven Hills' Application are filed, a final groundwater permit may be issued to Seven Hills as early as mid-March 2005.
- E. If the Department were to issue a final order approving the City's WMCP prior to the issuance of Seven Hills' groundwater permit, then the Seven Hills' Application would be subjected to a different classification under the Umatilla Basin Program rules in the midst of the review process. The application of a new and different classification could substantially alter and severely delay review of the Seven Hills' Application.
- F. The Department, the City, and Seven Hills agree that the issues raised in the Seven Hills' protest and appeal of the PFO recommending approval of the City's proposed WMCP can be resolved solely on the following terms.

Page 1 of 2 - SETTLEMENT AGREEMENT REGARDING PROPOSED WATER MANAGEMENT AND CONSERVATION PLAN FOR THE CITY OF MILTON-FREEWATER, UMATILLA COUNTY, OREGON



900 S.W. Fifth Avenue, Suite 2600 Portland, Oregon 97204 main 503 224.3380 fax 503.220.2480

February 4, 2011

DAVID E. FILIPPI Direct (503) 294-9529 defilippi@stoel.com

VIA ELECTRONIC AND U.S. MAIL

Ms. Patricia McCarty Protest Program Coordinator Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271 RECEIVED

FEB 07 2011

WATER RESOURCES DEPT SALEM, OREGON

Re: Proposed settlement agreement for Application G-16359

Dear Patricia:

Les Peterson ("Peterson") requests that the Oregon Water Resources Department (the "Department") issue a final order approving Water Right Application No. G-16359 (the "Application"). As explained more fully in this letter, the Department issued a proposed final order in 2005 that recommended denial of the Application. The sole basis for the recommendation was that, following approval of the City of Milton-Freewater's Water Conservation and Management Plan ("WMCP"), the applicable basin plan prohibited the use of groundwater for agricultural purposes if the source of groundwater was a basalt reservoir within a five-mile radius of any municipal well. OAR 690-507-0060(3)(a)(B). However, the City's WMCP expired on October 1, 2010. Because no other basis exists for denying the Application, the Department should issue a final order approving the Application and issue a permit.

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Ms. Patricia McCarty February 4, 2011 Page 2

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On March 24, 2005, the Department approved the City's WMCP. Then, on June 7, 2005, the Department issued a proposed final order that recommended denial of the Application on the basis that, following approval of the City's WMCP, the applicable basin plan prohibited the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal well. OAR 690-507-0060(3)(a)(B). The proposed final order provided no other basis for the denial.

On July 21, 2005, Peterson submitted a timely protest and request for hearing ("Protest"). The City requested standing, as provided in ORS 537.621(6) and OAR 690-310-0160(2), to participate in any future contested case or other legal proceeding relative to the Application.

On September 2, 2010, Peterson (regarding Application G-16359) and Joe Frazier (regarding Application G-16364) formally requested a consolidated contested case hearing for their respective protests to the proposed final orders issued by the Department regarding their respective applications.

The City's WMCP expired on October 1, 2010. Although the Department received a draft WMCP from the City on November 30, 2010, the draft WMCP has not been approved and, thus, the City does not have a full-time conservation program in effect.

FEB 07 2011

WATER RESOURCES DEPT SALEM, OREGON



Ms. Patricia McCarty February 4, 2011 Page 3

II. DISCUSSION

A. The City does not have a full-time conservation program in effect and OAR 690-507-0060(3)(a)(B) does not apply.

Based on the City's Petition for Reconsideration of Final Order and Permit for Application G-17395 ("Petition"), Peterson anticipates that the City will contend that OAR 690-507-0060(3)(a)(B) does apply because the City's existing conservation program is a full-time conservation program, regardless of whether it has been approved by the Department. That contention is wrong and it directly contradicts the 2005 settlement agreement between the Department, the City, and Seven Hills (the "Settlement Agreement"). See Settlement Agreement, In the Matter of Proposed Water Management and Conservation Plan for the City of Milton-Freewater, Umatilla County, Oregon (2005) (copy attached).

First, the City seems to assume that any program that it designates a "conservation program" necessarily satisfies OAR 690-507-0030(3)(a)(B) because the rule does not explicitly require an "approved" conservation program. However, mere absence of the word "approved" from the rule does not eliminate the Department's obligation to determine whether the City has "a full-time conservation program in effect." OAR 690-507-0030(3)(a)(B).

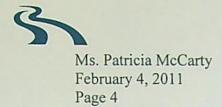
The rule provides cities with a powerful tool to protect municipal wells from interference. Yet, that tool is not absolute. In order to exercise it, a city must have "a full-time conservation program in effect." *Id.* This ensures that the city is doing its part to conserve water. The requirement would be meaningless if the Department lacked any role to play in determining whether a city's conservation program satisfied the rule. That is, a program that does not actually conserve water would not satisfy the rule. Further, use of the term "in effect" implies that the program must have an effect on water conservation. Thus, implicit in the rule is a requirement that the Department determine whether a City has such a program in effect.

Second, the City has already conceded that an approved WMCP is required before OAR 690-507-0030(3)(a)(B) applies. As part of the Settlement Agreement, the City (and the Department) stipulated and agreed to the following:

If the Department were to issue a final order approving the City's WMCP prior to the issuance of Seven Hills' groundwater permit, then the Seven Hills' Application would be subject to a different classification under the Umatilla Basin

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Program rules in the midst of the review process. The application of a new and different classification could substantially alter and severely delay review of the Seven Hills' Application.

Thus, the City admitted and agreed that the applicability of OAR 690-507-0030(3)(a)(B) does depend on the Department's approval of a WMCP. Put differently, whatever conservation program the City had in effect prior to the approval of its WMCP in 2005 did not satisfy the requirement that the City "have a full-time conservation program in effect." OAR 690-507-0030(3)(a)(B). If approval of a WMCP means a conservation program is "in effect," then expiration of a WMCP means the conservation program is not "in effect." As such, the City has not had a full time conservation program in effect since October 1, 2010.

B. The Department should issue a final order approving the Application and granting the permit.

The Department's approval of the City's WMCP was the sole reason the Department recommended denial of the Application in its proposed final order. Because the City no longer has a WMCP in effect, the Department should now issue a final order approving the Application and issue a permit. Failure to approve the application and issue the permit would treat Peterson differently from Seven Hills.

Peterson's Protest of the proposed final order requires the Department to conduct a contested case hearing. See ORS 537.621(9)(b)(B). However, Peterson is willing to withdraw his Protest if the Department agrees to the enclosed proposed settlement agreement.

The City's request for standing pursuant to ORS 537.621(6) and OAR 690-310-0160(2) does not preclude the Department from issuing a final order. ORS 537.621(6) provides: "Any person who supports a proposed final order may request standing for purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order." OAR 690-310-0160(2) simply parrots the language of ORS 537.621(6).

Neither ORS 537.621(6) nor OAR 690-310-160(2) gives the City the right to a contested case proceeding; they provide the City only the right to participate in a contested case proceeding if the Department holds such a proceeding. Only the *applicant* has a right to require that the Department hold a contested case proceeding. See ORS 537.621(9)(b)(B). This does not leave

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WATER RESOURCES DEPT SALEM, OREGON



Ms. Patricia McCarty February 4, 2011 Page 5

the City without an avenue to challenge a final order issued by the Department. Under ORS 537.621(6), the City may seek judicial review of the final order. See also ORS 537.625(2)(b).

III. CONCLUSION

For the foregoing reasons, Peterson requests that the Department agree to issue a final order approving the Application as proposed in the enclosed settlement agreement.

Very truly yours,

David E. Filippi

DEF/kct

cc: Tom Paul, OWRD (via email only)

Dwight French, OWRD (via email only)

Client (via email only)

Enclosure

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FEB 07 2011

WATER RESOURCES DEPT SALEM, OREGON

Patricia McCarty

From: Patricia McCarty

Sent: Thursday, September 23, 2010 1:36 PM

To: 'defilippi@stoel.com'

Subject: G-16264 Frazier; G-16359 Peterson

Hi David,

Please contact me at your convenience and let me know if you have in mind options for resolution of these protests. Mr. Frazier's and Mr. Peterson's protests will be referred to the Office of Administrative Hearings for a hearing as department resources allow. I don't anticipate that a referral will take place soon, so if there are options for resolution outside of a hearing process, we should discuss those and see where we can get.

Thank you,

Patricia McCarty
Protest Program Coordinator
Oregon Water Resources Department
(503) 986-0820

Patricia McCarty

From: Filippi, David [DEFILIPPI@stoel.com]

Sent: Thursday, September 02, 2010 2:50 PM

To: Patricia McCarty; patricia.e.mccarty@state.or.us

Cc: Pagel, Martha; cbentz@yturrirose.com; Les Peterson; Joe Frazier

Subject: FW: Scanned document from eCopy (ecopy@stoel.com)

Attachments: 9-2-10 Letter to Patricia McCarty at OWRD.PDF

Please see attached letter. Thank you.

David E. Filippi

Stoel Rives LLP | 900 SW Fifth Ave., Suite 2600 | Portland, OR 97204

Direct: (503) 294-9529 | Fax: (503) 220-2480 | defilippi@stoel.com | www.stoel.com



900 S.W. Fifth Avenue, Suite 2600 Portland, Oregon 97204 main 503:224:3380 fax 503:220 2480 www.stoel.com

September 2, 2010

DAVID E. FILIPPI Direct (503) 294-9529 defilippi@stoel.com

VIA U.S. MAIL AND ELECTRONIC MAIL (PATRICIA.E.MCCARTY@STATE.OR.US)

Ms. Patricia McCarty Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301

RE: Request for Consolidated Contested Case Hearing for Protests to PFOs for Applications G-16359 and G-16364

Dear Ms. McCarty:

I understand you requested that Mr. Les Peterson (regarding application G-16359) and Mr. Joe Frazier (regarding application G-16364) (collectively, the "Applicants") respond to the Department no later than September 3, 2010, as to whether they wished to proceed to hearing with respect to their protests to the PFOs issued by the Department regarding their respective applications. I also understand that both Applicants have notified you in writing that they do wish to proceed to hearing. Stoel Rives LLP represented both Applicants with respect to the submittal of their respective initial protests, and we are hereby providing notice to you and the Department that we will be representing both Applicants in the requested hearings.

Because the factual background and legal issues surrounding the PFOs and protests for Mr. Peterson's application G-16359 and Mr. Frazier's application G-16364 are identical, we hereby request that the two contested cases be consolidated into a single contested case proceeding. As such, we would request that you make a consolidated referral to the Office of Administrative Hearings, requesting a consolidated hearing in front of an ALJ. Following the initial pre-hearing conference with the ALJ, we are hopeful that we will be able to come to a quick agreement with the Department as to a set of stipulated facts, so as to allow the legal issues to be briefed and presented to the ALJ expeditiously. Further, we are aware that the City of Milton-Freewater requested party status with respect to Mr. Peterson's application, but missed the deadline for requesting party status with respect to Mr. Frazier's application. I have discussed this briefly with Ms. Martha Pagel. Ms. Pagel will be conferring with Mr. Cliff Bentz as to who will be representing the City on these matters going forward, and I hope to discuss with Ms. Pagel or Mr. Bentz soon the City's position with respect to the requested consolidated hearing.



Ms. Patricia McCarty September 2, 2010 Page 2

Please call me if you have any questions regarding our representation or requests on behalf of the Applicants.

Sincerely

David E. Filippi

cc (via email): Ms. Martha Pagel

Mr. Cliff Bentz Mr. Les Peterson Mr. Joe Frazier



North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

VIA CERTIFIED LETTER

July 13, 2010

Les Peterson 1415 Highland Rd. Walla Walla, WA 99362

Re: Protest to Oregon Water Resources Department's (OWRD) Proposed Final Order on Application # G-16359 in the name of Les Peterson.

Dear Mr. Peterson,

You applied for a water use permit on June 10, 2004. The OWRD proposed to deny the application on June 7, 2005. Your protest was received July 22, 2005. You application was placed on administrative hold until December 18, 2009 so that you could try to come to an agreement with the City of Milton-Freewater. Since December 18, 2009, the Department has not received any further information from you.

In your protest, you requested a contested case hearing. If you wish to proceed to a hearing, the Department will refer the case to the Office of Administrative Hearings for a hearing in front of an administrative law judge. That process usually requires you or your attorney to be present to provide evidence supporting your position and rebutting the Department's evidence.

If you would prefer to avoid a contested case hearing, you may withdraw the protest by submitting a written statement notifying the Department that you withdraw the protest. If you elect to withdraw the protest, the Department will issue a Final Order denying the application.

Please let me know if you wish to proceed to a hearing by September 3, 2010. If I do not hear from you by that date, the Department will issue a final order denying the application for a permit soon thereafter.

Sincerely,

Patricia McCarty

Protest Program Coordinator

Patricia Mc Carty

Water Rights Division Phone: 503-986-0820 Patricia McCartney
Protest Program Coordinator
Oregon Water Resources Department

RE: Protest of Proposed Final Order on Application #G-16359 in the name of Les Peterson

Dear Patricia McCarty,

Harvest is just winding down and I've had to devote my attention to completing it.

In response to your inquiry it is still my wish to proceed with a contested case hearing. My desire to have a hearing in front of an administrative law judge has grown exponentially as attempts to reach granting an exception by the City of Milton-Freewater have been ignored.

I will contact counsel and hopefully we can have this issue resolved before years end. However, this process will likely involve a round of legal briefs (motion for summary judgment, response brief, reply brief) and other arguments.

Would you like a formal letter from my counsel also? When I get back to this issue after harvest I could have him call you? Let me know if you need more technical information or anything else.

Sincerely,

Les Peterson

1415 Highland Road

Walla Walla, Wa. 99362

Lu Peterson

Fax 509-522-1895

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AUG 1 8 2010

WATER RESOURCES DEPT SALEM, OREGON December 6, 2008

Patricia McCartney
Protest Program Coordinator
Oregon Water Resources Department

RE: Protest of Proposed Final Order on Application #G-16359 in the name of Les Peterson

Dear Patricia McCarty,

Negotiations regarding an exception to the Umatilla Basin Program are on going with the City of Milton-Freewater. However, currently Mr. Cliff Bentz, counsel for the city, is joining the state legislature and this change will likely delay things further before my counsel, David Fillippi, and the new representative for the City of Milton-Freewater are back up to speed.

Let me know if you need correspondence from counsel for more technical information or anything else.

Sincerely,

Les Peterson

1415 Highland Road

Walla Walla, Wa. 99362

Les Peterson

Fax 509-522-1895

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DEC 1 5 2008

WATER RESOURCES DEPT SALEM, OREGON



North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1266 503-986-0900 FAX 503-986-0904

VIA CERTIFIED LETTER

October 28, 2008

Les Peterson 1415 Highland Road Walla Walla, WA 99362

RE: Protest of Proposed Final Order on Application # G-16359 in the name of Les Peterson

Dear Mr. Peterson,

The Water Resources Department proposed to deny the above application for a water use permit on June 7, 2005. Your protest was received July 22, 2005. The Department cannot approve the application because the Umatilla Basin Program Rules do not allow the use of ground water for irrigation. If you wish to receive approval for such a use you may seek an exception to the Basin Program.

A contested case hearing was requested at the time of the protest. That process usually requires the presence of you or your attorney. If you would prefer to avoid a contested case hearing on the proposed denial, you may withdraw the protest by submitting a written statement notifying the Department that you withdraw the protest. If you elect to withdraw the protest, the Department will issue a Final Order denying the application. I will need to hear from you by December 15, 2008, or the protest will be referred to the Office of Administrative Hearings.

Sincerely,

Patricia McCarty

Protest Program Coordinator

Oregon Water Resources Department

503-986-0820



North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1266 503-986-0900 FAX 503-986-0904

October 28, 2008

Les Peterson 1415 Highland Road Walla Walla, WA 99362

RE: Protest of Proposed Final Order on Application # G-16359 in the name of Les Peterson

Dear Mr. Peterson,

The Water Resources Department received your letter of December 6, 2008. After discussion with David Filippi the Department has placed your application on administrative hold until December 18, 2009. After that date the Department will need to complete processing of your application. If you are unable to come to an agreement with the City of Milton-Freewater and have not withdrawn your protest to the Department's Proposed Final Order to deny the application, the protest will be scheduled for a contested case hearing.

Please contact me at the number below if you have any questions.

Sincerely,

Tatricia Mc Carty

Protest Program Coordinator

Oregon Water Resources Department

503-986-0820

CC Aave Filippi



North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1266 503-986-0900 FAX 503-986-0904

May 13, 2008

David E. Filippi Stoel Rives, LLP 900 SW Fifth Avenue, Suite 2600 Portland, OR 97204-1268

RE: Protest of Proposed Final Order on Application # G-16359 in the name of Les Peterson

Dear Mr. Filippi,

When I spoke with you recently about this protest, I suggested that if Mr. Peterson was interested in continuing to explore options to secure a ground water permit for the proposed well, he should request that the application be placed on administrative hold. You indicated that you thought a hold had been granted. The protest to the above PFO, submitted July 22, 2005, does contain a request to the Department to place the application on administrative hold. Unfortunately, the application file does not contain a copy of an approval or a denial of an administrative hold. If Mr. Peterson is interested in having the application placed on hold, I will be happy to do so. Please let me know by letter or e-mail at your convenience.

Enclosed is a copy of the Oregon Attorney General's advice on an aspect of the Umatilla Basin Program rules, OAR 690, Division 507. It may be useful information for your client if he is seeking the support of the City of Milton-Freewater for the proposed well.

Sincerely,

Patricia Mc Carty

Protest Program Coordinator

Oregon Water Resources Department

503-986-0820



North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1266 503-986-0900 FAX 503-986-0904

March 25, 2008

David E. Filippi Stoel Rives, LLP 900 SW Fifth Avenue, Suite 2600 Portland, OR 97204-1268

RE: Protest of Proposed Final Order on Application # G-16359 in the name of Les Peterson

Dear Mr. Filippi,

The Water Resources Department proposed to deny the above application for a water use permit on June 7, 2005. The applicant's protest was received July 22, 2005.

At this time, the Department is unlikely to approve the application. The City of Milton-Freewater has responded through counsel that it will not enter into any agreement allowing the well proposed in the application. The Umatilla Basin Program Rules do not include irrigation as a classified use of groundwater. Absent any such agreement or equivalent opportunity to overcome the Basin Program Rules, the Department cannot issue a permit for the proposed water use.

A contested case hearing was requested at the time of the protest. If the applicant wishes to proceed to a hearing the Department will begin the process of referring the case to the Office of Administrative Hearings. If you would prefer to avoid a contested case hearing on the proposed denial, you may withdraw the protest by submitting a written statement notifying the Department that you withdraw the protest. If you elect to withdraw the protest, the Department will issue a Final Order denying the application.

Please contact me at your earliest convenience and let me know what you would prefer.

Sincerely,

Patricia McCarty

Protest Program Coordinator

Oregon Water Resources Department

503-986-0820

Patricia McCarty

From: Patricia McCarty

Sent: Wednesday, January 23, 2008 4:07 PM

To: 'law@yturrirose.com'
Subject: For Cliff Bentz

Hello Cliff,

Congratulations on the replacement appointment. I am hoping that you had a chance to check with the City of Milton-Freewater about the applications for groundwater permits by Peterson (G-16359) and Frazier (G-16364). The last time we talked you were going to check with the city to see if they had any willingness to allow these wells within their protected 5-mile radius.

If this matter has been assigned to someone else in your office, I will be happy to work with them.

Sincerely,

Patricia McCarty
Protest Program Coordinator
Water Rights Division
Oregon Water Resources Department
725 Summer St. NE Suite A
Salem, OR 97301
Phone: 503-986-0820

Phone: 503-986-0820 Fax: 503-986-0901

3/25/08 PM

Spoke w/Cliff Bentz - mF will not exter agreement to allow the wells

YTURRI ROSE LLP

ATTORNEYS AT LAW 89 S.W. THIRD AVENUE

P.O. BOX 'S'

F-MAIL law@yturrirose.com

FACSIMILE

(541) 889-2432

ANTHONY YTURRI (1914-1999) GENE C. ROSE, RETIRED

RECEIVED NOV 0 7 2005 WATER RESOURCES DEPT SALEM, OREGON

CLIFF BENTZ * TIM J. HELFRICH * BRUNO J. JAGELSKI * SCOTT K. WARNER * DAVID R. AUXIER * JEFF R. WHEELER * SHAWNA D. PETERSON * M. GREGORY EMBREY ◊

CARL BURNHAM, JR.

· Licensed in Oregon and Idaho

O Licensed in Idaho

ONTARIO, OREGON 97914 (541) 889-5368

November 4, 2005

Mike Reynolds Oregon Water Resources 725 Summer Street NE, Suite A Salem OR 97301-1271

> Les Peterson, Water Rights Application No. G-16359 Re:

Dear Mike:

I have been retained by the City of Milton Freewater to assist it in responding to the application filed by Les Peterson, being Application No. G-16359.

Steve Applegate has been assisting and did file, on the City's behalf, the Request for Standing. I attach a copy of that Request for Standing for your review.

Could you please provide this office with copies of correspondence and the materials generated as this application process progresses? This would of course include notice of the hearings, further procedural actions, etc.

Thank you very much for your most kind assistance.

Very truly yours,

Yturri Rose LLP

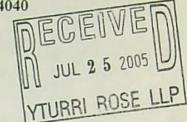
CSB/tm Enclosure

STEVEN P. APPLEGATE CONSULTING

3185 La Costa Loop South SALEM, OR 97302 Phone/fax (503)362-4040

July 20, 2005

Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271 ATTN: Kerry Lefever



REFERENCE: File G-16359, Les Peterson - Request for Standing

Dear Ms. Lefever:

I represent the City of Milton-Freewater (City) in regard to the above referenced file. The Oregon Water Resources Department (WRD) issued a Proposed Final Order (PFO) on this application on June 7, 2005. The PFO proposed denial of the application because it was determined that interference would occur between the applicant's well and those of the City.

The City supports the findings in the PFO and thus hereby requests standing, as provided in ORS 537.621(6) and OAR 690-310-160(2), to participate in any future contested case or other legal proceeding relative to this application. We enclose the statutory fee of \$50.

Obviously, the City has concerns about potential impacts of the proposed development on the continued production from their wells.

Any questions or other correspondence should be directed to:

City of Milton-Freewater P.O. Box 6 Milton-Freewater, OR 97862 ATTN: Delphine Palmer

Telephone: 541-938-5531; Fax 541-938-8224

Copies should also be sent to Mr. Cliff Bentz of Yturri Rose, Attorney of Record, and to myself.

Thank you,

Sincerely,

Steven P. Applegate

cc: Delphine Palmer Cliff Bentz NOV 0 7 2005

WATER RESOURCES DEPT SALEM, OREGON

Les Peterson 1415 Highland Road Walla Walla, Washington 99362 RECEIVED

JUL 2 5 2005 WATER RESOURCES DEPT SALEM, OREGON

June 19, 2005

Oregon Water Resources Department Water Resources Division Water Rights Application Number G-16359

Dear Oregon Water Resources Department,

As the applicant for the water right Number G-16359 my credentials include over twenty-eight years of farming. The ability to continue that livelihood as a family farm will be greatly enhanced with the versatility of wider crop choices and increased production given the water to allow it. The importance of crop production by any farmer requires no justification and is obviously in the public interest.

It seems to me that the Proposed Final Order regarding water rights application Number G-16359 written by the Oregon Water Resources Department provides the greatest strength for a rebuttal of the denial recommendation.

The "Application History" indicates an application received December 30,2004 was given an Initial Review and the Department gave public notice February 22,2005. There were no written comments received within 30 days. March 24, 2005 the Water Resources issues a final order approving a water and conservation Plan for the City of Milton-Freewater. On May 20, 2005 Mike Zwart determines the proposed well interferes with the city's wells.

To summarize: An application received in December 2004 given review and public notice was without problem until May 20,2005 when Mike Zwart says the proposed well will interfere with Milton-Freewaters wells. A statement rebutted in detail on pages 2 and 3 of the same letter under the heading:"Groundwater Findings Under OAR 690-09. The Department determined, consistent with OAR 690-09-0040(4), that the proposed ground water use will not have the potential for substantial interference with the nearby water sources."

Further under the section "Findings of Fact." "The Groundwater Section finds, per OAR 390.835(9), there is not 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."

The "Conclusions of Law" state many positive issues in favor of the application.

Water is available for the proposed use. The proposed use would not injure other water rights. The proposed use complies with other rules of the Water Resources Commission. The proposed use is compatible with applicable land use plans. No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

The review of The Proposed Final Order indicates to me a positive report requiring the acceptance of the application. To accomplish this the only thing to be said is," The March 24, 2005 Water and Conservation Plan for the City of Milton-Freewater will become effective on the date issued!" This would serve the best interest of all parties and could only be considered fair in the public's interest. Any applications made prior to that date would follow normal procedure without difficulty.

One last point should be made without use of the Proposed Final Order. Measure 37 is a new statute and provides that," the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value." Use Oregon Administrative Rule, OAR 125-145-0000 for reference.

"If the state finds that a land use regulation of a state agency restricts the use of the owner's property, and reduces its value then the state will have a choice to:

---pay the owner of the property an amount equal to the reduction in value, or

----modify, change or not apply the regulation to the owner's property."

Land is a finite EXISTING resource which the increasing world population must use efficiently. Water is an AVAILABLE resource which can increase the productive use of that land. In this specific case it is my request that the AVAILABLE water resource be allowed on this EXISTING land resource. To do otherwise is not in the public interest. It is really that simple.

A response by my legal representative will be forthcoming but this personal response will be sent in an effort to be timely.

It is at this point I would like to formally request a "contested case hearing." Should the Department revisit this Proposed Final Order and gain new considerations please let me know.

Thank you,

1-6 0.

Les Peterson

Peterson Farms

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JUL 2 5 2005 WATER RESOURCES DEPT SALEM, OREGON



RECEIVED OVER THE COUNTER

900 S.W. Fifth Avenue, Suite 2600 Portland, Oregon 97204 main 503:224:3380 fax 503:220:2480 www.stoel.com

July 21, 2005

DAVID E. FILIPPI Direct (503) 294-9529 defilippi@stoel.com

RECEIVED

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

VIA FACSIMILE AND OVERNIGHT MAIL

Mr. Mike Reynolds Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271

Re: In the Matter of the Proposed Final Order for Denying Water Rights Application

No. G-16359

Dear Mr. Reynolds:

Please find enclosed for filing the Protest and Request for Hearing of Les Peterson in the abovereferenced matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

David E. Filippi

Enclosures

cc (w/enc.): Client

RECEIVED OVER THE COUNTER

BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

RECEIVED

JUL 2 2 2005

WATER RESOURCES DEPT SALEM, OREGON

In the Matter of the Proposed Final Order Proposing to Deny Water Right Application No. G-16359 PROTEST AND REQUEST FOR HEARING OF LES PETERSON

Les Peterson hereby protests, and otherwise appeals, the proposed final order ("PFO") issued by the Oregon Water Resources Department (the "Department") on June 7, 2005, proposing to deny Water Right Application No. G-16359 submitted by Mr. Peterson on December 30, 2004. By way of this protest, Mr. Peterson also hereby requests a hearing on this matter.

 Protestant's Name, Address, and Telephone Number. Orders, notices, and other correspondence concerning this matter should be sent to:

> Les Peterson 1415 Highland Road Walla Walla, WA 99362 (509) 522-2124

with copies to:

David E. Filippi Stoel Rives LLP 900 SW Fifth Avenue, Suite 2600 Portland, OR 97204 (503) 294-9529

2. Les Peterson's Interests. Les Peterson ("Peterson") is the named applicant for Water Right Application No. G-16359 and an owner of certain agricultural property in the Umatilla Basin. Peterson's groundwater permit application (the "Application"), submitted on December 30, 2004 seeks to draw groundwater from a well or wells on or near Peterson's property for irrigation use. Access to and use of groundwater is critical to Peterson's agricultural business interests.

Page 1 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

As background, on February 18, 2005, the Oregon Water Resources Department

(hereinafter, the "Department" or "OWRD") issued Initial Review Determinations ("Initial
Review") regarding the Application No. G-16359, which stated: "The use of water from a

well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507,
the Umatilla Basin Program." The Initial Review also stated that the Department's
conclusions were subject to change if a Water Management and Conservation Plan

("WMCP") submitted by the City of Milton-Freewater was approved before the Proposed
Final Order protest deadline for the Application passes. The Department gave Peterson no
notice that approval of the City's WMCP was imminent or that the legal standards by which
the Application would be evaluated would change if a WMCP were to be approved.

The public comment period for Application No. G-16359 closed on March 24, 2005. No written comments were received during the 30-day period. Based on the absence of any comments and the Department's positive Initial Review of the Application, Peterson anticipated approval of the Application; however, the Commission's final approval of the City's WMCP on March 24, 2005 apparently precluded the issuance of a PFO proposing to approve Peterson's groundwater application.

Consequently, Peterson is clearly affected by the Department's PFO, which proposes to deny the Application, because such a denial impacts Peterson's viability as an agricultural landowner and business person.

- 3. Standing. Pursuant to ORS 537.621(7), an applicant for a water right permit may protest a proposed final order approving or denying a water rights application. ORS 537.621(7).
- 4. The Action Proposed in the PFO Is Improper. The PFO proposes to deny the Application on the basis that, following approval of the City of Milton-Freewater's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal

JUL 22 2005

WATER RESOURCES DEPT

well. OAR 690-507-0030(3)(a)(B). The City's WMCP, submitted in August 2000 and modified in part by letter on November 10, 2004, was inactive for nearly four and a half years before it was approved on March 24, 2005—without notice to Peterson or others with applications pending before the Department that approval of the WMCP would significantly shift the legal standards by which groundwater permit applicants in the basin would be evaluated.

Although Oregon has not considered the issue of shifting legal standards in the water right application context, the Oregon Supreme Court has expressly stated that where land use regulations establish a standard, those standards must be applied to a pending application regardless of subsequent changes to the regulation. *See Marbet v. Portland Gen. Elect.*, 277 Or 447, 463, 561 P2d 154 (1977) (explaining that a standard should be adopted and interpreted sufficiently in advance of the final decision to allow the parties to address it). Just as a decision-maker is required to employ standards applicable to land uses at the time of an application, the Department should be required to evaluate Peterson's groundwater application in accordance with the standards in place at the time the Application was submitted.

The March 24, 2005 approval of the City's WMCP suddenly elevated the standard for groundwater use in the basin beyond the original standard anticipated and otherwise met by Peterson. (See Initial Review Determinations at 1-2.) Specifically, approval of the WMCP subjects the City and affected neighboring water users to the regulations for Municipal Water Management and Conservation Plans as set forth in OAR Chapter 690, Division 86, and other provisions contained in the Umatilla Basin Program Rules related to municipal WMCPs. Becoming subject to the Umatilla Basin Program Rules for new groundwater sources in the vicinity of cities with approved WMCPs in the midst of the application process harms Peterson, as Peterson was subjected to one permitting standard (which he had met), and then suddenly in the midst of the process he was subjected to another (which the

Page 3 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

Department is alleging that he has not met). At a minimum, the late shift in the standard being applied to Peterson's application precluded Peterson from placing his application on administrative hold to attempt resolution of the issues raised by the Department's approval of the City of Milton-Freewater's WMCP prior to the issuance of the PFO. See OAR 690-507-0030(3)(a)(B) (subjecting groundwater permit applications to a different classification under the Umatilla Basin Program depending on whether affected cities have a full-time conservation program in effect). ¹

The timing of the Department's approval of the WMCP, combined with the timing of the PFO is inequitable because the Department did not inform Peterson that the conditions listed in OAR 690-507-0030 would be imposed on his application or that the conditions he fulfilled based on then-existing basin standards would suddenly become inadequate. The Application was filed and reviewed based on specific standards that Peterson met—as set forth in the Department's Initial Review of the Application. That review expressly stated that the proposed use, quantity, source, and place of use were allowable under the rules then in effect. Those rules should continue to apply to the Application as filed.

After Initial Review, the Application then proceeded to the public comment period under the pretext of having met the Department's criteria for initial approval. The sudden

Page 4 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

Use of groundwater from the basalt reservoir is subject to restrictions whereby:

[&]quot;Ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Athena, Helix, Milton-Freewater, and Weston is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect." OAR 690-507-0030(3)(a)(B).

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

approval of the City's WMCP allegedly imposed a new requirement on Peterson's groundwater application—creating a moving target for approval that cannot be supported by the record to date or by applicable state law. The only basis for imposing the new standard of which we are aware is a memorandum from Dwight French to Water Right Caseworkers dated September 15, 2004, which was issued in response to a letter from Shannon O'Fallon with the Oregon Department of Justice to Tom Paul dated August 18, 2004. However, neither the memorandum nor the letter set forth any justification as to why the elevated "Five-Mile Radius" standard contained in the Umatilla Basin Plan should be applied to pending applications, where the approval of a City's WMCP occurred after the submittal of the application and after the Initial Review, but before the close of the PFO protest period. Rather, the Department should have grandfathered in all groundwater applications that were otherwise pending as of the date of the decision to approve the City of Milton-Freewater's WMCP. Instead, the Department's decision to approve the WMCP and subsequently deny previously allowable groundwater applications renders an inequitable result for groundwater applicants. In light of the proposed denial of the Application based on standards inapplicable to the Application at the time of submittal, Peterson respectfully requests that the Commission issue the permit as contemplated in the Initial Review, pursuant to the rules existing at the time the Application was originally submitted.

Solutions or Other Alternatives that Would Have Otherwise Been Available Had the Initial Review Revealed a Potential Inconsistency with the Applicable Basin Plan Rules. Had the Initial Review revealed that the proposed use allegedly was not allowed by the applicable Basin Plan rules, Peterson would have had the opportunity to explore solutions or other options by placing the Application on administrative hold. For instance, Peterson would like the opportunity to discuss options with the City of Milton-Freewater. Similarly, the Applicant would like at least to explore the option of seeking a Basin Plan Exception

Page 5 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

JUL 22 2005

WATER RESOURCES DEPT

pursuant to ORS 536.295. Pursuant to ORS 536.295, a water right applicant is entitled to seek a basin plan exception for a use not classified in the applicable basin plan. A basin plan exception may provide an appropriate means of facilitating Peterson's groundwater application in light of the recently approved City WMCP. Counsel for Peterson anticipates seeking a stay of further proceedings as a result of this Protest to allow for such efforts.

- apply the basin plan standards that were in effect at the time of the Application was submitted, and not the basin plan standards in effect at the time the protest period for the PFO expires. As such, the Department should issue the permit as requested, and as otherwise consistent with the Department's Initial Review Determinations. At a minimum, Peterson requests that the Commission allow him time to pursue solutions and alternatives as set forth above. Such solutions may involve the pursuit of an agreement with the City of Milton-Freewater or the pursuit of a basin plan exception pursuant to ORS 536.295. If the Commission does not grant the relief sought, Peterson hereby requests a contested case hearing pursuant to ORS 183.413 and OAR chapter 690, divisions 1 and 2.
- 7. Protest Fee. No protest fee is required, as the protestant in this instance is the applicant. See OAR 690-310-0160(1)(f).

DATED: July 21, 2005.

STOEL RIVES LIP

David E. Filippi, OSB'No. 96509 Of Attorneys for Les Peterson

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 21, 2005, I filed PROTEST AND REQUEST FOR

HEARING OF LES PETERSON with Mike Reynolds, Oregon Water Resources Department,

725 Summer Street NE, Suite A, Salem, OR 97301-1271 by facsimile and overnight mail.

Dated: July 21, 2005.

David E. Filippi, OSB No. 96509 Of Attorneys for Les Peterson

STEVEN P. APPLEGATE CONSULTING 3185 La Costa Loop South SALEM, OR 97302

Phone/fax (503)362-4040

July 20, 2005

OVER THE COUNTER

Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271 ATTN: Kerry Lefever

RECEIVED

JUL 22 2005

WATER RESOURCES DEPT SALEM, OREGON

REFERENCE: File G-16359, Les Peterson - Request for Standing

Dear Ms. Lefever:

I represent the City of Milton-Freewater (City) in regard to the above referenced file. The Oregon Water Resources Department (WRD) issued a Proposed Final Order (PFO) on this application on June 7, 2005. The PFO proposed denial of the application because it was determined that interference would occur between the applicant's well and those of the City.

The City supports the findings in the PFO and thus hereby requests standing, as provided in ORS 537.621(6) and OAR 690-310-160(2), to participate in any future contested case or other legal proceeding relative to this application. We enclose the statutory fee of \$50.

Obviously, the City has concerns about potential impacts of the proposed development on the continued production from their wells.

Any questions or other correspondence should be directed to:

City of Milton-Freewater

P.O. Box 6

Milton-Freewater, OR 97862

ATTN: Delphine Palmer

Telephone: 541-938-5531; Fax 541-938-8224

Copies should also be sent to Mr. Cliff Bentz of Yturri Rose, Attorney of Record, and to myself.

Thank you,

Sincerely,

Steven P. Applegate

cc: Delphine Palmer Cliff Bentz



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	Name:	Fax No.	Company/Firm		Phone No.		
TO:	Mike Reynolds	(503) 986-0901	Oregon Water Department	Resources	(503) 986-0820		
	Name:	Sender's Direct Dial:		Sender's Direct Email:			
FROM:	David E. Filippi	(503) 294-9529		defilippi@stoel.com			
Client:			Matter:				
Date:	July 21, 2005						
No. of Pa	ges (including this cover):	9					
Originals Not Forwarded Unless Checked: First Class Mail Overnight Delivery Hand Delivery					Hand Delivery		
In case of error call Cathy Taylor at (503) 294-9497.							
This facsimile may contain confidential information that is protected by the attorney-client or work product privilege. If the reader of this message is not the intended recipient or an employee responsible for delivering the facsimile, please do not distribute this facsimile, notify us immediately by telephone, and return this facsimile by mail. Thank you.							
COMME 2005.	NTS: Correspondence	and Protest and R	equest for Hearin	g of Les Pete	rson, dated July 21,		



July 21, 2005

200 S.W. (ifth Avenue: Suite 2600 Portland: Orsgon 97204 main 503-224-3360 Tax 505-224-2450 main 305-224-2450

David E. Filippi Direct (503) 294-9529 defilippi@stocl.com

VIA FACSIMILE AND OVERNIGHT MAIL

Mr. Mike Reynolds Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301-1271

Re: In the Matter of the Proposed Final Order for Denying Water Rights Application No. G-16359

Dear Mr. Reynolds:

Please find enclosed for filing the Protest and Request for Hearing of Les Peterson in the abovereferenced matter.

If you have any questions, please do not hesitate to contact me.

Very truly yours,

David E. Filippi

Enclosures

cc (w/enc.): Client

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California
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BEFORE THE WATER RESOURCES COMMISSION OF THE STATE OF OREGON

In the Matter of the Proposed Final Order Proposing to Deny Water Right Application No. G-16359 PROTEST AND REQUEST FOR HEARING OF LES PETERSON

Les Peterson hereby protests, and otherwise appeals, the proposed final order ("PFO") issued by the Oregon Water Resources Department (the "Department") on June 7, 2005, proposing to deny Water Right Application No. G-16359 submitted by Mr. Peterson on December 30, 2004. By way of this protest, Mr. Peterson also hereby requests a hearing on this matter.

 Protestant's Name, Address, and Telephone Number. Orders, notices, and other correspondence concerning this matter should be sent to:

> Les Peterson 1415 Highland Road Walla Walla, WA 99362 (509) 522-2124

with copies to:

David E. Filippi Stoel Rives LLP 900 SW Fifth Avenue, Suite 2600 Portland, OR 97204 (503) 294-9529

2. Les Peterson's Interests. Les Peterson ("Peterson") is the named applicant for Water Right Application No. G-16359 and an owner of certain agricultural property in the Umatilla Basin. Peterson's groundwater permit application (the "Application"), submitted on December 30, 2004 seeks to draw groundwater from a well or wells on or near Peterson's property for irrigation use. Access to and use of groundwater is critical to Peterson's agricultural business interests.

Page 1 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

As background, on February 18, 2005, the Oregon Water Resources Department (hereinafter, the "Department" or "OWRD") issued Initial Review Determinations ("Initial Review") regarding the Application No. G-16359, which stated: "The use of water from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507, the Umatilla Basin Program." The Initial Review also stated that the Department's conclusions were subject to change if a Water Management and Conservation Plan ("WMCP") submitted by the City of Milton-Freewater was approved before the Proposed Final Order protest deadline for the Application passes. The Department gave Peterson no notice that approval of the City's WMCP was imminent or that the legal standards by which the Application would be evaluated would change if a WMCP were to be approved.

The public comment period for Application No. G-16359 closed on March 24, 2005.

No written comments were received during the 30-day period. Based on the absence of any comments and the Department's positive Initial Review of the Application, Peterson anticipated approval of the Application; however, the Commission's final approval of the City's WMCP on March 24, 2005 apparently precluded the issuance of a PFO proposing to approve Peterson's groundwater application.

Consequently, Peterson is clearly affected by the Department's PFO, which proposes to deny the Application, because such a denial impacts Peterson's viability as an agricultural landowner and business person.

- Standing. Pursuant to ORS 537.621(7), an applicant for a water right permit
 may protest a proposed final order approving or denying a water rights application. ORS
 537.621(7).
- 4. The Action Proposed in the PFO Is Improper. The PFO proposes to deny the Application on the basis that, following approval of the City of Milton-Freewater's WMCP, the applicable basin plan prohibits the use of groundwater for agricultural purposes if the source of groundwater is a basalt reservoir within a five-mile radius of any municipal

well. OAR 690-507-0030(3)(a)(B). The City's WMCP, submitted in August 2000 and modified in part by letter on November 10, 2004, was inactive for nearly four and a half years before it was approved on March 24, 2005—without notice to Peterson or others with applications pending before the Department that approval of the WMCP would significantly shift the legal standards by which groundwater permit applicants in the basin would be evaluated.

Although Oregon has not considered the issue of shifting legal standards in the water right application context, the Oregon Supreme Court has expressly stated that where land use regulations establish a standard, those standards must be applied to a pending application regardless of subsequent changes to the regulation. See Marbet v. Portland Gen. Elect., 277 Or 447, 463, 561 P2d 154 (1977) (explaining that a standard should be adopted and interpreted sufficiently in advance of the final decision to allow the parties to address it).

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Page 3 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

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Page 4 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

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Page 5 - PROTEST AND REQUEST FOR HEARING OF LES PETERSON

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- 7. Protest Fee. No protest fee is required, as the protestant in this instance is the applicant. See OAR 690-310-0160(1)(f).

DATED: July 21, 2005.

STOEL RIVES LLP

David E. Filippi, OSB No. 96509 Of Attorneys for Les Peterson

CERTIFICATE OF FILING AND SERVICE

I hereby certify that on July 21, 2005, I filed PROTEST AND REQUEST FOR

HEARING OF LES PETERSON with Mike Reynolds, Oregon Water Resources Department,

725 Summer Street NE, Suite A, Salem, OR 97301-1271 by facsimile and overnight mail.

Dated: July 21, 2005.

David E. Filippi, OSB No. 96509 Of Attorneys for Les Peterson 1415 HIGHLAND ROAD WALLA WALLA, WA. 99362

Phone: 509-522-2124 Fax: 509-522-1895

LES PETERSON



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	Fax:	503-986-0901		Date:	July 21, 2005	
		Oregon Water R	Resources Department			
	To:	WATER RIGHT	SSECTION	From:	LES PETERSON	

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STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIPT # 76077

725 Summer St. N.E. Ste. A SALEM, OR 97301-4172 (503) 986-0900 / (503) 986-0904 (fax)

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DATED: 7 22 05

BY: Alkin

Les Peterson 1415 Highland Road Walla Walla, Washington 99362

June 19, 2005

Oregon Water Resources Department Water Resources Division Water Rights Application Number G-16359

Dear Oregon Water Resources Department,

As the applicant for the water right Number G-16359 my credentials include over twenty-eight years of farming. The ability to continue that livelihood as a family farm will be greatly enhanced with the versatility of wider crop choices and increased production given the water to allow it. The importance of crop production by any farmer requires no justification and is obviously in the public interest.

It seems to me that the Proposed Final Order regarding water rights application Number G-16359 written by the Oregon Water Resources Department provides the greatest strength for a rebuttal of the denial recommendation.

The "Application History" indicates an application received December 30,2004 was given an Initial Review and the Department gave public notice February 22,2005. There were no written comments received within 30 days. March 24, 2005 the Water Resources issues a final order approving a water and conservation Plan for the City of Milton-Freewater. On May 20, 2005 Mike Zwart determines the proposed well interferes with the city's wells.

To summarize: An application received in December 2004 given review and public notice was without problem until May 20,2005 when Mike Zwart says the proposed well will interfere with Milton-Freewaters wells. A statement rebutted in detail on pages 2 and 3 of the same letter under the heading: "Groundwater Findings Under OAR 690-09. The Department determined, consistent with OAR 690-09-0040(4), that the proposed ground water use will not have the potential for substantial interference with the nearby water sources."

Further under the section "Findings of Fact." "The Groundwater Section finds, per OAR 390.835(9), there is not 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."

The "Conclusions of Law" state many positive issues in favor of the application.

Water is available for the proposed use. The proposed use would not injure other water rights. The proposed use complies with other rules of the Water Resources Commission. The proposed use is compatible with applicable land use plans. No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

The review of The Proposed Final Order indicates to me a positive report requiring the acceptance of the application. To accomplish this the only thing to be said is," The March 24, 2005 Water and Conservation Plan for the City of Milton-Freewater will become effective on the date issued!" This would serve the best interest of all parties and could only be considered fair in the public's interest. Any applications made prior to that date would follow normal procedure without difficulty.

One last point should be made without use of the Proposed Final Order. Measure 37 is a new statute and provides that," the owner of private real property is entitled to receive just compensation when a land use regulation is enacted after the owner or a family member became the owner of the property if the regulation restricts the use of the property and reduces its fair market value." Use Oregon Administrative Rule, OAR 125-145-0000 for reference.

"If the state finds that a land use regulation of a state agency restricts the use of the owner's property, and reduces its value then the state will have a choice to:

---pay the owner of the property an amount equal to the reduction in value, or

----modify, change or not apply the regulation to the owner's property."

Land is a finite EXISTING resource which the increasing world population must use efficiently. Water is an AVAILABLE resource which can increase the productive use of that land. In this specific case it is my request that the AVAILABLE water resource be allowed on this EXISTING land resource. To do otherwise is not in the public interest. It is really that simple.

A response by my legal representative will be forthcoming but this personal response will be sent in an effort to be timely.

It is at this point I would like to formally request a "contested case hearing." Should the Department revisit this Proposed Final Order and gain new considerations please let me know.

Thank you,

Les Peterson

Peterson Farms

In Retursion

Oregon Water Resources Department Water Rights Division

Water Rights Application Number G-16359

Proposed Final Order

Summary of Recommendation: The Department recommends that the application be denied because the use is not allowable under Oregon Administrative Rule 690-507-0030(3)(a).

Application History

On December 30, 2004, LES PETERSON submitted an application to the Department for the following water use permit:

- Amount of Water: 4.38 CUBIC FEET PER SECOND (CFS)
- Use of Water: IRRIGATION USE ON 350.0 ACRES
- Source of Water: A WELL IN BIRCH CREEK BASIN
- Area of Proposed Use: Umatilla County within SECTION 4 and SECTION 9, TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

On February 18, 2005, the Department mailed the applicant notice of its Initial Review, determining that "The use of 4.38 cubic feet per second from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable from March 1 through October 31 of each year." The Initial Review also stated the conclusions are subject to change if a water management and conservation plan is approved by the Water Resources Department for the City of Milton-Freewater before the Proposed Final Order protest deadline passes. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On February 22, 2005, 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 both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

On March 24, 2005, the Water Resources Department issued a Final Order approving a Water and Conservation Plan for the City of Milton-Freewater.

On May 20, 2005, Mike Zwart of the Department's Groundwater Section determined there is not a documented barrier to ground water movement separating the proposed well from the City of Milton-Freewater's municipal wells and there will be interference with the city's wells.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- designations of any critical groundwater areas
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- any comments received

Findings of Fact

The Umatilla Basin Program does not allow IRRIGATION USE.

Senior water rights exist on A WELL IN BIRCH CREEK BASIN, or on downstream waters.

A WELL IN BIRCH CREEK BASIN is not within or above a State Scenic Waterway.

The Groundwater Section finds, per OAR 390.835(9), there is not 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.

Groundwater Findings Under OAR 690-09

The Department determined, consistent with OAR 690-09-0040(4), that the proposed ground water use will not have the potential for substantial interference with the nearby surface water sources.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

For these reasons, the required presumption has not been established.

The Department therefore concludes that water is available in the amount of water necessary for the proposed use; the proposed use would not result in injury to existing water rights; and the proposed use would not ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Recommendation

The Department recommends that the application be denied.

DATED June 7, 2005

Dwight French

Water Rights Section Manager

If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must 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 this 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; and
- If you are not the applicant, the protest fee of \$250 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. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.

water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;

(e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

An assessment of groundwater availability has been completed by the Department's Groundwater/Hydrology section. A copy of this assessment is in the file. The proposed use of groundwater will, if properly conditioned, avoid injury to existing rights and the resource.

The proposed well is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if 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), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The Umatilla Basin Program does not allow the proposed use.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use would not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use is compatible with applicable land use plans.

- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.
- Persons other than the applicant who support the proposed final order may request standing for the purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.
- Requests for standing shall meet the requirements described in OAR 690-310-160 and shall be accompanied by the \$50.00 standing fee established under ORS 536.050.

Your protest or request for standing must be received in the Water Resources Department no later than July 22, 2005.

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 if

- 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.

This document was prepared by Kerry Lefever. If you have any questions about any of the statements contained in this document I am most likely the best person to answer your questions. You can reach me at 503-986-0816.

If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds at 503-986-0820.

If you have other questions about the Department or any of its programs please contact our Customer Service Group at 503-986-0801.

Address all other correspondence to:

Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271, Fax: 503-986-0901.

KL - WEEK 515

Mailing List for PFO Copies

Application #G-16359

PFO Date June 7, 2005

Original mailed to:

Applicant:

LES PETERSON

1415 HIGHLAND RD,

WALLA WALLA, WA 99362

Copies sent to:

WRD - File # G-16359

2. Water Availability: Ken Stahr

Copies Mailed

PFO and Map Copies sent to:

3 WRD - Watermaster # 5

4. Regional Manager: NC

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

5, City of Milton-Freewater, PO Box 0, Milton.

6. Steven P. Applegate Consulting, 5528 Murray St SE, Salem, OR 97306 6 22/05 US PO wilfied as that

3185 La Costa Leop S. his mail was founded.

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

Affected Landowners (include "Notice of Proposed Final Order--Affected Landowner"):

CASEWORKER: KL - WEEK 515

OREGON WATER RESOURCES DEPARTMENT INTEROFFICE MEMO

To: Jeana Eastman & Kerry Lefever Date: May 20, 2005

From: Mike Zwart

Subject: Review of files G-16364 and G-16359

As requested, I have reviewed these files to determine if there is a documented barrier to ground-water movement that separates the proposed wells from the Milton-Freewater municipal basalt wells and if there will be interference with these municipal wells. I conclude that there is not a documented barrier to ground-water movement between the proposed wells and the Milton-Freewater municipal basalt wells. Therefore, I also conclude that there will be interference with the city's wells.

Neither of the wells is constructed, so there is no site-specific data available at these locations. However, the available geologic mapping and nearby well logs do not suggest that there is a barrier to ground-water movement that would prevent interference with the city wells. It may be possible that the applicants could collect sufficient geologic and hydrologic information from wells or test holes that would disclose an as-yet undocumented barrier to ground-water movement. Construction of such wells and collection of the appropriate data would be quite expensive, however.



Water Resources Department

North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

MEMORANDUM

TO:

Water Resources Commission

FROM:

Phillip C. Ward, Director

SUBJECT:

Water Resources Commission Meeting

Agenda Item G, April 14, 2005

Public Interest Review under OAR 690-507-0070(3)(d)(D) in the Umatilla

Basin Program

I. Issue Statement

Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for certain ground water uses within a five-mile radius of the City of Hermiston. The Department has six pending applications for ground water use that fall within these rule requirements. In order for these uses to be consistent with the Umatilla Basin Program, the Commission is asked to review and consider the public interest for these applications.

II. Background

Under OAR 690-507-0070(3)(d)(D), the Commission must review and consider the public interest for applications for uses other than municipal, group domestic and statutorily exempt ground water uses from basalt wells within a five-mile radius of the City of Hermiston (Attachment 1). This review is completed if 1) there is a documented barrier to ground water movement between a proposed well and the municipal wells, 2) there will be no interference with municipal wells, and 3) the city has an approved water management and conservation plan.

Since the Umatilla Basin Program was adopted in 1988, the Commission has not been asked to review and consider the public interest under these rules for a number of reasons. The primary reason is that the water right application process was overhauled by statutory changes adopted in 1995 (Senate Bill 674, Oregon Laws 1995). The changes significantly modified how and when applications go before the Commission for a public interest review. With the adoption of SB 674 in 1995, the Department believed that basin plan rules requiring the Commission to review an application for the public interest such as OAR 690-507-0070(3)(d)(D) was overruled by the statutory changes in 1995.

However, on August 18, 2004, the Department of Justice (DOJ) advised the Department that the Umatilla Basin Program rules require the Commission to make a public interest review of ground water applications for uses other than municipal, group domestic and statutorily exempt ground

water uses from basalt wells within a five-mile radius of municipalities wells identified in the basin program. A copy of this DOJ advice is provided in Attachment 2.

This recent advice from DOJ instructs the Department to bring qualifying applications to the Commission for review and consideration of the public interest. Specifically,

"Applications that propose a well within a five-mile radius around municipal well that are not for municipal, group domestic or statutorily exempt ground water uses, may be allowed if:

- (1) It is documented that a barrier to ground water movement separates a proposed well from municipal wells; and
- (2) There will be no interference with municipal wells."

In addition, the Commission must review the application and consider whether it is in the public interest, regardless of the affected municipalities position on the proposed use."

There are 14 municipalities in the Umatilla Basin Program with similar provisions. However, this request deals strictly with applications within a five-mile radius of the City of Hermiston.

III. Discussion

The Department has six pending applications that meet criteria under OAR 690-507-0070(3)(d)(D). Attachment 3 provides a map of the wells proposed in Applications G16084, G 16094, G 16126, G 16130, G 16313, and G16395 along with the locations of City of Hermiston municipal wells. Attachment 4 provides additional information on the quantity and type of use identified in each of these ground water applications.

All six of the pending applications are located within a five-mile radius of the City of Hermiston's wells and are for uses other than municipal, group domestic and statutorily exempt ground water uses. In addition, the Department has documented in all six cases that a barrier to ground water movement separates the proposed wells from the municipal wells and that there will be no interference with municipal wells. The City of Hermiston also has an approved water management and conservation plan.

A. Review and Consideration of the Public Interest

The Umatilla Basin plan requires the Commission to review and consider the public interest for the six subject applications. OAR 690-310-0130 instructs the Department on how to determine whether the public interest presumption is met for a proposed ground water use. Specifically, subsection (1) of this rule states:

"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 right; and
- (d) The proposed use complies with the rules of the Commission."

A review of the four criteria for the six pending ground water applications follows.

(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):

Notwithstanding rules related to the public interest determination conducted by the Commission, the use is consistent with the Umatilla Basin Program. Preference considerations under ORS 536.310(12) are not applicable to the subject applications.

(b) Water is available:

For ground water applications, two separate water availability determinations are made. The Department first determines whether ground water is available within the capacity of the resource. The Department also determines whether there is the potential for substantial interference with nearby surface water sources. If the potential for substantial interference is found, then a review of the nearby surface water availability is conducted. In all six of these cases, the Department has determined that ground water is available within the capacity of the resource and there is no potential for substantial interference with surface waters.

(c) The proposed use will not injure other water rights:

The Department has determined that the proposed use will not injure other water rights. As part of this determination, the Department found that the proposed use will not interfere with any municipal well or other well.

(d) The proposed use complies with the rules of the Commission:

The Department has determined that the applications are not in conflict with any rule, beyond the review conducted by the Commission in the Umatilla Basin Program.

B. Reviewing the Public Interest for Similar Applications

Given the statutory changes in 1995, staff recommend that the Commission consider delegating its authority to review and consider the public interest for applications meeting the criteria for public interest review in the Umatilla Basin Program.

This recommendation is based on a number of considerations. Because of statutory changes in 1995, the Department is required to review the public interest for each water right application. Commission review of the public interest under the Umatilla Basin Program repeats this review. While DOJ advised the Department that the Commission review these applications for public interest, their advice also recommended that the Department seek a delegation of this authority from the Commission since it already makes a public interest determination under its statutory requirements. This delegation would also provide for more timely review and processing of these water right applications and would allow the Department to meet water right processing timelines provided in statute.

The advice from DOJ also informed the Department that other sections of its Umatilla Basin Program are not valid as they inappropriately gave municipalities a role in processing water right applications. The Department has met with the affected municipalities to discuss its implementation of the existing Umatilla Basin Program as a result of this advice. The Department will be working with these communities and others to possibly amend these rules to ensure the rules provide the intended protection for municipal wells based on scientific information.

IV. Conclusion

Consistent with DOJ advice, the Department has determined that it is appropriate for the Commission to review and consider the public interest for the six subject applications because:

- 1. The wells in the applications are located within a five-mile radius of the City of Hermiston wells;
- There is a documented barrier to ground water movement between the proposed wells and City of Hermiston municipal wells;
- 3. There will be no interference with municipal wells; and
- The City of Hermiston has an approved water management and conservation plan.

With regard to the review and consideration of the public interest, the Department has found that all of the elements of the public interest presumption, besides the basin program element, have been satisfied.

V. Alternatives

The Commission may consider the following actions:

 Determine that the six subject applications as identified are consistent with the public interest and allow the Department to continue processing the application with an affirmative finding regarding the basin plan element of the public interest presumption.

- 2. Determine that some subset of the six applications are consistent with the public interest and allow the Department to continue processing those applications with an affirmative finding regarding the basin plan element of the public interest presumption. The applications not included in this finding would receive a proposed final order proposing to deny the applications.
- 3. Require the Department conduct further review of the applications and report to the Commission at a future meeting.

In addition, the Commission may choose to delegate its authority to the Director to review and consider the public interest for ground water applications meeting criteria provided in the Umatilla Basin Program as provided in Attachment 5.

VI. Recommendation

Staff recommend Alternative 1 that the Commission determine that the six subject applications are consistent with the public interest and allow the Department to continue processing the application with an affirmative finding regarding the basin plan element of the public interest presumption.

Staff also recommend that the Commission delegate its authority to the Director to review and consider the public interest for similar applications in the Umatilla Basin as provided in Attachment 5.

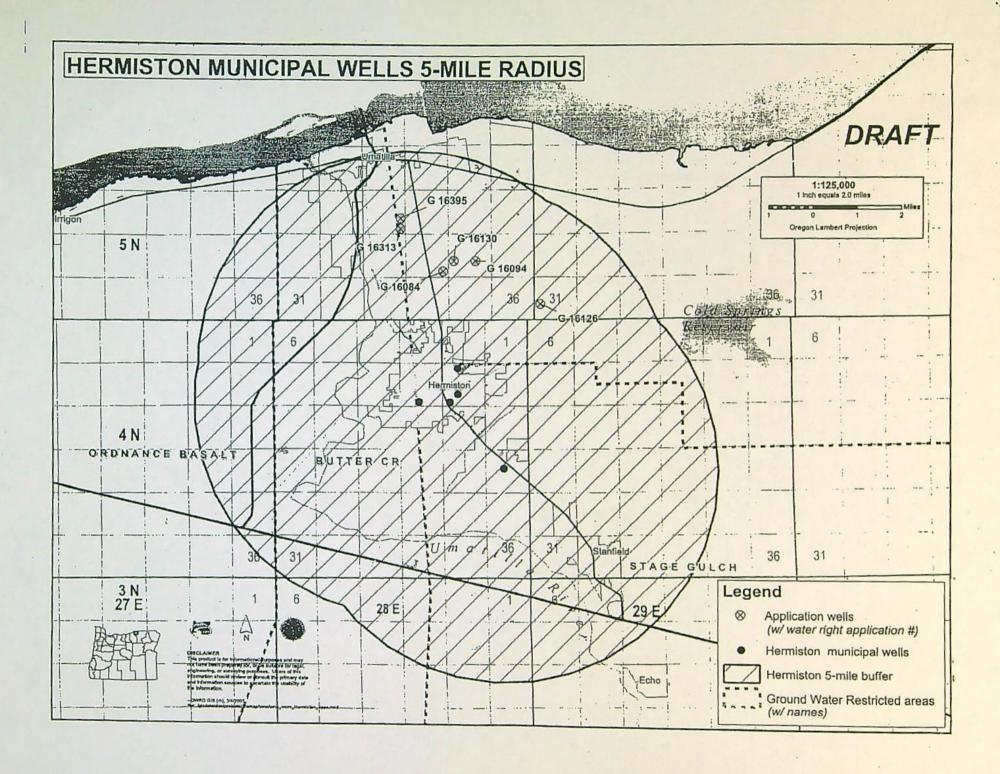
Attachments:

- 1. OAR 690-507-0070(3)(d)(D)
- DOJ Advice Received on August 18, 2004
- 3. Map of the City of Hermiston Area
- 4. Summary of Pending Ground Water Applications
- Commission Delegation of Authority

Dwight French (503) 986-0819

OAR 690-507-0070(3)(d)(D)

Subject to the more strict controls imposed by the existing State Gulch Proclamation or issuance of a critical area order for the Stage Gulch Ground Water Study Area, ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Echo, Hermiston, Pendleton, Stanfield, and Umatilla is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only when the affected city has a full-time conservation program in effect.



Summary of Pending Ground Water Applications

Application	Name	Priority Date	Use	Reque sted Rate (CFS)	Requested Acres
G-16084	Fordice	9/10/03	Irrigation	0.025	2.0
G-16094	Culp	9/26/03	Irrigation	0.01	1.0
G-16126	Ibarra	11/05/04	Irrigation	0.125	10.0
G-16130	Huffman	11/12/04	Irrigation	0.06	5.0
G-16313	Orr	9/16/04	Industrial	1.45	Not applicable
G-16395	Nobles	2/15/05	Irrigation	0.06	5.0

OREGON WATER RESOURCES COMMISSION

ORDER

DELEGATING AUTHORITY

to

CARRY OUT DUTIES UNDER OAR 690-507

Relating to Considering the Public Interest for Ground Water Applications in the Umatilla Basin that Meet Certain Criteria

Pursuant to ORS 536.025(2), the Water Resources Commission (Commission) may delegate to the Water Resources Director the exercise or discharge in the Commission's name any power, duty or function of whatever character, vested in or imposed by law upon the Commission.

The Commission hereby delegates to the Director of the Water Resources Department (Director), all power, duty and function vested in the Commission under the provisions of OAR 690-507 that relate to the review and consideration of the public interest for applications for uses other than municipal, group domestic and statutorily exempt ground water uses from certain basalt wells within a five-mile radius of a municipal well, where a documented barrier to ground water movement separates the proposed well and municipal well, and where there is no interference with the municipal well. This classification applies only to affected cities with a full-time conservation program and may include the cities of Adams, Athena, Echo, Heppner, Helix, Hermiston, Ione, Lexington, Milton-Freewater, Pendleton, Pilot Rock, Stanfield, Umatilla, and Weston.

When considering the public interest, the Director shall take into consideration the following elements:

- (a) Whether 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) Whether water is available;
- (c) Whether the proposed use will not injure other water rights;
- (d) Whether the proposed use complies with the rules of the Commission.

The official act of the Director acting in the Commission's name and by the authority granted herein shall be considered to be an official act of the Commission.

Dated:

April 14, 2005

Dan Thorndike, Chair

Concur by unanimous vote of Commission members present.

Dan Thorndike, Chair Tyler Hansell Jim Nakano Susie Smith Jay Rasmussen

INTEROFFICE MEMORANDUM

TO: Doug Woodcock March 30, 2005

FROM: Jeana Eastman / Kerry Lefever

RE: GW Files G-16364 and G-16359

Doug,

The two above referenced applications are in the Umatilla Basin and within a 5-mile radius of the City of Milton Freewater's municipal wells. When the GW review (done by Mike Zwart) and Initial Review were done, the City of Milton Freewater did not have a Water Conservation & Management Plan approved. It is my understanding that a WCMP has been approved or will be before the end of the protest deadline (45 days after the Proposed Final Order is issued, of which both are ripe for). I have spoken with Mike about the applications and requested a review to determine whether or not there is a documented barrier to groundwater movement that separates the wells from municipal wells. The information is necessary as it will effect the recommendation in the PFO. Mike requested I route the files through you.

Please route both files to me when finished and I will pass Kerry's on to her.

Thanks for your help, -jeana

Mike,

Please review and determine:

- If there is a documented barrier to groundwater movement that separates the wells from municipal wells and,
- If there will be interference with municipal wells

I forgot to request the interference when we spoke on the phone.

I appreciate your help, -jeana

PFO CHECKLIST

Application #: G-16359 Applicant: LES PETERSON PFO week: 508	
Shortcomings preventing PFO? Y / N Should process continue? W / N IR Date 2-18-05 Public Notice Date 3-24-05 Comments received? Y / D	
IR Date 2-18-05 Public Notice Date 3=17-05 Comments received? Y / 32	
Was additional information requested in the IR? Y / W If so, do we now have enough info to do the PFO? Y / N	
Was the application filed after 10/23/992 N (If not, add A date requirement)	
B.O.R. or Doug Co. project Y / Contract in file? N contract #	
IR identifies as DEQ 303d? Y / N / NA Comments received? Y / N	
∠ Is second gw review necessary? (y) / N / NA Complete? (Q) / N	
Water Availability OK / REDONE / NA	
/ Changes from IR determinations On March 24, 2005, Water Management	1
Changes from IR determinations On March 24, 2005, Water Management of Conservation Plan for City of Milton-Freewater was issued as approved. See OAR 690-507-0030(3)(a)(B)	
issued as approved. See OAR 890-507-0030(3)(a)(B)	
irrigation not allowed	
L'Copy to City M-F WM, Reg Man Steve Applegate	
Steve Appleante	
SCM Consultants	
Fecs Base Fee Water Amount (Q)	
4.38 \$100 / \$150	
4.38 \$250/\$300 4 Addl@_100 + 400	
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Name: Kerry Lefever Date: 3/30/2005 Peer Reviewer: Jerry Garrey	
Name: Kerry Lefever Date: 3/30/2005 Peer Reviewer: Jerry Garrey	

The purpose of this checklist is to be used as a working document by Department staff to aid in the production of the related Initial Review, Proposed Final Order, or Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above. The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.

Terms of the Agreement

- 1. The City requests, and the Department, the City, and Seven Hills agree, that the Department will take no further action on the City's WMCP until the Department issues a final order approving the Seven Hills' Application and a final groundwater permit to Seven Hills. However, this Settlement Agreement does not bind the Department to issue a final order approving the Seven Hills' Application or to issue a final groundwater permit.
- 2. Upon the Department's issuance of a final order approving the Seven Hills' Application and the issuance of a final groundwater permit to Seven Hills, Seven Hills agrees to withdraw its protest and appeal of the PFO for the City's WMCP. While Seven Hills agrees to the proposed conditions set forth in the PFO, Seven Hills reserves the right to challenge any final order related to the Seven Hills' Application to the extent that the final order is not consistent with the PFO and/or the draft groundwater permit.
- 3. Upon Seven Hills' withdrawal of its protest and appeal of the PFO for the City's WMCP, the Department agrees to issue a final order approving the City's WMCP, with the final order substantially similar to the PFO recommending approval of the City's WMCP.
- 4. The City and Seven Hills request, and the Department, the City, and Seven Hills agree, that pending issuance of a final order approving the Seven Hills' Application and the issuance of a final groundwater permit to Seven Hills, the Department will hold the Seven Hills' protest and appeal of the PFO for the City's WMCP in abeyance, and the Department will take no action with respect to the Seven Hills' protest and appeal.
- Following Seven Hills' withdrawal of its protest and appeal of the PFO to the City's WMCP, the Department agrees to refund in full Seven Hills' protest fee.

R. L. Ry Fan Noam M. Norm McKibben	SKIRBEN 2 26 05
Norm McKloben \	Date
In his individual capacity and on behalf of Seven Hills Properties, LLC	
Howard Moss	Date
On behalf of the City of Milton-Freewater	3-3-05
Dwight French On behalf of the Oregon Water Resources Department	Date

Page 2 of 2 – SETTLEMENT AGREEMENT REGARDING PROPOSED WATER MANAGEMENT AND CONSERVATION PLAN FOR THE CITY OF MILTON-FREEWATER, UMATILLA COUNTY, OREGON

FEB-24-2005 THU 08:35 AM Corey Byler Rev stal LLP FAX NO. 541 278 3148

P. 03/03

FID-15-41 11:484 FROM

T-200 P-00/00 P-000

Terms of the Astronment

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Norm Medithen In his individual capacity and on behalf of Seven Sitts Properties, LLC	Dete
Delphine Palmer On behalf of the City of Miless-Preswager	Ditte
Dwight French On behalf of the Oregon Wester Resources	Date

Pair 2 of 2 - Settlement accession recalled to possed water management and complexity of Melton-Reswater, UM-atela correct, or except

Property Comment



Water Resources Department

North Mall Office Building 725 Summer Street NE, Suite A Salem, OR 97301-1271 503-986-0900 FAX 503-986-0904

February 18, 2005

LES PETERSON 1415 HIGHLAND RD WALLA WALLA, WA 99362 (509)522-2124

Reference: File G-16359

Dear Applicant:

THIS IS NOT A PERMIT AND IS SUBJECT TO CHANGE AT THE NEXT PHASE OF PROCESSING.

This letter is to inform you of the preliminary analysis of your water use permit application and to describe your options. In determining whether a water use permit 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 you have supplied, the Water Resources Department has made the following preliminary determinations:

Initial Review Determinations:

- 1. The proposed use is not prohibited by law or rule except where otherwise noted below.
- 2. The use of water from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable under OAR 690-507, the Umatilla Basin Program.
- The Department has determined, based upon OAR 690-09, that the proposed groundwater use will not have the potential for substantial interference with the nearest surface water source.
- 4. The Department has also determined, based upon available data, that the use of groundwater in the amount of 4.38 cubic feet per second (cfs) for irrigation use on 350.0 acres, if properly conditioned, will not injure existing rights or the groundwater resource.

5. The well requested under this application is located within a five-mile radius around the City of Milton-Freewater's municipal wells. Groundwater use from the basalt reservoir within a five-mile radius around any municipal well of the City of Milton-Freewater could be limited to only municipal uses, group domestic uses, or statutorily exempt groundwater uses, if the city has an approved water management and conservation plan in effect [OAR 690-507-0070(3)(a)(B)]. The City of Milton-Freewater does not currently have a full-time water management and conservation program in effect, therefore, OAR 690-507-0070(3)(a)(B) will not affect this application.

Please Note: The conclusions of this Initial Review are subject to change if a water management and conservation plan is approved by the Water Resources Department for the City of Milton-Freewater before the protest filing deadline passes. The protest period ends 45 days after the issuance of the Proposed Final Order [OAR 690-310-0160(6)].

Summary of Initial Determinations

The use of 4.38 cubic feet per second from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable from March 1 through October 31 of each year.

Because of these favorable determinations, the Department can now move your application to the next phase of the water rights application review process. This phase is where public interest factors will be evaluated.

Please reference the application number when sending any correspondence regarding the conclusions of this initial review. Comments received within the comment period will be evaluated at the next phase of the process.

To Proceed With Your Application:

If you choose to proceed with your application, you do not have to notify the Department. Your application will automatically 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.

Withdrawal Refunds:

If you choose not to proceed, you may withdraw your application and receive a refund (minus a \$50 processing charge per application.) To accomplish this you must notify the Department in writing by Friday, March 4, 2005. For your convenience you may use the enclosed "STOP PROCESSING" form.

Application G-16359 Page 2

If A Permit Is Issued It Will Likely Include The Following Conditions:

- Measurement, recording and reporting conditions:
 - A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month and shall submit a 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.
 - B. The permittee shall allow the watermaster access to the meter or measuring device; provided however, where the meter or measuring device is located within a private structure, the watermaster shall request access upon reasonable notice.

2. Limited Water Level Decline/Interference Condition

To monitor the effect of water use from the well(s) authorized under this permit, the Department requires the water user to make and report annual static water level measurements. The static water level shall be measured during the period February 15 through March 15. Reports shall be submitted to the Department within 30 days of measurement.

Measurements must be made according to the following schedule:

Before Use of Water Takes Place

Initial and Annual Measurements

The Department requires the permittee to submit an initial water level measurement in the month specified above once well construction is complete and annually thereafter until use of water begins; and

After Use of Water has Begun

Seven Consecutive Annual Measurements

Following the first year of water use, the user shall submit seven consecutive annual reports of static water level measurements. The first of these seven annual measurements will establish the reference level against which future annual measurements will be compared. Based on an analysis of the data collected, the Director may require that the user obtain and report additional annual static water level measurements beyond the seven year minimum reporting period. The additional measurements may be required in a different month. If the measurement requirement is stopped, the Director may restart it at any time.

Application G-16359 Page 3

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 and be submitted to the Department on forms provided by the Department. The Department requires the individual performing the measurement to:

- (A) Identify each well with its associated measurement; and
- (B) Measure and report water levels to the nearest tenth of a foot as depth-to-water below ground surface; and
- (C) Specify the method used to obtain each well measurement; and
- (D) Certify the accuracy of all measurements and calculations submitted to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if annual water level measurements reveal any of the following events:

- (A) An average water level decline of 3 or more feet per year for five consecutive years; or
- (B) A water level decline of 15 or more feet in fewer than five consecutive years; or
- (C) A water level decline of 25 or more feet; or
- (D) Hydraulic interference leading to a decline of 25 or more feet in any neighboring well with senior priority.

The period of non or restricted use shall continue until the annual water level rises above the decline level which triggered the action or until 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 senior water rights. The water user shall in no instance 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.

3. The priority date for this application is December 30, 2004.

The water source identified in your 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.oda.state.or.us/nrd/water_quality/index.html to learn more about the plans and how they may affect your proposed water use.

Application G-16359 Page 4

If you have any questions:

Questions about the status of your application, processing timelines, or your upcoming Proposed Final Order should be directed to our customer service staff at 503-986-0801. Feel free to call me at 503-986-0816 if you have any questions regarding the contents of this letter. Please have your application number available if you call. Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271, Fax: 503-986-0901.

Sincerely,

Kerry Lefever
Kerry Lefever

Water Right Application Caseworker

enclosures: Application Process Description and Stop Processing Request Form

G-16359 wab 7-30710206 pou 7-30710206 gw _B

APPLICATION FACT SHEET

Mail to: Applicant, Watermaster, District Biologist (ODFW)

If necessary, also mail to: Regional Water quality manager (DEQ), and DOA

Application File Number: G-16359

Applicant: LES PETERSON

County: Umatilla

Watermaster: 5

Priority Date: December 30, 2004

Source: A WELL IN BIRCH CREEK BASIN

Use: IRRIGATION USE ON 350.0 ACRES

Quantity: 4.38 CUBIC FEET PER SECOND

Basin Name & Number: Umatilla, #7

Stream Index Reference: Volume 1 BASIN 7 MISC

Well Location: SWSW, SECTION 4, T5N, R36E, W.M.; 480 FEET NORTH & 130 FEET

EAST FROM SW CORNER, SECTION 4

Place of Use: NE ¼ NW ¼ 40.0 ACRES

SE 4 NW 4 40.0 ACRES

NE 4 SW 4 40.0 ACRES

NW 4 SW 4 40.0 ACRES

SW 4 SW 4 40.0 ACRES

SE 4 SW 4 40.0 ACRES

SECTION 4

NE 4 NE 4 20.0 ACRES

NW 4 NE 4 40.0 ACRES

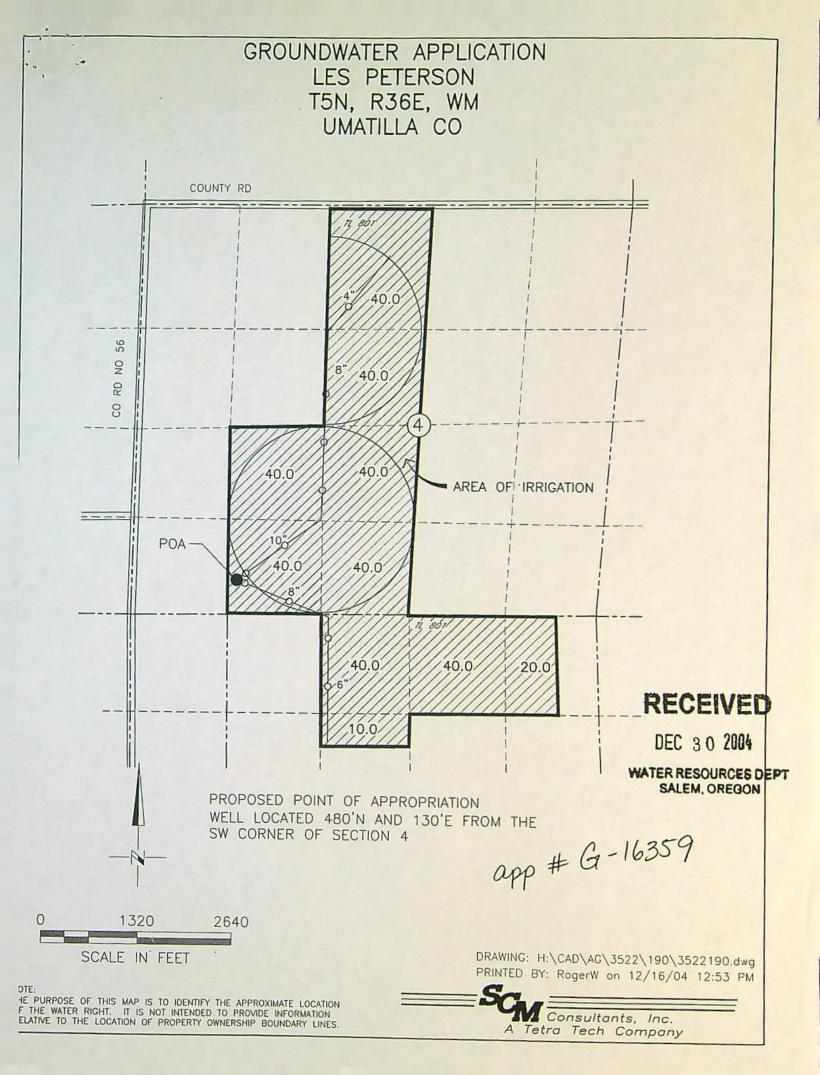
NE 4 NW 4 40.0 ACRES

SE 4 NW 4 10.0 ACRES

SECTION 9

TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

14 DAY STOP PROCESSING DEADLINE DATE: Friday, March 4, 2005 PUBLIC NOTICE DATE: Tuesday, February 22, 2005 30 DAY COMMENT DEADLINE DATE: Thursday, March 24, 2005



Mailing List for IR Copies

Application #G-16359

IR Date: February 18, 2005

Original mailed to:

Applicant:

LES PETERSON

1415 HIGHLAND RD

WALLA WALLA, WA 99362

Copies sent to:

WRD - File # G-16359

2 WRD - Water Availability: Ken Stahr

IR, Map, and Fact Sheet Copies sent to:

3. WRD - Watermaster # 5

4. WRD - Regional Manager: NC

Copies Mailed
By: CR
(SUPPORT STAFF)
on: 2 18

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

5 SCM Consultants Inc., 7601 W Clearwater Avenue, Suite 301, Kennewick, WA 99336

6. Confederated Tribes of the Umatilla Indian Reservation,

PO Box 638, 73239 Confederated Way, Pendleton, OR 97801

7.,CITY OF MILTON-FREEWATER, PO BOX 6, MILTON-FREEWATER, OREGON 97862

ID# KL

COPYSHT.IR

REMINDER: Copy all IR's for uses in the geographic Umatilla Basin to Confederated Tribes of the Umatilla Indian Reservation, PO Box 638, 73239 Confederated Way, Pendleton, OR 97801.

REMINDER: Copy all IR's for uses in the Klamath Basin to DEQ and ODFW contacts, regardless of whether they are subject to Division 33. (If they are not subject to Division 33, do not include Division 33 forms.)

IR CHECKLIST

Application #: G-16359 Applicant: LES PETERSON
Use(s): IRRIGATION USE ON 350.0 ACRES Priority Date: December 30, 2004
∠ If quasi/muni, reviewed by Bill Fujii Y / N / NA
Is the application complete? N
Prohibited by ORS 538? Y / N If so, do not do an IR; return app & fees to applicant.
GW Review surface classification triggered Is there PSI? stream name will not will likely be availablewithout injury and/or within the capacity of the resource will, if properly conditioned, avoid injury to existing ground water rights or to the ground water resource Well located in GWLA or CGWA or T1N R3E Sec 20, 21, 28, 29? Y/D (If Y, include basin map noting POD)
WM Dist (NWR-1 2 16 18 20) NCR-3 4 5 21) (ER-6 8 9 10) (SCR-11 12 17) (SWR-13 14 15 19) swr cc: dave jarrett
☐ Above Bonn ☐ If above, not allowed April 15 - September 30? ☐ Below Bonn ☐ Statewide
SW Availability NA = 80% live = 50% storage
 □ wab in Lost River Basin? If so, use 7-13-04 table for watershed ID # 31420404. □ wab in Chehalem, Champoeg, Mission or Case Creeks? If so, use Dwight's 12/4/2004 memo.
Is there a conflict? Y / NA
□ If conflict, are rights from a different source? □ If supplemental, □ check for primary right on same land □ will this be making up a deficiency in rate? Walla Walla Subbasin □ And African To The control of the
If supplemental, check for primary right on same land will this be making up a deficiency in rate? Wella Wella Subbasin Allowed under Basin Program (V) / N Limitations? Y / N DAR 690 - 50 7 -00 30 (3) (A)
203D Y / NA IN GEOGRAPHIC UMATILLA Y / N (cc: DEQ Regional Manager) (cc: CTUIR) BOTTLED WATER Y / O (cc: DOA Food Safety Division)
✓ 303D Y / Q/ NA IN GEOGRAPHIC UMATILLA Y / N BOTTLED WATER Y / D
203D Y / NA IN GEOGRAPHIC UMATILLA Y / N (cc: DEQ Regional Manager) (cc: CTUIR) BOTTLED WATER Y / O (cc: DOA Food Safety Division)
2303D Y / NA IN GEOGRAPHIC UMATILLA Y / N BOTTLED WATER Y / Q (cc: DEO Regional Manager) (cc: CTUIR) (cc: DOA Food Safety Division) Rate GO Rate Max 350 at x / 80 = 4.375 cf3 4.38 cf3 Duty 3 Season Allowed Max -0 cf 3 Req Max 0 cf 3 Land use approval OK needs approval county notified NA
\[\langle 303D \ Y \sqrt{Q} \ NA \text{IN GEOGRAPHIC UMATILLA Y \ N \text{BOTTLED WATER Y Q \text{(cc: DEO Regional Manager)} \text{(cc: DEO Regional Manager)} \text{(cc: CTUIR)} \text{(cc: DOA Food Safety Division)} \\ \alg{Rate} \frac{ \text{QO} \text{Rate \text{Max} 350 \alpha \text{x \text{QO} = 4.375 \text{Req} \text{4.38 cf3} \\ \text{Duty} \text{Season \text{Allowed Max} \text{Nav} \text{Req} \text{Max} \text{Nav} \text{Req} \text{Max} \text{Nav} \qq \qq \q
2303D Y / NA IN GEOGRAPHIC UMATILLA Y / N BOTTLED WATER Y / Q (cc: DEO Regional Manager) (cc: CTUIR) (cc: DOA Food Safety Division) Rate GO Rate Max 350 at x / 80 = 4.375 cf3 4.38 cf3 Duty 3 Season Allowed Max -0 cf 3 Req Max 0 cf 3 Land use approval OK needs approval county notified NA
303D Y / NA IN GEOGRAPHIC UMATILLA Y / N BOTTLED WATER Y / Received Decided Regional Manager) (cc: CTUIR) (cc: DEO Regional Manager) (cc: CTUIR) (cc: DOA Food Safety Division) Rate
303D Y NA IN GEOGRAPHIC UMATILLA Y N BOTTLED WATER Y O

Is the stream withdrawn? Y / N / N season allowed	Marian Maria
Basin Maps have been checked Y / N River Mile	
SWW ABOVE WITHIN (1) (if so, notify state parks & record	app # in book) Name
Is the use located within Oregon Streamflow Restoration Area? Y /	
Letter format Good Limited Bad Bad w/ HC Oppor	
If Initial Review is negative, did you notify the applicant? Y / N /	A)
CWRE, representative, etc. to notify? (Y)/ N	
SCM Consultants Inc, 7601 W Cl	earnater Are Ste 301 Kennenic
Addn'l info req'd? Y N (If Y, send certified)	
Attachments included? Y (N) NA	
Attachments included? Y (N) NA	200
Attachments included? Y N/ NA	

Peer Reviewer: Jeana Eastman

Name: Kerry Lefever Date: 2/7/2005 Peer Reviewer: Date: Date: 2/7/2005 Peer Reviewer: Date: Date: Date: Date: 2/7/2005 Peer Reviewer: Date: Date Final Order. It is not intended to be a complete record of all factors which were considered to produce the document, nor is it intended to serve any purpose other than that stated above. The related Initial Review, Proposed Final Order, or Final Order is intended to stand alone as the record of factors considered in its production.

Platcard Report

Township 5N Range 36E Section 4 of (4, 9)

						N	E			N	W			S	W		SE					
	App# Priority	Permit/ Certificate	Claim/ Decree	Status dlc/lot	NE	NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE	Govt Lot	DLC
0	G16359 12/30/2004	-		THUE					40.0 IR			40.0	40.0 IR	40.0	40.0							

Page:1

Return to Platcard Query Screen

Run Time: 2 seconds

Platcard Report

Township 5N Range 36E Section 9 of (4, 9)

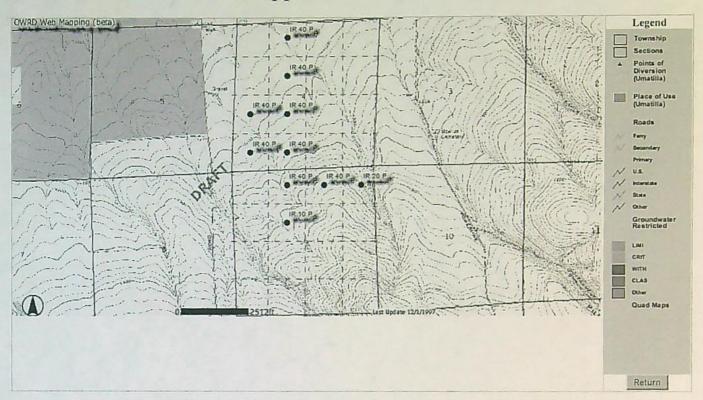
				NE				NW			SW			SE								
	App# Priority	Permit/ Certificate	Claim/ Decree	Status dlc/lot	NE	NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE	NE	NW	sw	SE	Govt Lot	DLC
0	G16095 09/26/2003	G15704								40.0 IR	10.0 IR											
0	G16359 12/30/2004	79	MBRE	cr	20.0 IR	40.0 IR			40.0 IR			10.0 IR										

Page:1

Return to Platcard Query Screen

Run Time: 1 seconds

Application G-16359



Analysis for Application: G16359

Location: 5N-36E-4-NENW

Uses: IR 40 P

Basins

BASIN_NUM BASIN_NAME
7 Umatilla

Records Found: 1

WaterMaster Districts

WATERDIST	REGION	WMASTER	ADDRESS	ESS CITY ZIP		PHONE	EXT	FAX		
5	NC	Tony Justus	116 SE Dorian	Pendleton	97801	541-278-5456		541-278-0287		

Records Found: 1

WAB

GAGE	BASIN	LINK1	LINK2
30710206	7	Water Availability: 50% 80%	Flood Frequency Analysis

Records Found: 1

County

COUNTY	FIPS
Umatilla	41059

Records Found: 1

Groundwater Restricted Records Found: 0

Divison 33 Area

DIV33

In a Div33 area

Records Found: 1

Rule 4D

RULE4D

In a Rule4D Area

Records Found: 1

303D Streams Records Found: 0

303D Lakes Records Found: 0

Location: 5N-36E-4-SENW

Uses: IR 40 P

Basins

BASIN_NUM BASIN_NAME
7 Umatilla

Records Found: 1

WaterMaster Districts

WATERDIST	REGION	WMASTER	ADDRESS	CITY	ZIP	PHONE	EXT	FAX
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30710206 7 Water Availability: 50% 80% Flood Frequency Analysis

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Rule 4D

RULE4D

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Records Found: 1

303D Streams Records Found: 0

303D Lakes Records Found: 0

Location: 5N-36E-9-NENE

Uses: IR 20 P

Basins

BASIN_NUM BASIN_NAME
7 Umatilla

Records Found: 1

WaterMaster Districts

WATERDIST REGION WMASTER ADDRESS CITY ZIP PHONE EXT FAX

5 NC Tony Justus 116 SE Dorian Pendleton 97801 541-278-5456 541-278-0287

Records Found: 1

WAB

GAGE BASIN LINK1 LINK2
30710206 7 Water Availability: 50% 80% Flood Frequency Analysis

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303D Lakes Records Found: 0

Location: 5N-36E-9-NWNE

Uses: IR 40 P

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303D Lakes Records Found: 0

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Uses: IR 10 P

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Water Right Conditions Tracking Slip

Groundwater/Hydrology Section
FILE ## G-16359 ROUTED TO: Water Rights
ROUTED TO: Water Mights
TOWNSHIP/
RANGE-SECTION: 5//36E-4 cc
CONDITIONS ATTACHED? [4 yes [] no REMARKS OR FURTHER INSTRUCTIONS:

Reviewer Michael Zwart

Water Rights Section	Date January 20, 2005	
Ground Water/Hydrology Section		
Application G- <u>16359</u>	Supersedes review of N/A	
	DWATER t a proposed groundwater use will ensure the preservation of the pu	uhlic
	Ground Water/Hydrology Section _ Application G16359 TEREST PRESUMPTION; GROUN	Ground Water/Hydrology Section Michael Zwart Reviewer's Name Supersedes review of N/A Date of Review(s) PEREST PRESUMPTION; GROUNDWATER

A2. A3.		Irrigation fer data (attach a			ity: <u>March 1 to Oc</u> ells; mark proposed we	ctober 31 lls as such under logid):
Well	Logid	Applicant's Well #	Proposed Aquifer*	Proposed Rate(cfs)	Location (T/R-S QQ-Q)	Location, metes and bounds, e.g. 2250' N, 1200' E fr NW cor S 36
1	Proposed	1	CRB	4.38	5N/36E-4 SW-SW	480' N, 130'E fr SW cor S 4
2						
3				The second		
4						
5						

subbasin

Quad Map: Bowlus Hill

Well	Well Elev ft msl	First Water ft bls	SWL ft bls	SWL Date	Well Depth (ft)	Seal Interval (ft)	Casing Intervals (ft)	Liner Intervals (ft)	Perforations Or Screens (ft)	Well Yield (gpm)	Draw Down (ft)	Test Type
1	1210	400+	400+		1000+	CRB	CRB	None	None			

Walla Walla

Use data	from application for proposed wells.
A4. I would	Comments: All construction information from application. Basalt should be reasonably close to land surface here, so I expect a 30 to 50 ft. casing and seal depth.
A5. 🛚	Provisions of the Umatilla Basin rules relative to the development, classification and/or management of ground water hydraulically connected to surface water are, or are not, activated by this application. (Not all basin rules contain such provisions.) Comments: If the City Milton-Freewater has an approved Water Management and Conservation Plan, the Dwight French memo of 9/15/04 will apply here. The proposed well is within five miles of Milton-Freewater city wells and develops a basalt aquifer.
A6. 🗌	Well(s) #

app #G 16359

^{*} Alluvium, CRB, Bedrock

a.	ed upon available data, I have determined that ground water* for the proposed use:
	is over appropriated, is not over appropriated, or is cannot be determined to be over appropriated during any period of the proposed use. * This finding is limited to the ground water portion of the over-appropriation determination as prescribed in OAR 690-310-130;
b.	will not or ☐ will likely be available in the amounts requested without injury to prior water rights. * This finding is limited to the ground water portion of the injury determination as prescribed in OAR 690-310-130;
c.	will not or will likely to be available within the capacity of the ground water resource; or
d.	will, if properly conditioned, avoid injury to existing ground water rights or to the ground water resource: i. The permit should contain condition #(s)
a.	Condition to allow ground water production from no deeper than ft. below land surface;
b.	Condition to allow ground water production from no shallower than ft. below land surface;
c.	Condition to allow ground water production only from the ground water reservoir between approximately ft. and ft. below land surface;
	issuance of the permit until evidence of well reconstruction is filed with the Department and approved by the Ground Water Section.
	Describe injury —as related to water availability— that is likely to occur without well reconstruction (interference w/ senior water rights, not within the capacity of the resource, etc):
sma	ound water availability remarks:Potential for water-level declines and overdraft of the resource exists virtually rywhere the Columbia River Basalt aquifers are developed, especially in the Umatilla Basin where recharge is all. If no measurement/decline condition is used, as recommended above, then I would need to re-review the file, in the likely result being that one or both of the boxes 'will not likely be available' being checked under B1b or
sma with	ound water availability remarks:Potential for water-level declines and overdraft of the resource exists virtually rywhere the Columbia River Basalt aquifers are developed, especially in the Umatilla Basin where recharge is all. If no measurement/decline condition is used, as recommended above, then I would need to re-review the file, in the likely result being that one or both of the boxes 'will not likely be available' being checked under B1b or
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continued

Application G-16359

Date: January 20, 2005

C. GROUND WATER/SURFACE WATER CONSIDERATIONS, OAR 690-09-040

C1. 690-09-040 (1): Evaluation of aquifer confinement:

Well	Aquifer or Proposed Aquifer	Confined	Unconfined
1	Basalt of the Columbia River Basalt Group		

Basis for aquifer confinement evaluation: <u>In this basin, this aquifer typically is confined except where shallow water-bearing zones may be in hydraulic connection with an overlying unconfined alluvial aquifer, which is absent here. WBZ is likely below the static water level.</u>

C2. 690-09-040 (2) (3): Evaluation of distance to, and hydraulic connection with, surface water sources. All wells located a horizontal distance less than ¼ mile from a surface water source that produce water from an unconfined aquifer shall be assumed to be hydraulically connected to the surface water source. Include in this table any streams located beyond one mile that are evaluated for PSI.

Well	SW #	Surface Water Name	GW Elev ft msl	SW Elev ft msl	Distance (ft)	Hydraulically Connected? YES NO ASSUMED	Potential f Subst. Inter Assumed YES	fer. ? NO
1	1	Unnamed trib. to Birch Cr.	800±	1200	1200			\boxtimes
1	2	Walla Walla River	800±	1100	12100			\boxtimes
					Bulling			

Basis for aquifer hydraulic connection evaluation: <u>Elevation of the water-bearing zones and SWL at the proposed well are very likely below the subject surface water sources.</u> Hydraulic connection is likely to be distant and diffuse, probably in Washington State.

Water Availability Basin the well(s) are located within: Birch Cr > Walla Walla R at mouth (30710206).

C3a. 690-09-040 (4): Evaluation of stream impacts for each well that has been determined or assumed to be hydraulically connected and less than 1 mile from a surface water source. Limit evaluation to instream rights and minimum stream flows that are pertinent to that surface water source, and not lower SW sources to which the stream under evaluation is tributary. Compare the requested rate against the 1% of 80% natural flow for the pertinent Water Availability Basin (WAB). If Q is not distributed by well, use full rate for each well. Any checked \(\subseteq \) box indicates the well is assumed to have the potential to cause PSI.

Well	SW #	Well < 1/4 mile?	Qw > 5 cfs?	Instream Water Right ID	Instream Water Right Q (cfs)	Qw > 1% ISWR?	80% Natural Flow (cfs)	Qw > 1% of 80% Natural Flow?	Interference @ 30 days (%)	Potential for Subst. Interfer. Assumed?
	V. CO									

C3b. 690-09-040 (4): Evaluation of stream impacts by total appropriation for all wells determined or assumed to be hydraulically connected and less than 1 mile from a surface water source. Complete only if Q is distributed among wells. Otherwise same evaluation and limitations apply as in C3a above.

SW #	Qw > 5 cfs?	Instream Water Right ID	Instream Water Right Q (cfs)	Qw > 1% ISWR?	80% Natural Flow (cfs)	Qw > 1% of 80% Natural Flow?	Interference @ 30 days (%)	Potential for Subst. Interfer. Assumed?

Comments:	This section does not apply.

C4a. 690-09-040 (5): Estimated impacts on hydraulically connected surface water sources greater than one mile as a percentage of the proposed pumping rate. Limit evaluation to the effects that will occur up to one year after pumping begins. This table encompasses the considerations required by 09-040 (5)(a), (b), (c) and (d), which are not included on this form. Use additional sheets if calculated flows from more than one WAB are required.

Well	SW#	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
7777		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS												
Interferen													
Distribut Well	ted Well SW#	s Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec
		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS												
Interferen	ce CFS		Mills and the							Part I			
		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS			FIRM									
Interference													
		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS										~	70	70
Interference													
		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS			100						,,,		70	70
Interference													
Interferent		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS					, c	70	70	76	70	70	70	1/0
Interference													
		%	%	%	%	%	%	%	%	%	%	%	%
Well Q as	CFS												
Interference	ce CFS												
(A) = Total	Interf.												
(B) = 80 %	Nat. Q												
(C) = 1 %	Nat. Q												
(D) = (A) >	> (C)	1	1	1	1	1	1	V	1	1	V	1	1
(E) = (A / E)	3) x 100	%	%	%	%	%	%	%	%	%	%	%	%

(D) = highlight the che Basis for impact ev	aluation: This section does not apply.
-	
-	
690-09-040 (5) (b Rights Section.	The potential to impair or detrimentally affect the public interest is to be determined by the
under this permit of	tioned, the surface water source(s) can be adequately protected from interference, and/or ground water and be regulated if it is found to substantially interfere with surface water: ermit should contain condition #(s)
	ermit should contain special condition(s) as indicated in "Remarks" below;
W / GW Remarks a	nd Conditions
SW / GW Remarks an	nd Conditions
SW / GW Remarks an	nd Conditions
SW / GW Remarks an	nd Conditions
SW / GW Remarks an	nd Conditions
SW / GW Remarks an	nd Conditions
SW / GW Remarks an	nd Conditions
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SW / GW Remarks an	nd Conditions
SW / GW Remarks and a second s	nd Conditions
SW / GW Remarks and a second s	nd Conditions
SW / GW Remarks and	nd Conditions
SW / GW Remarks and	nd Conditions
SW / GW Remarks and	nd Conditions
SW / GW Remarks and	nd Conditions
References Used: L	ocal well logs; local knowledge; local reviews, esp. G-16095; GW Reports #30 and #35; Newcom
References Used: L	ocal well logs; local knowledge; local reviews, esp. G-16095; GW Reports #30 and #35; Newcom
References Used: L	ocal well logs; local knowledge; local reviews, esp. G-16095; GW Reports #30 and #35; Newcom

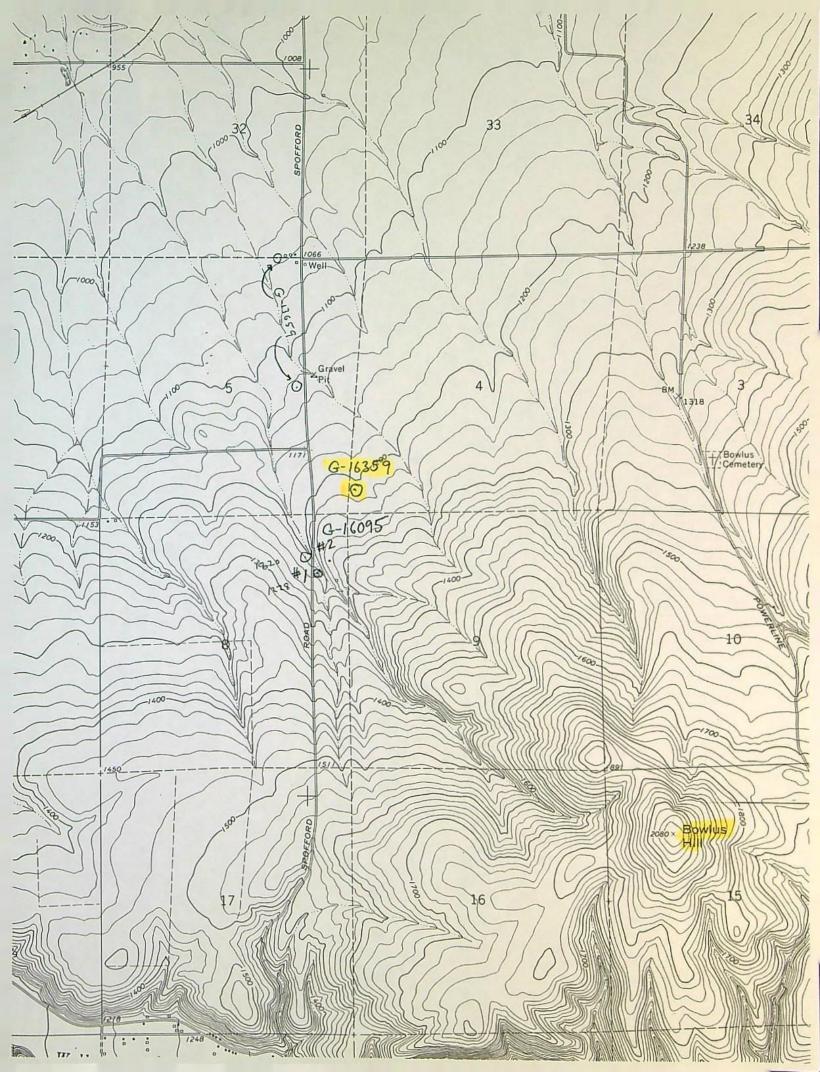
Date: January 20, 2005

·Application G-16359 continued

Applic	cation G-16359 continued Date: January 20, 2005
D.W	ELL CONSTRUCTION, OAR 690-200
D1.	Well #:1 Logid: Proposed
D2.	THE WELL does not meet current well construction standards based upon: a. review of the well log; b. field inspection by
	c. report of CWRE other: (specify)
D3.	THE WELL construction deficiency: a.
D4.	THE WELL construction deficiency is described as follows:
D5.	THE WELL a. was, or was not constructed according to the standards in effect at the time of original construction or most recent modification. b. I don't know if it met standards at the time of construction.
D6. [Route to the Enforcement Section. I recommend withholding issuance of the permit until evidence of well reconstruction is filed with the Department and approved by the Enforcement Section and the Ground Water Section.
THIS	SECTION TO BE COMPLETED BY ENFORCEMENT PERSONNEL
D7. [Well construction deficiency has been corrected by the following actions:
	, 200
	(Enforcement Section Signature)
D8. [Route to Water Rights Section (attach well reconstruction logs to this page).

Water Resources Department

ME	мо						J	anuar	7 20	_, 200	5		
TO- FRO)M JECT	GW	Application G-16359 GW: Michael Zwart (Reviewer's Name) Scenic Waterway Interference Evaluation										
	Yes No	The	The source of appropriation is within or above a Scenic Waterway										
	Yes Use the Scenic Waterway condition (Condition 7J). No												
PRE	PREPONDERANCE OF EVIDENCE FINDING: (Check box only if statement is true) At this time the Department is unable to find that there is a preponderance of evidence that the proposed use of ground water 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.												
FLOW REDUCTION: (To be filled out only if <u>Preponderance of Evidence</u> box is not checked) Exercise of this permit is calculated to reduce monthly flows in Scenic Waterway by the following amounts expressed as a proportion of the consumptive use by which surface water flow is reduced.													
	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	



the vicinity of application 16359 Wells Application well(s) in this 1/4-1/4 section Well(s) identified in this 1/4-1/4 section from OWRD's well log database within 1 mi, radius of application well(s) Conditioned, permitted well(s) in this 1/4-1/4 section within 5 mi. radius of application well(s) Critical GW Area Regulated GW Area Well(s) identified in this section from OWRD's well log database within 1 mi, radius of application well(s) OWRD Observation well and well-id within 5 mi, radius of application well(s) Permitted well(s) in this 1/4-1/4 section within 1 ml. radius of application well(s) Ferndale 6 N A 851 Spofford ▲ 857 A 814 Watapine 2 511 O A 812 ▲ 813 - × 11H Millon-Freewater 5 N 3 6 E 3 7 E

```
ABANDON: 0
RECONDITIONED:
                  2
                2 0
   REPAIRED:
 CONVERSION:
                  0
  DEEPENINGS:
NEW CONSTRUCT:
COMMUNITY USE:
 DOMESTIC USE:
                   7
                  0
INDUSTRIAL USE:
                  0
INJECTION USE:
IRRIGATION USE:
  THERMAL USE:
                   0
LIVESTOCK USE: 0
        PERMITTED WELLS WITHIN 1 MILE OF APPLICATION G 16359
```

\$RECNO	APE	PLICATION	PEI	RMIT	CLAIM		LOC-QQ	USE_CODE
1	G	7166	G	6341		0	6.00N36.00E29SENW	IR
1	G	8140	G	7511		0	6.00N36.00E29SENW	IR
1	G	8661	G	8090		0	6.00N36.00E29SENW	IS
1	G	11488	G	10608		0	6.00N36.00E29SENW	IC
2	G	4844	G	4848		0	6.00N36.00E32SWNW	IR
2	G	9493	G	8905		0	6.00N36.00E32SWNW	IR
3	G	13659	G	12524		0	5.00N36.00E 5NWNE	IS
4	G	13659	G	12524		0	5.00N36.00E 5SENE	IS
5	G	16359		0		0	5.00N36.00E 4SWSW	IR
6	G	16095	G	15704		0	5.00N36.00E 8NENE	IR
7	G	16095	G	15704		0	5.00N36.00E 8SENE	IR
	**	******	***	*****	*****	***	*******	

CONDITIONED WELLS WITHIN 5 MILES OF APPLICATION G 16359

\$RECNO	APP	LICATION	PER	MIT	LOC-QQ	CONDITION-CODE
1	GR	1154	GR	1118	6.00N35.00E35SESW	
1	GR	2825	GR	2664	6.00N35.00E35SESW	
1	GR	4168	GR	3733	6.00N35.00E35SESW	
2	G	4059	G	4977	6.00N35.00E35SWSW	
2	G	13630	G	12412	6.00N35.00E35SWSW	7BG
2	G	13630	G	12412	6.00N35.00E35SWSW	7BR
2	GR	1159	GR	1123	6.00N35.00E35SWSW	
2	GR	3021	GR	2828	6.00N35.00E35SWSW	
2	GR	4075	GR	3671	6.00N35.00E35SWSW	
2	GR	4076	GR	3672	6.00N35.00E35SWSW	
3	G	2502	G	2312	5.00N36.00E18NWSW	
3	G	11997	G	11310	5.00N36.00E18NWSW	4E
3	U	317	U	311	5.00N36.00E18NWSW	
4	G	11954	G	10990	5.00N35.00E 3SWNW	4E
	**	*****	***	****		*****

APPLICATION G 16359 FALLS WITHIN THESE QUAD(S)

BOWLUS HILL ************

STATE OF OREGON

WATER RESOURCES DEPARTMENT

RECEIPT # 72064

RECEIPT: 72064

725 Summer St. N.E. Ste. A SALEM, OR 97301-4172

INVOICE # _____

EIVED FRO	M: Lesor Mary P	eterson	APPLICATION	G 1635			
			PERMIT				
			TRANSFER				
sн: с	HECK:# OTHER: (IDENTIFY))	TOTAL REC'D \$ 900,00				
1083	TREASURY 4170 WRD	MISC CASH AC	CT				
0407	COPIES			\$			
	OTHER: (IDENTIFY)			\$			
0243 I/S Le	ease 0244 Muni Water Mgmt.	Plan 0245	Cons. Water				
		OPERATING AC					
	MISCELLANEOUS	CALL COMP					
0407	COPY & TAPE FEES			\$			
0410	RESEARCH FEES			\$			
0408	MISC REVENUE: (IDENTIFY)			\$			
TC162	DEPOSIT LIAB. (IDENTIFY)			\$			
0240	EXTENSION OF TIME			\$			
	WATER RIGHTS:	EXAM FEE		RECORD FE			
0201	SURFACE WATER	\$	0202	\$			
0203	GROUND WATER	\$ 900,00	0204	\$			
0205	TRANSFER	\$					
	WELL CONSTRUCTION	EXAM FEE		LICENSE FE			
0218	WELL DRILL CONSTRUCTOR	\$	0219	\$			
	LANDOWNER'S PERMIT		0220	\$			
	OTHER (IDENTIFY)						
0.500		L CONCT CTAR					
	TREASURY 0437 WEL		7 12/1				
0211	WELL CONST START FEE	\$	CARD#				
0210	MONITORING WELLS	\$	CARD#				
-	OTHER (IDENTIFY)	19					
0607	TREASURY 0467 HYDI	RO ACTIVITY	LIC NUMBER				
0233	POWER LICENSE FEE (FW/WRD)			\$			
0231	HYDRO LICENSE FEE (FW/WRD)			\$			
	HYDRO APPLICATION			\$			
	TREASURY OTHE	ER / RDX					
FUND_	TITLE						
	E VENDOR #						
DESCRIP	TION			\$			

Distribution - White Copy - Customer, Yellow Copy - Fiscal, Blue Copy - File, Buff Copy - Fiscal



Application for a Permit to Use Ground Water

Please type or print in dark ink. If your application is found to be incomplete or inaccurate, we will return it to you. If any requested information does not apply to your application, insert "n/a." Please read and refer to the instructions when completing your application. A summary of review criteria and procedures that are generally applicable to these applications is available at www.wrd.stat.or.us/publication/reports/index.shtml.

1. APPLICANT INFORMATION

DEC 3 0 2004

A. Individua	ls		WATER RE	SOUR M, ORI
Applicant:	Les		Peterson	
	First 1415 Highlar	nd Road	Last	
	Walla Walla	Washington	99362	
	City	State	Zip	
Phone:	(509)522-2124		Cell (509)520-2920	
	Home	Work	Other	
*Fax:(509)5	22-1895	*E-Mail a	nddress: lespeterson@pocketnet.co	om
B. Organizat				
(Corporations, as	ssociations, firms, partnersh	ips, joint stock companies, coopera	tives, public and municipal corporations)	
Name of organ	ization: N/A			
N. 1441	C			
Name and title	or person applying:			
Mailing addres	s of organization:			
	City	State	Zip	
DI.		,		
Phone:	Day	Evening		-
*Fax:		*E-Mail address:		
*Optional informa	ation			
	2	For Department Use		
A 7	No. G16359	Pormit No.	Data	
App. I	NO. CITY OF	Permit No	Date	

2. PROPERTY OWNERSHIP

	2. PROPER	TI OWNERSHIT	notes that the case side could from
Do you own all th	he land where you propose to di	vert, transport, and use water?	RECEIVED
⊠ Yes (Skip to section 3 "Ground wate	er Development.")	DEC 3 0 2004
□ No P	lease check the appropriate box	below.	WATER RESOURCES DEPT
	I have a recorded easement or	written authorization permitting access	SALEM, OREGON
	I do not currently have written	authorization or easement permitting a	access.
		sement is not necessary, because the or bmersible lands, and this application is S 274.040).	
List the names an	nd mailing addresses of all affect	ted landowners.	
	3 GROUNDWA	ATER DEVELOPMENT	
		TER DEVELOTIMENT	
A. Well Inform	ation		
Number of well(s	s):1		
Name of nearest	surface water body: Walla	Walla River	
Distance from we	ell(s) to nearest stream or lake: 1)3+Miles	
2)	3)	4)	
If distance from s water and well he		le, indicate elevation difference between	n nearest surface
2)	3)	4)4)	
wells. If the well is available, for each the map and procee	tructed according to standards set a already constructed, please enclos well with this application. Identify e	by the Department for the construction and e a copy of the well constructor's log and each well with a number corresponding to to e form. If the well has not been constructed	the well ID number, if he wells designated on
Well(s) will be co	nstructed by:I will contact D	rillers after Receiving Permit	
Address:			

Completion date: The well will be drill well within 6 months of receiving my permit

Please provide a description of your well development. (Attach additional sheets if needed.)

Well No.	Diameter	Type and size of casing	No, of feet of casing	Intervals casing is perforated (in feet)	Seal depth	Est. depth to water	Est. depth to water bearing stratum	Type of access port or measuring device	Total well depth
1	16"	Steel	To Basalt	Not anticipating perforations	To basalt	400+ft	400 + fT	2 " access port in well casing	1000+ft

~		170m	171
C.	Ar	tesian	Flows

If your water wel	l is flowing artesian	, describe your wa	ter control and cons	servation works:	
Do not a	nticipate artesian f	low			

4. WATER USE

Please read the instruction booklet for more details on "type of use" definitions, how to express how much water you need and how to identify the water source you propose to use. You must fill out a supplemental form for some uses as they require specific information for that type of use.

A. Type(s) of Use(s)

See list of beneficial uses provided in the instructions.

- If your proposed use is domestic, indicate the number of households to be supplied with water:
- · If your proposed use is irrigation, please attach Form I
- · If your proposed use is mining, attach Form R
- · If your proposed use is municipal or quasi-municipal, attach Form M
- If your proposed use is commercial/industrial, attach Form O

RECEIVED

DEC 3 0 2004

WATER RESOURCES DEPT SALEM, OREGON

i	D	. A			-4		XX/	-	
ı	b		۱m	លារា	nt	OT:	w	Яl	er

Provide the production rate in gallons per minute (gpm) and the total annual amount of water you need from each well, from each source or aquifer, for each use. You do not need to provide source information if you are submitting a well log with your application.

Well No.	Source or aquifer	Type of use	Total rate of water requested (in gpm)	Total annual quantity (in gallons)	Production rate of well (in gpm)	
1	Basalt	Irrigation	2000	391 million	2000gpm	
What is the	num Rate of Use Required maximum, instantaneous your application will be be	rate of water that will be	e used?	4.38 cfs		-
D. Period of Indicate the (For seasonal)	of Use time of year you propose I uses like irrigation give a	to use the water:	March 1st to d begin and end, e.g	October 31st	ober 31.)	
number of a	e applying water to land, cres where water will be should be consistent with	applied or used:	350 Acres			
(This number		. WATER MANAGEN	MENT		REC	EIVED
A. Diversio	on				DEC 3	0 2004
What equip	ment will you use to pump	water from your well(s)?		WATER RES	OURCES DEP
	Pump (give horsepowe	r and pump type)400	hp electrical dee	p well turbine	04151	OREGON
	Other means (describe)					
B. Transpo How will yo	ort ou transport water to your	place of use?				
Ditch or canal (give average width and depth)						
	Width	Depth				
Is th	ne ditch or canal to be line					
□ Pipe (give diameter and total length) See application Map						
	Diameter	Length				
Other (describe)						

C. Application/Distr What equipment will y	ibution Method ou use to apply water to	your place of use	e? 2- Center Pivots,	solid set and		
wheel Lines						
Irrigation or land appli	cation method (check all	that apply):				
Flood	High-pressure sprink	kler				
☐ Drip	☐ Water cannons		□ Center pivot system			
	Wheel lines ■ Wheel lines ■			RECEIVED		
☐ Siphon tubes of	or gated pipe with furrows					
Other, describ	e			DEC 3 0 2004		
Distribution method				WATER RESOURCES DEPT		
☐ Direct pipe fr	om source	orage (tank or pon	d) Open	SALEM, OREGON		
method? For example, additional space, attack	if you are using sprinkle a separate sheet.	er irrigation ratho	ou choose this distribution er than drip irrigation, expla	in. If you need		
	6. PRO	JECT SCHEDU	JLE			
Indicate the anticipated begun, or is completed, p	dates that the following co please indicate that date.	nstruction tasks sh	hould begin. If construction ha	s already		
Proposed date construc	Proposed date construction will begin with in 6 month of receiving Permit					
Proposed date construc	Proposed date construction will be completed October 1, 2007					
Proposed date beneficia	al water use will begin _	October 1, 20	08			
		REMARKS				
If you would like to clari the specific application of	fy any information you ha question you are addressin	ve provided in the g.	application, please do so here	and reference		

8. MAP REQUIREMENTS

The Department cannot process your application without accurate information showing the source of water and location of water use. You must include a map with this application form that clearly indicates the township, range, section, and quarter/quarter section of the proposed well location and place of use. The map must provide tax lot numbers. See the map guidelines sheet for detailed map specifications.

9. SIGNATURE

RECEIVED DEC 3 0 2004

By my signature below I confirm that I understand:

WATER RESOURCES DEPT SALEM, OREGON

- I am asking to use water specifically as described in this application.
- Evaluation of this application will be based on information provided in the application packet.
- I cannot legally use water until the Water Resources Department issues a permit to me.
- · If I get a permit, I must not waste water.
- If development of the water use is not according to the terms of the permit, the permit can be canceled.
- The water use must be compatible with local comprehensive land use plans.
- Even if the Department issues a permit to me, I may have to stop using water to allow senior water right holders to get water they are entitled to, and

I swear that all information provided in this application is true and correct to the best of my knowledge:

12 - 22 · 200 4 t sign) Date

Signature of Applicant (If more than one applicant, all must sign)

Before you submit your application be sure you have:

- Answered each question completely.
- Attached a legible map which includes township, range, section, quarter/quarter and tax lot number.
- Included a Land Use Information Form or receipt stub signed by a local official.
- Included the legal description of all the property involved with this application. You may supply a copy of the deed, land sales contract, or title insurance policy, to meet this requirement.
- Included a check payable to the Oregon Water Resources Department for the appropriate amount. The Department's fee schedule can be found at www.wrd.state.or.us or call (503) 986-0900.



Oregon Water Resources Department

FORM I

FOR IRRIGATION WATER USE

1.	Please indicate whether yo	ou are requesting a	primary or suppler	nental irriga	tion water r	ight.
	⊠ Primary □Su _l	☑ Primary ☐ Supplemental If supplemental, please indicate the number of acres that will be irrigated for each type of use.				RECEIVED
		Primary:	350	Acres		DEC 3 0 2004
		Secondar		Acres		WATER RESOURCES DEPT SALEM, OREGON
		List the permit or of the primary wat		No		SALEM, OREGON
2.	Please list the anticipated partial season:	crops you will grow a	and whether you w	vill be irrigati	ing them fo	r a full or
1	Graps		☐ Partial seaso	on (from:	to	
2	Alfalfa		Partial seaso	on (from:	to	
3	Grains		☐ Partial seaso	on (from:	to	
4	Peas		☐ Partial seaso	on (from:	to	
3.	Indicate the maximum total number of acre-feet you expect to use in an irrigation season: \(\frac{1050}{acre-feet} \) acre-feet (1 acre-foot equals 12 inches of water spread over 1 acre, or 43,560 cubic feet, or 325,851 gallons)					
4.	How will you schedule you week, daily?	r applications of wat	er? Will you be a	oplying wate	er in the eve	enings, twice a
	□ Daily during dayting □ Daily dayting	ne hours	□ Daily delight of the last of th	uring nighttin	me hours	
	Two or three times during daytime	weekly		three times nighttime	weekly	
	☐ Weekly, during day	ytime hours	☐ Weekly	, during nigl	nttime hour	s
	Other, explain:					
	app # G 163	59				



Oregon Water Resources Department Land Use Information Form

This information is needed to determine compatibility with local comprehensive plans as required by ORS 197.180. WRD will use this and other information to evaluate the water use application. THIS FORM IS NOT REQUIRED IF: 1) water is to be diverted, conveyed, and/or used only on federal lands; or 2) the application is for a water right transfer, allocation of conserved water, or exchange and all of the following apply: a) only the place of use is proposed for change, b) there are no structural changes, c) the use of water is for irrigation, and d) the use is located in an irrigation district or exclusive farm use zone.

	To Be C	ompleted By Applicant ———	
	section must be completed by the individual section must be completed by the individual section in the individual section	ual or group that is filing an application with map from the application to this form.	the Water
- A. App	licant		
Name:			
Addres	s: 1415 Highland Road		
City: _V	Valla Walla State:	NA Zip: 99362 Day Phone: (509)8	49-2877
- B. Lan	d and Location		
"convey on tax i municip	d, conveyed, or used. Check "diverte yed" if water is conveyed (transporte ot. More than one box may be check	low for all tax lots on or through which wad" if water is diverted (taken) from its sould) on tax lot, and "used" if water will be pred. (Attach extra sheets as necessary.) Attion districts, may substitute existing and equested below.	urce on tax lot, ut to beneficial use Applicants for
Tax Lot I.D.	Plan Designated (e.g. Rural Residential/RR-5)	Water to be: (Check all that apply)	Proposed Land Use
T5N R36E TL 801	Exclusive Form Use	☑ Diverted ☑ Conveyed ☑ Used	Irrigated Agriculture
		Diverted Conveyed Used	
proposed C. Des Indicate ⊠ Water		Allocation of Conserved Water Exchange	RECEIVED
Indicate	the intended use of water and describe	the key characteristics of the project.	
Comm		DEC 3 0 2004	
☐ Municipal ☐ Quasi-municipal ☐ Domestic (indicate number of households ☐ Other ☐ Briefly describe: ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐ ☐			WATER RESOURCES DE SALEM, OREGON
Indicate th	ne source of the water to be used.		
Reserv	oir/Pond	Surface Water(Source)	
Indicate th	ne estimated quantity of water the use will require	: GPM Acre-Feet	

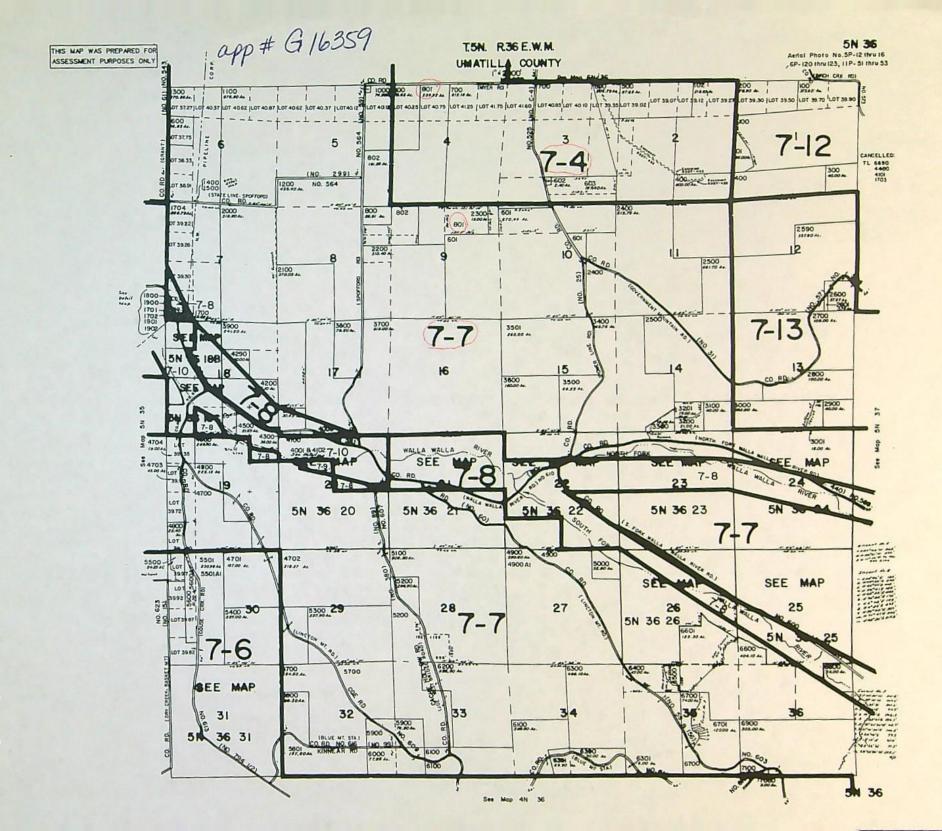
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DEC 3 0 2004

For Local Government Use Only The following section must be completed by a planning official from each county and city listed unless the projects DEPT located entirely within the city limits. In this case, only the city planning agency must complete this form. Please request additional forms as needed or feel free to copy. - A. Allowed Use Check the appropriate box below and provide requested information. Land uses to be served by proposed water uses (including proposed construction) are allowed outright or are not regulated by your comprehensive plan. Cite applicable ordinance section(s): 151,056 Go to section B "Approval" below. Land uses to be served by proposed water uses (including proposed construction) involve discretionary land use approvals as listed in the table below. Please provide information as requested below for all tax lots on or through which water will be diverted, conveyed, or used. Check "diverted" if water is diverted (taken) from its source on tax lot, "conveyed" if water is conveyed (transported) on tax lot, and "used" if water will be put to beneficial use on tax lot. More than one box may be checked. (Attach extra sheets as necessary.) Applicants for municipal use, or irrigation uses within irrigation districts, may substitute existing and proposed service area boundaries for the tax lot information requested below. Type of Land Use Approval Needed City Most Significant, Applicable Check the item that applies: (3.g. plan amendments, rezones, Plan Policies & Ordinance Section Land Use Approval conditional use permits, etc.) References Obtained ☐ Being pursued □ Denied ☐ Not being pursed ☐ Obtained ☐ Being pursued Denied ☐ Not being pursed Obtained ☐ Being pursued Denied ☐ Not being pursed Obtained ☐ Being pursued ☐ Denied ☐ Not being pursed Obtained ☐ Being pursued ☐ Denied ☐ Not being pursed ☐ Obtained ☐ Being pursued ☐ Denied ☐ Not being pursed Note: Please attach documentation of applicable local land use approvals which have already been obtained. (Record of Action/land use decision and accompanying findings are sufficient.) Phone: 541, 128, 6251 C. Additional Comments Local governments are invited to express special land use concerns or make recommendations to the Department regarding this proposed use of water below, or on a separate sheet.

Note: If this form cannot be completed while the applicant waits, sign and detach the receipt stub as instructed below. You will have 30 days from the Water Resources Department's notice date to return the completed Land Use Information Form or WRD may presume the land use associated with the proposed use of water is compatible with local comprehensive plans.

app # G 16359





THIS SPACE RESERVED FOR RECORDER'S USE

After recording return to: Les A. Peterson 1415 Highland Road Walla Walla, WA 99362 Until a change is requested all tax statements shall be sent to The following address: Les A. Peterson 1415 Highland Road Walla Walla, WA 99362

Escrow No. MF0052755

SPECIAL WARRANTY DEED

Baker Boyer Bank, Grantor(s) hereby grant, bargain, sell, warrant and convey to Les A. Peterson and Mary M. Peterson, husband and wife, Grantee(s) and grantee's heirs, successors and assigns the following described real property, free of encumbrances except as specifically set forth herein in the County of Umatilla and State of Oregon, to wit:

SEE ATTACHED LEGAL DESCRIPTION

134101 133723 5N 36 0 0 801 7-7 5N 36 0 0 801 7-4

Grantor is lawfully seized in fee simple on the above granted premises and SUBJECT TO: all those items of record, if any, as of the date of this deed and those shown below, if any:

REAL PROPERTY TAXES PLUS INTEREST, IF ANY, BY REASON OF FARM USE LAND ASSESSMENT.

and the grantor will warrant and forever defend the said premises and every part and parcel thereof against the lawful claims and demands of all persons claiming by, through, or under the grantor except those claiming under the above described encumbrances.

The true and actual consideration for this conveyance is \$356,420.00.

THIS INSTRUMENT WILL NOT ALLOW USE OF THE PROPERTY DESCRIBED IN THIS INSTRUMENT IN VIOLATION OF APPLICABLE LAND USE LAWS AND REGULATIONS. BEFORE SIGNING OR ACCEPTING THIS INSTRUMENT, THE PERSON ACQUIRING FEE TITLE TO THE PROPERTY SHOULD CHECK WITH THE APPROPRIATE CITY OR COUNTY PLANNING DEPARTMENT TO VERIFY APPROVED USES AND TO DETERMINE ANY LIMITS ON LAWSUITS AGAINST FARMING OR FOREST PRACTICES AS DEFINED IN ORS 30.930. WATER RESOURCES DEPT

Dated this 3/ day of Aysks

uthven, Vice President/Milton Freewater Bus Bnk Mgr

LONA MASON

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DEC 3 0 2004

SALEM, OREGON

State of Oregon County of Umatilla

Baker Boyer Bank

This instrument was acknowledged before me on

2004 by Stephen Ruthven.

blic for Oregon)

My commission expires 10/10/04

Page No. 3

Order No. 63519 Policy No. L260483

TRACT I:

TOWNSHIP 5 NORTH, RANGE 36, E.W.M.,

Section 4: Southeast Quarter of the Southwest Quarter.

Section 9: Northeast Quarter of the Northwest Quarter. North 495 feet of the Southeast Quarter of the Northwest Quarter.

> Beginning at the Northwest corner of the Northeast Quarter of Section 9; thence South along the the West line of said Northeast Quarter, a distance of 1,320 feet; thence East, 2,070 feet; thence North, 1,317 feet to a point on the North line of said Section 9, said point being 2,006 feet East of the point of thence West on the North line of said Section 9, a distance of 2,006 feet to the point of beginning;

All being East of the Willamette Meridian, Umatilla County, Oregon.

TRACT II:

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1- . 3

DEC 3 0 2004

TOWNSHIP 5 NORTH, RANGE 36, E.W.M.,

WATER RESOURCES DEPT SALEM, OREGON

Section 4: East Half of the Northwest Quarter. North Half of the Southwest Quarter. Southwest Quarter of the Southwest Quarter.

> Excepting therefrom any portion lying within the County Road right of way.

All being East of the Willamette Meridian, Umatilla County, Oregon.

Order No. 0052755 Page 3,

LEGAL DESCRIPTION FILE NO.: MF 0052755

Township 5 North, Range 36, E. W. M.

Section 4: East half of Northwest Quarter; the Southwest Quarter.

Section 9: Northeast Quarter of the Northwest Quarter. North 495 feet of the Southeast Quarter of the Northwest Quarter.

Beginning at the Northwest corner of the Northeast Quarter of Section 9, thence South along the West line of said Northeast Quarter a distance of 1,320 feet; thence East, 2,070 feet; thence North 1,317 feet to a point on the North line of said Section 9, said point being 2,006 feet East of the point of beginning; thence West on the North line of said Section 9, a distance 2,006 feet to the point of beginning.

All being East of the Willamette Meridian, Umatilla County, Oregon.

Subject to any and all roads.

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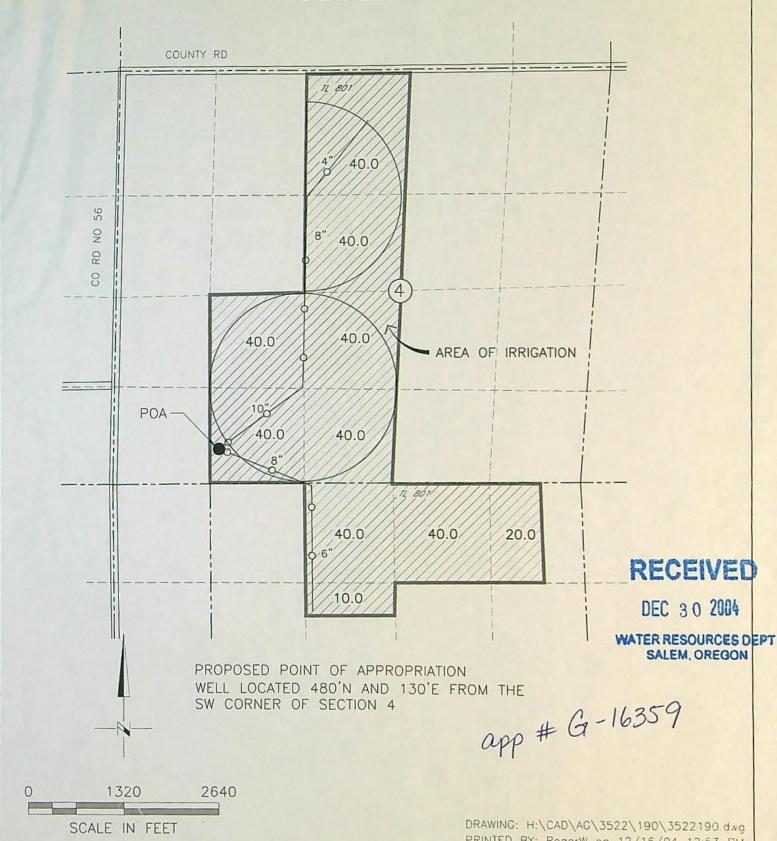
DEC 3 0 2004

WATER RESOURCES DEPT SALEM, OREGON



app # G 16359

GROUNDWATER APPLICATION LES PETERSON T5N, R36E, WM UMATILLA CO

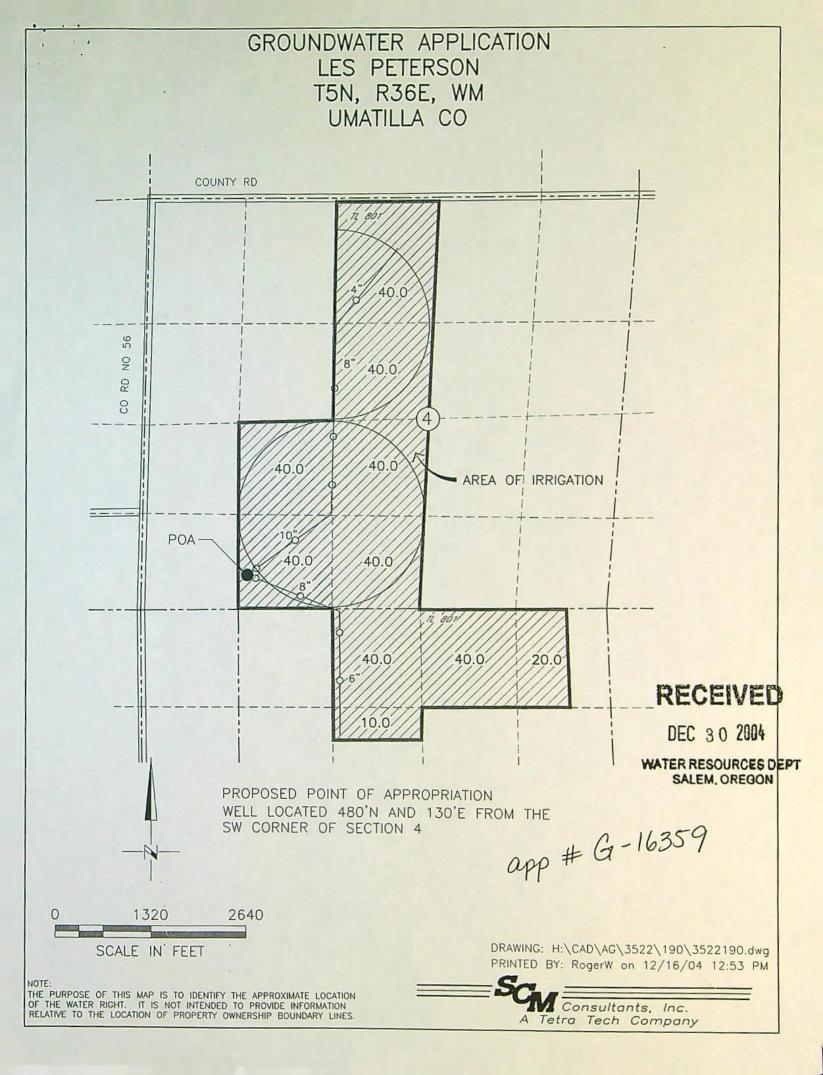


NOTE:

THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.

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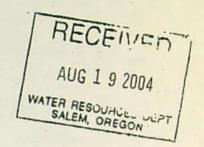
HARDY MYERS Attorney General



PETER D. SHEPHERD
Deputy Attorney General

DEPARTMENT OF JUSTICE GENERAL COUNSEL DIVISION

August 18, 2004



Tom Paul Administrator Field Services Division Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301

Re: Umatilla Basin Program and 5-mile Radius Provision

DOJ No. 690-302-GN0175-04

Dear Mr. Paul:

In 1990, the Oregon Water Resources Commission (Commission) adopted the Umatilla Basin Program rules, OAR 690, Division 507. The rules contain a provision which limits new ground water development within five miles of a municipal well to municipal, group domestic and statutorily exempt ground water users. OAR 690-507-0060(3)(a)(B). Notwithstanding this classification, other uses may be permitted if certain criteria are met. These other uses must be reviewed by the Commission for a consideration of the public interest, unless the affected municipality affirms it is in favor of the proposed appropriation. *Id.* You have asked whether this rule purports to give a municipality the authority to veto new ground water withdrawals within a five-mile radius of its well, and if so, whether this rule is consistent with the authorizing statute.

The rule which gives municipalities a role in the approval of new ground water development within a five-mile radius of a municipal well exceeds the statutory authority granted to the Commission for adoption of Basin Planning rules, and therefore, that portion of the rule is invalid. Even if there were authority for that portion of the rule, the rule does not give municipalities the authority to veto new ground water development within a five-mile radius of a municipal well.

Classification of Water

Under ORS 536.340, the Commission may classify sources of water supply "as to the highest and best use and quantities of use thereof for the future in aid of an integrated and balanced program for the benefit of the state as a whole." *Id.*, at (1)(a). "Classification or reclassification of sources of water supply as provided in this subsection has the effect of restricting the use and quantities of use thereof to the uses and quantities of uses specified in the classification or reclassification, and no

The Umatilla Basin Program has similar provisions in other sections of the rules. This advice applies to all similar provisions.

Tom Paul August 18, 2004 Page 2

other uses or quantities of uses except as approved by the commission under ORS 536.370 to 536.390 or as accepted by the commission under ORS 536.295." Id. (Emphasis Added).

Commission Rule Governing Uses of Water Within the Umatilla Basin

Under its authority to classify uses of water within basins, the Commission adopted the following rule:



Groundwater from the basalt reservoir in a five-mile radius around any municipal well of the cities of Pendleton and Pilot Rock is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mail radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that it is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full time conservation program in effect.

OAR 690-507-0060(3)(a)(B)(Emphasis added). This rule purports to do a number of things. First, it limits water use within a five-mile radius of any wells to which the cities of Pendleton or Pilot Rock hold water rights, to municipal, group domestic and statutorily exempt ground water uses, if the affected cities have a full time conservation program in effect. Id. Second, the rule provides that other uses not classified may be allowed if it can be shown that there is a barrier to ground water movement between the proposed well and the municipal well, and there will be no interference. Id. Third, the rule provides that other uses must be referred to the Commission for a public interest review, unless the affected city indicates it is in favor of the proposed new well. Id. In other words, it appears the public interest determination that is to be performed by the Commission, could be bypassed if the affected city does not object to the proposed well. Thus, if a person applied for a ground water right for irrigation within five miles of a City of Pendleton well, and if there was evidence of (1) a barrier to the movement of water between the proposed well and the City's well; and (2) no interference between the wells, under this rule the proposed new use could be approved by the Commission without further review, if the City of Pendleton had no objection.

ORS 536,340 permits the Commission to classify water supplies as to the highest and best uses. Therefore, it is appropriate for the Commission to have given a preference to municipalities, group domestic, and other exempt ground water uses within five miles of a municipal well. It is less clear whether the Commission has the statutory authority under ORS 536,340 to consider, on an individual basis, applications for other non-classified uses, given that there is now a specific statutory process for considering applications for uses not classified within a basin program. ORS 536,295. However, it is clear that ORS 536,340 does not authorize the Commission to delegate its decision

² OAR 690-507-0060 was adopted before statutory changes were enacted which gave the Department the authority to undertake a public interest review of water right applications. OAR 690-507-0060(3)(a)(B) provides that the Commission will undertake a public interest review of applications for uses of ground water that are not classified. It may be prudent for the Commission to either amend the rule to be consistent with ORS 536.295, or delegate the public interest review to the Department pursuant to ORS 536.025.

Tom Paul August 18, 2004 Page 3

making regarding which uses are classified within a basin, to a municipality. There is no express or implied authority in ORS 536.340 nor any other statute which vests the Commission with power, that would allow a municipality to affect the processing of a water right application. See Lane County v. LCDC, 138 Or App 635, 639, 910 P.2d 414 on recons 140 Or App 368, 914 P.2d 114 (1996) (rules invalid as exceed agency's statutory authority); Miller v. Employment Division, 290 Or 285, 289, 620 P2d 1377 (1980) (an agency has no authority to expand or to contract the meaning or coverage of a statute.)

Finally, the rule, as written, does not in fact give authority to a municipality to veto a ground water right application for a well within a five-mile radius of a municipality's well. Rather, as stated above, the rule allows a municipality to express its non-opposition to a proposed appropriation, which in turn allows the Commission to bypass its public interest review. OAR 690-507-0060(3)(a)(B).

Until the Commission adopts new rules repealing the objectionable language in OAR 690-507-0060(3)(a)(B)(and similarly worded rules), the language which permits a municipality to affirm that it is in favor of a proposed appropriation, thereby excusing the proposed use from a public interest review, should not be applied to pending applications. Applications that propose a well within a five-mile radius around a municipal well that is not for municipal, group domestic or statutorily exempt ground water uses, may be allowed if: (1) it is documented that a barrier to ground water movement separates a proposed well from municipal wells; and (2) there will be no interference with municipal wells. *Id.* In addition, the Commission must review the application and consider whether it is in the public interest, regardless of the affected municipalities position on the proposed use. As stated earlier in a footnote, the Commission may wish to delegate the public interest review to the Department, as is appropriate under ORS 537.615 and ORS 536.025. Finally, it should be noted that the five-mile radius classification in OAR 690-507-0060(3)(a)(B) does not apply unless the affected city has a full-time conservation program in effect.

Please let me know if I can be of further assistance.

Sincerely,

Shannon K. O'Fallon

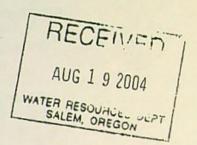
Senior Assistant Attorney General

Natural Resources Section

SKO:jrs/GENJ9535



August 18, 2004



Tom Paul Administrator Field Services Division Oregon Water Resources Department 725 Summer Street NE, Suite A Salem, OR 97301

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DOJ No. 690-302-GN0175-04

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Tom Paul August 18, 2004 Page 2

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OAR 690-507-0060 was adopted before statutory changes were enacted which gave the Department the authority to undertake a public interest review of water right applications. OAR 690-507-0060(3)(a)(B) provides that the Commission will undertake a public interest review of applications for uses of ground water that are not classified. It may be prudent for the Commission to either amend the rule to be consistent with ORS 536.295, or delegate the public interest review to the Department pursuant to ORS 536.025.

Tom Paul August 18, 2004 Page 3

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Please let me know if I can be of further assistance.

Sincerely

Shannon K. O'Fallon

Senior Assistant Attorney General

Natural Resources Section

SKO:jrs/GENJ9535

WATER RESOURCES DEPARTMENT

DIVISION 507

UMATILLA BASIN PROGRAM

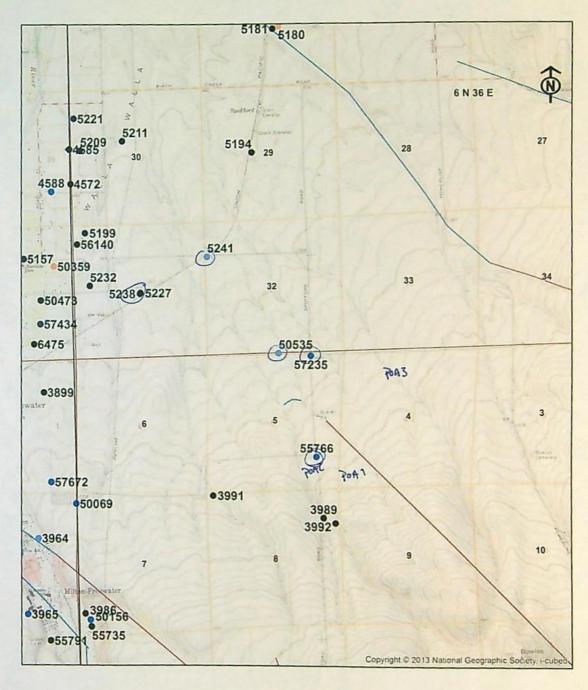
690-507-0030 Walla Walla River Subbasin

- (3) Ground Water: Appropriation and use of ground water in the Walla Walla River subbasin shall comply with the following provisions:
 - (a) Classification: Permits to use ground water may be issued only for the following classified uses:
 - (A) The ground water resources of the Walla Walla River subbasin are classified for statutorily exempt ground water uses (see definition), **irrigation**, municipal, industrial, power development, low temperature geothermal, mining, fish life, wildlife, recreation, pollution abatement, and artificial ground water recharge; and
 - (B) Ground water from the basalt reservoir in a five-mile radius around any municipal well of the cities of Athena, Helix, Milton-Freewater, and Weston is classified for municipal, group domestic and statutorily exempt ground water uses (see definition) only. Other uses may be permitted if it is documented that a barrier to ground water movement separates a proposed well from municipal wells and there will be no interference with municipal wells. Applications for other uses of ground water within a five-mile radius of a municipal well shall automatically be referred to the Commission for review and consideration of public interest unless the affected city affirms that is in favor of the proposed appropriation. This classification applies only when the affected city(ies) have a full-time conservation program in effect.

690-507-0010 Definitions

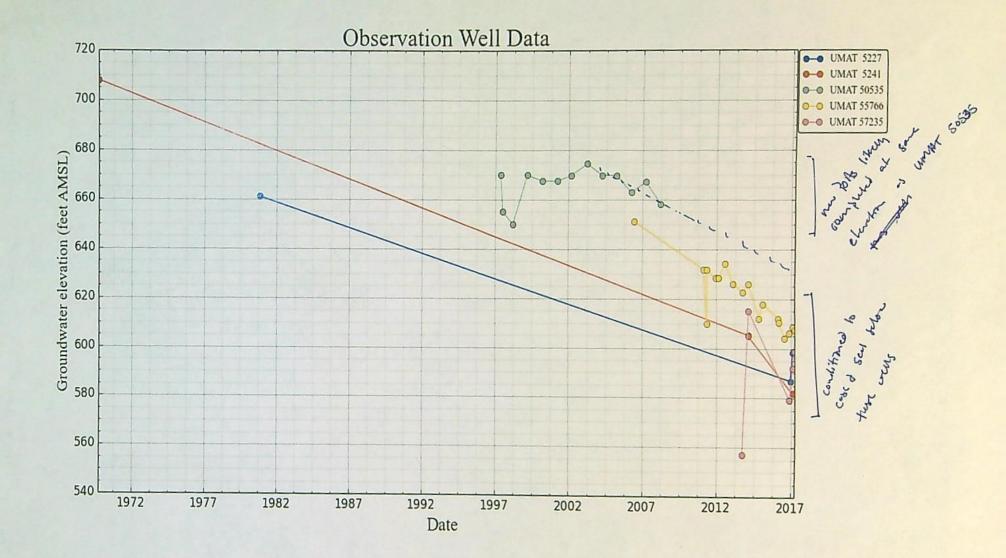
- (6) "Statutorily Exempt Ground Water Uses" means those uses for which no ground water application, permit, or certificate is required under ORS 537.545. These uses are for:
 - (a) Stockwatering purposes;
 - (b) Watering any lawn or noncommercial garden not exceeding one-half acre in area;
 - (c) Watering the grounds, three acres in size or less, or schools that have less than 100 students and that are located in cities with a population of less than 10,000;
 - (d) Single or group domestic purpose in an amount not exceeding 15,000 gallons a day;
 - (e) Down-hole heat exchange purposes; or
 - (f) Any single industrial or commercial purpose in an amount not exceeding 5,000 gallons a day.

Nearby Wells: Permit G-17294 Proposed wells located in Section 4 & 5



0 0.3 0.6 1.2 Miles

For x - appeal cocetron of 3 70As on Permit Cr - 17294



Oregon Water Resources Department

Water Right Services Division

Application for Extension of Time

In the Matter of the Application for an Extension of Time)
for Permit G-17294, Water Right Application G-16359,) PROPOSED FINAL ORDER
in the name of Les Peterson) TO DENY

Permit Information

Application:

G-16359

Permit:

G-17294

Basin:

7 - Umatilla / Watermaster District 5

Date of Priority:

December 30, 2004

Source of Water:

Three wells in Birch Creek Basin

Purpose or Use:

Irrigation of 350.0 acres

Maximum Rate:

4.38 cubic feet per second (cfs)

This Extension of Time request is being processed in accordance with Oregon Revised Statute 537.630 and 539.010(5), and Oregon Administrative Rule Chapter 690, Division 315.

In Summary, the Department proposes to:

- Deny an extension of time to complete construction of the water system from April 22, 2016, to October 1, 2026.
- Deny an extension of time to apply water to full beneficial use from April 22, 2016, to October 1, 2026.

ACRONYM QUICK REFERENCE

Application – Application for Extension of Time
Department – Oregon Department of Water Resources
FOF – Finding of Fact
PFO – Proposed Final Order
cfs – cubic feet per second
Agent – David E. Filippi, Stoel Rives LLP
Well 2 – POA 2 (Startcard #1029943)
POA – point of appropriation

AUTHORITY

Generally, see ORS 537.630 and OAR Chapter 690 Division 315.

ORS 537.630(1) provides in pertinent part that the Oregon Water Resources Department (Department) for good cause shown shall order and allow an extension of time within which irrigation or other works shall be completed or the right perfected. In determining the extension, the Department shall give due weight to the considerations described under ORS 539.010(5) and to whether other governmental requirements relating to the project have significantly delayed completion of construction or perfection of the right.

ORS 539.010(5) instructs the Director to consider: the cost of the appropriation and application of the water to a beneficial purpose; the good faith of the appropriator; the market for water or power to be supplied; the present demands therefor; and the income or use that may be required to provide fair and reasonable returns upon the investment.

OAR 690-315-0040 provides that in order to approve an application for an extension of time to complete construction or apply water to full beneficial use, the Department shall make the findings in OAR 690-315-0040(1) including a finding that there is "good cause" to approve the extension. OAR 690-315-0040(2)-(4) contains the factors that the Department must consider to make findings that support a "good cause" determination.

FINDINGS OF FACT

- On April 22, 2011, Permit G-16846 was issued by the Department. The permit authorizes
 the use of up to 4.38 cfs of water from a well in Birch Creek Basin for irrigation of 350.0
 acres. The permit specified completion of construction and complete application of
 water was to be made on or before April 22, 2016.
- On August 15, 2014, the Department approved Permit Amendment T-11630 (Special Order Volume 93, Page 108) authorizing additional points of appropriation, and a change in the place of use under Permit G-16846. A superseding Permit G-17266 was issued by the Department on August 25, 2014, to reflect the changes.

- On August 25, 2014, a correcting superseding Permit G-17294 was issued by the Department, to correct an error in a change in place of use and describe additional points of appropriation proposed under Permit Amendment T-11630. The permit authorizes the use of up to 4.38 cfs of water from three wells in Birch Creek Basin for irrigation of 350.0 acres. The permit specified completion of construction and complete application of water was to be made on or before April 22, 2016.
- 4. On October 17, 2016, on behalf of the permit holder, David E. Filippi, (Agent) for Les Peterson, submitted an "Application for Extension of Time" (Application) to the Department, requesting both the time to complete construction of the water system and the time to apply water to full beneficial use under the terms and conditions of Permit G-17294 be extended from April 22, 2016, to October 1, 2026. This is the first permit extension requested for G-17294.
- On October 25, 2016, notification of the Application for Extension of Time for G-17294
 was published in the Department's Public Notice. On October 26, 2016, Walla Walla
 River Irrigation District submitted comments on the Application.
- 6. In summary, the commenter stated the basalt aquifer in Milton Freewater is over appropriated, landowners are facing potential groundwater curtailment for the first time, and that granting an extension of time for Permit G-17294 to further perfect a basalt groundwater right would be detrimental to other basalt groundwater rights.

Review Criteria [OAR 690-315-0040]

In order to approve an Application for an Extension of Time to complete construction and/or apply water to full beneficial use pursuant to ORS 537.230 or 537.630, or to begin construction, pursuant to ORS 537.248, the Department must make the findings in OAR 690-315-0040(1)(a) - (d).

Complete Extension of Time Application [OAR 690-315-0040(1)(a)]

 On October 17, 2016, the Department received a completed Application and the fee specified in ORS 536.050 from the permit holder.

Start of Construction [OAR 690-315-0040(1)(b) and 690-315-0040(5)]

- Construction of the well began prior to April 22, 2016, as specified in the permit as being the date to apply water to full beneficial use. The permit holder states, construction of POA 2, Startcard #1029943 (Well 2) began March 31, 2016.
- According to correspondence received by the Department on October 17, 2016, from Zollman's Larry Burd Well Drilling, LLC, construction of Well 2 began March 31, 2016.

The Department has determined based on Finding of Fact (FOF) 8 and 9 that the permit holder has satisfied the condition requiring beginning of construction of the well.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

In order to make a finding of "good cause" to approve the extension, the Department shall consider whether the applicant has demonstrated "reasonable diligence" in previous performance under the permit. OAR 690-315-0040(2)(a). In determining "reasonable diligence", the Department shall consider, but is not limited to, the following factors: a) The amount of construction completed within the time allowed in the permit or previous extension; b) The amount of beneficial use made of the water during the permit or previous extension time limits; c) Water right holder conformance with the permit or previous extension conditions; and d) Financial investments made toward developing the beneficial use of water.

OAR 690-315-0040(3)(a)

Amount of Construction (The amount of construction completed within the time allowed in the permit.1)

- 10. The Application states that on March 31, 2016, construction of Well 2 began.
- Since April 22, 2016, the permit holder has continued construction of Well 2 to a depth of 950 feet below ground surface.

The Application provides minimal evidence of progress of physical work made towards completion of the water system. The Department has determined based on FOF 10 and 11, the permit holder has demonstrated minimal progress towards the development of Permit G-17294.

OAR 690-315-0040(3)(c)

Compliance with Conditions

The water right permit holder's conformance with the permit conditions.

 The Application states that none of the conditions in the permit have been complied with, as construction of the well has not been completed.

[&]quot;Actual Construction" is defined in OAR 690-315-0020(3)(d)(A)and(B) as physical work performed toward completion of the water system which demonstrates the water right permit holder's good faith and intention to complete the project with reasonable diligence. Actual construction does not include planning a diversion system, formulating a business plan, securing financing, letting contracts, purchasing but not installing equipment, surveying, clearing land or planting crops.

The Department has determined based on FOF 12, that the permit holder has not demonstrated compliance with the terms and conditions as required by Permit G-17294. The Application does not provide evidence of compliance with the terms and conditions of the permit. Therefore, the Department has determined the permit holder has not complied with any of the terms and conditions specified in Permit G-17294.

OAR 690-315-0040(3)(b)

Beneficial Use of Water: the amount of beneficial use made of the water during the permit or previous extension conditions.

- 13. The Application states that no water has been appropriated under this permit.
- 14. The Application does not identify beneficial use of water under this permit.

Based on FOF 12, 13, and 14, the Department has determined that beneficial use of water has not been demonstrated, as no water has been appropriated and the permit holder has demonstrated non-compliance with the terms and conditions under Permit G-17294.

OAR 690-315-0040(2)(b),(3)(d),(4)(d)

Financial Investments to Appropriate and Apply Water to a Beneficial Purpose

15. The Application states an approximate total of \$366,390 has been invested. The Application included costs associated with surveying, and construction of an access road and pad for construction of Well 2 which are not "actual construction" under this permit, and therefore are not counted towards development. After deducting these costs, the approximate total investment for "actual construction" of the water system to date is approximately \$355,933 which is about 22 percent of the total projected cost for complete development of this project. The Application states an additional \$1,250,000 investment is needed to complete this project, which includes completing construction of Well 2, construction of POA 1 and POA 3 if necessary, installing pumps, electrical, and the water delivery system.

The Department has determined based on FOF 15, that the permit holder had made an investment towards the development of the water system.

Reasonable Diligence of the Appropriator [OAR 690-315-0040(2)(a)]

Based on FOF 10 through 15, the Application provides evidence that minimal work has been accomplished towards completion of the water system; the permit holder has demonstrated noncompliance with the terms and conditions of the permit, and; beneficial use of water has not been demonstrated. The Department has determined the applicant has demonstrated marginal diligence in development of the water under Permit G-17294.

The Market and Present Demands for Water [OAR 690-315-0040(4)(a-f)]

The Department's determinations of market and present demand for water or power to be supplied shall consider the requirements set forth under OAR 690-315-0040(4)(a-f). In accordance with OAR 690-315-0040(4), the Department shall consider, but is not limited to, the following factors when determining the market and the present demand for water or power to be supplied:

- (a)The amount of water available to satisfy other affected water rights and scenic waterway flows;
- (b) Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d);
- (c) The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife;
- (d) Economic investment in the project to date;
- (e) Other economic interests dependent on completion of the project; and
- (f) Other factors relevant to the determination of the market and present demands for water and power.

OAR 690-315-0040(4)(a)

The amount of water available to satisfy other affected water rights and scenic waterway flows.

- 16. A review of the amount of water available to satisfy other affected water rights and scenic waterway flows was determined at the time of issuance of Permit G-17294; furthermore, water availability for other affected water rights and scenic waterway flows after the permit was issued is determined when an Application for a new water right is submitted.
- 17. On April 13, 2017, the undeveloped portion of water under Permit G-17294, being 4.38 cfs, was reviewed by the Department's Groundwater Section for evaluation of current water availability. Based on available information, the Groundwater Section states that water levels in the vicinity of Permit G-17294 show water level declines on the order of 100 feet since the 1970s, and declines of 3 to 4 feet per year over the past 5 years. The Groundwater Section determined that the resource cannot support the complete development of the authorized rate.

OAR 690-315-0040(4)(b)

Special water use designations established since permit issuance, including but not limited to state scenic waterways, federal wild and scenic rivers, serious water management problem areas or water quality limited sources established under 33 U.S.C. 1313(d).

18. The points of appropriation for Permit G-17294, are located within the Birch Creek Basin, and are located in the Walla Walla Sub Basin.

- 19. Birch Creek is not located within or above any state or federal scenic waterway.
- 20. The points of appropriation are not in an area listed by the Department of Environmental Quality as a water quality limited stream.
- 21. The points of appropriation are located in a proposed serious water management problem area, currently new groundwater applications are being denied.

OAR 690-315-0040(4)(c)

The habitat needs of sensitive, threatened or endangered species, in consultation with the Oregon Department of Fish and Wildlife.

22. Birch Creek is located within an area ranked "high" for stream flow restoration needs as determined by the Department in consultation with the Oregon Department of Fish and Wildlife, and is located within a Sensitive, Threatened or Endangered Fish Species Area as identified by the Department in consultation with Oregon Department of Fish and Wildlife.

OAR 690-315-0040(4)(d)

Economic interests dependent on completion of the project.

23. The Application states an approximate total of \$355,933 has been invested in the project.

OAR 690-315-0040(4)(e)

Other economic interests dependent on completion of the project.

24. The Application did not identify economic interests other than those of the applicant's that may be dependent on completion of the project.

OAR 690-315-0040(4)(f)

Other factors relevant to the determination of the market and present demand for water and power.

- 25. Other factors relevant to the determination of the market and present demand for water and power have been identified, in that demand on the resource has resulted in significant declines of water levels in the aquifer, resulting in injury to senior water right holders.
- 26. On October 26, 2016, comments were received by the Department from the Walla Walla River Irrigation District. The commenter stated the basalt aquifer in Milton Freewater is over appropriated, and the Department's Field Services Division recently proposed designating the area a Critical Groundwater Area. Landowners are facing potential groundwater curtailment for the first time, and granting an extension of time for Permit G-17294 to further perfect a basalt groundwater right would be detrimental to existing

basalt groundwater rights.

The Department has determined based on FOF 17, 18, 21, 25, and 26, that there is a significant present demand for water in the Walla Walla Sub Basin, and that current data, comprising of substantial evidence, indicate groundwater levels are declining, and additional appropriation of groundwater may exacerbate these declines.

OAR 690-315-0040(2)(f) Fair Return Upon Investment

27. The Application did not identify that the use and income from the permitted water development will likely result in reasonable returns upon the investment made to date.

OAR 690-315-0040(2)(g) Other Governmental Requirements

28. The Application states delay in the development of this project was due in part to the length of time involved in gaining approval of a Permit Amendment to change the place of use.

OAR 690-315-0040(2)(h) Unforeseen Events

29. The Application did not identify unforeseen events.

OAR 690-315-0040(2)(i) Denial of the Extension Will Result in Undue Hardship

- 30. The Application did not state if a denial of the extension would result in undue hardship.
- 31. The Application did not identify whether there are other reasonable alternatives for meeting water use needs.

OAR 690-315-0040(2)(c) Good Faith of the Appropriator

32. Based on Findings of Fact 12, 13, and 14, above, the Department finds that the Applicant has not demonstrated good faith.

Duration of Extension [OAR 690-315-0040(1)(c)]

Under OAR 690-315-0040(1)(c), in order to approve an extension of time for water use permits the Department must find that the time requested is reasonable and the applicant can complete the project within the time requested.

33. As of October 17, 2016, the Application states the remaining work to be completed consists of completing construction of the water system, which includes completing construction of Well 2, construction of POA 1, construction of POA 3, with continuous casing and sealing to a depth of at least 950 feet below land surface, installing pumps, electrical, and water delivery infrastructure to all authorized places of use; meeting all permit conditions, which includes installing a totalizing flow meter at each POA, submitting annual water use reports, and annual March static water level measurements for each authorized POA; and applying water to full beneficial use on 350.0 acres.

The Department cannot find that the applicant can complete the project or apply water to full beneficial use within the time requested for the extension, because demand on the resource cannot support the development of the undeveloped portion of water under Permit G-17294.

Good Cause [OAR 690-315-0040(1)(d)]

The Department must find that there is "good cause" to approve the extension. In making a "good cause" finding, the Department shall consider the requirements set forth under OAR 690-315-0040(2).

The Department has considered the reasonable diligence and good faith of the appropriator, the cost to appropriate and apply water to a beneficial purpose, the market and present demands for water to be supplied, the financial investment made and fair and reasonable return upon the investment, the requirements of other governmental agencies, and unforeseen events over which the permit holder had no control, whether denial of the extension will result in undue hardship to the applicant and whether there are no other reasonable alternatives for meeting water use needs, any other factors relevant to a determination of good cause, and has determined that the applicant has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

CONCLUSIONS OF LAW

- The permit holder has submitted a complete extension application form and the fee specified in ORS 536.050, as required by OAR 690-315-0040(1)(a).
- The permit holder has complied with the time allowed for construction work under the permit pursuant to ORS 537.630 as required by OAR 690-315-0040(1)(b) and OAR 690-315-0040(5).
- 3. The Application established that there has been marginal diligence toward developing the project. The permit holder has not shown that good cause exists for an extension of time to complete construction and apply water to full beneficial use pursuant to OAR 690-315-0040(1)(d).

 Based on Market and Present Demand of water, pursuant to 690-315-0040(4), water is not available to support additional development.

PROPOSED ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, the Department proposes to issue an order to:

Deny the time to complete construction of the water system under Permit G-17294 from April 22, 2016, to October 1, 2026.

Deny the time to apply water to beneficial use under Permit G-17294 from April 22, 2016, to October 1, 2026.

DATED: May 2, 2017

Dwight French, Administrator, Water Right Services Division If you have any questions, please check the information box on the last page for the appropriate names and phone numbers.

Proposed Final Order Hearing Rights

- Under the provisions of OAR 690-315-0100(1) and 690-315-0060, the applicant or any
 other person adversely affected or aggrieved by the proposed final order may submit a
 written protest to the proposed final order. The written protest must be received by
 the Water Resources Department no later than <u>June 16, 2017</u>, being 45 days from the
 date of publication of the proposed final order in the Department's weekly notice.
- 2. A written protest shall include:
 - The name, address and telephone number of the petitioner;
 - A description of the petitioner's interest in the proposed final order and if the
 protestant claims 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 adversely affect or aggrieve the petitioner's interest;
 - A detailed description of how the proposed final order is in error or deficient and how to correct the alleged error or deficiency;
 - e. Any citation of legal authority supporting the petitioner, if known;
 - Proof of service of the protest upon the water right permit holder, if petitioner is other than the water right permit holder; and
 - g. The applicant or non-applicant protest fee required under ORS 536.050.

- 3. Within 60 days after the close of the period for requesting a contested case hearing, the Director shall:
 - a. Issue a final order on the extension request; or

. . .

- Schedule a contested case hearing if a protest has been submitted, and:
 - 1) Upon review of the issues, the Director finds there are significant disputes related to the proposed agency action; or
 - The applicant submits a written request for a contested case hearing within 30 days after the close of the period for submitting protests.

Notice Regarding Service Members: 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. You may contact the Oregon State Bar or the Oregon Military Department for more information. The toll-free telephone number for the Oregon State Bar is: 1 (800) 452-8260. The toll-free telephone number of the Oregon Military Department is: 1 (800) 452-7500. The Internet address for the United States Armed Forces Legal Assistance Legal Services Locator website is: http://legalassistance.law.af.mil

- If you have questions about statements contained in this document, please contact Corey A Courchane at (503)986-0825.
- 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 Patricia McCarty at 503-986-0820.
- 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

	CONTRACTOR OF SECTION ON RELIVERY
SENDER: COMPLETE THIS SECTION	COMPLETE THIS SECTION ON DELIVERY
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Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits. 1. Article Addressed to: WAT Les Peterson 1415 Highland Road Walla Walla, WA 99362	A. Signature X

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