

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16018

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 above 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.

FINAL ORDER INCORPORATING SETTLEMENT AGREEMENT

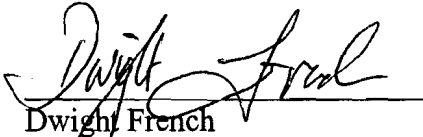
Application History

On May 28, 2003, Larry Keith submitted an application to the Oregon Water Resources Department (OWRD) on behalf of Rainbow Heights Homeowners Association for a water use permit. The OWRD issued a Proposed Final Order on April 13, 2004. Larry Keith on behalf of Rainbow Heights Homeowners Association filed a protest on April 21, 2004. OWRD and Rainbow Heights Homeowners Association agree that the issues raised in the protest can be resolved solely by the terms of a settlement agreement. The settlement agreement was signed by all parties on March 7, 2006. The settlement agreement is incorporated into this final order and is attached hereto.

The proposed use would not impair or be detrimental to the public interest.

Order

Application G-16018 therefore is approved as provided in the Settlement Agreement, and Permit G-16042 is issued as limited by conditions in the Settlement Agreement.



Dwight French
Administrator of Water Rights
and Adjudications

for

Phillip C. Ward, Director
Oregon Water Resources Department

March 20, 2006
Date

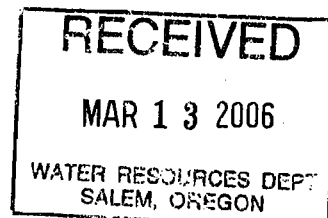
BEFORE THE OREGON WATER RESOURCES DEPARTMENT

In the Matter of Water Right Application)
G-16018 in the Name of Rainbow Heights) SETTLEMENT
Homeowners Assoc.,) AGREEMENT
 Applicant and Protestant)

The Oregon Water Resources Department (“OWRD”) and Larry Keith, on behalf of Rainbow Heights Homeowners Association (“Applicant”), do hereby stipulate and agree in this “Settlement Agreement” as follows:

Background

- I. On May 28, 2003, Applicant submitted an application to OWRD for 50.0 gallons per minute (GPM) (0.111 cubic foot per second (CFS)) of water from a well in the Powell Creek Basin, for irrigation of 18.0 acres in Marion County.
- II. On April 13, 2004, OWRD issued a Proposed Final Order (PFO) recommending denial of application G-16018 because the proposed use would not ensure the preservation of the public welfare, safety and health for numerous reasons. First, the PFO cited the Groundwater/Hydrology section’s July 30, 2003, determination that the proposed groundwater use would have the potential for substantial interference (PSI) with an unnamed tributary of Battle Creek, because the well is hydraulically connected to and is within one-quarter mile of that surface water source. Second, the PFO also indicated that the groundwater is over-appropriated, would not be available in the amounts requested without injury to prior rights and would not be available within the capacity of the resource. Finally, the PFO stated that the Mill Creek subbasin was withdrawn from appropriation and that the Department of Environmental Quality (DEQ) recommended denial of the application because of the potential for impact to surface water sources.
- III. On April 21, 2004, Applicant submitted a timely protest to the PFO for application G-16018.
- IV. On July 6, 2004, OWRD Groundwater/Hydrology section staff conducted a site visit of the area at issue in this case. Staff subsequently submitted a July 7, 2004, memo to the file stating that the stream to which the well is hydraulically connected is at a distance of more than one-quarter mile from the well. Since the well is not within one-quarter mile of surface water, the memo changes the Department’s PSI determination to state that the proposed use will not have the potential for substantial interference with surface water.
- V. The July 7, 2004, memo also noted that, pursuant to ORS 537.545, the landowner of each of the eight lots included within application G-16018 could construct a well and irrigate up to one-half acre of non-commercial lawn and garden as an exempt use. On this basis, the Department can find that the proposed use will ensure the preservation of the public welfare, safety and health if the use were limited to irrigation of 4.0 acres, or one-half acre per lot, and conditioned to protect the groundwater resource.



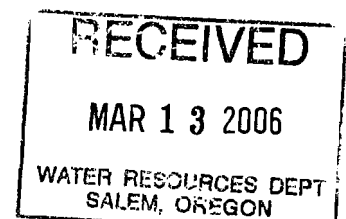
- VI. On July 13, 2004, OWRD received an e-mail from DEQ stating that the DEQ would not object to OWRD issuing a permit for this application based on the new determination that the well will not have PSI with surface water.
- VII. OWRD and Applicant agree that the issues raised in Applicant's protest are resolved solely on the following terms.

Terms of the Agreement

1. The Parties to this Settlement Agreement waive the opportunity to file exceptions and any right to judicial review of this Settlement Agreement and final order. The Applicant does not waive and expressly reserves the right and opportunity to challenge a decision by the Department regarding any renewal or nonrenewal of the permit, including any new terms or conditions associated with such renewal or nonrenewal of the permit. However, the Applicant will not challenge renewal of the permit to the extent the renewal is consistent with the conditions included in this Settlement Agreement. The Applicant expressly reserves the right and opportunity to challenge any enforcement actions by the Department regarding permit terms and conditions.
2. In signing this Settlement Agreement, the Applicant withdraws its protest against the PFO for application G-16018 with prejudice.
3. The Department shall issue a Final Order Incorporating Settlement Agreement and a permit that is consistent with the attached draft permit once the Applicant has submitted to the Department all of the following:
 - a. Payment of \$250 in outstanding permit recording fees;
 - b. A demonstration to the Department's satisfaction that the irrigation system(s) to be used under this permit is/are equally efficient to drip irrigation. In this instance, and until October 1, 2010, the Department agrees that automated, timer-controlled sprinkler irrigation systems with the addition of highly accurate moisture sensors that are calibrated for the applicable soil type, installed at location(s) that provide a reasonable representation of the water applied, and which can override the irrigation system, are considered equally efficient to drip irrigation. After October 1, 2010, and upon any renewal by OWRD of this time-limited permit, OWRD may continue or modify the requirements for ensuring that the irrigation systems to be used under this permit are equally efficient to drip irrigation.
4. Before water may be used under this permit on any of the eight parcels, the Applicant must submit a place of use map for that particular parcel to the OWRD for review and approval, with the map identifying the one-half acre in the parcel to be irrigated under this permit. The Department has received such maps for Tax Lots 600, 601, 602, 603,


701, and 703. The Department has approved those maps to the extent they show no more than 0.5 acres of irrigated land per parcel.

5. The Applicant understands that the permit issued pursuant to paragraph 3 above will authorize the use of water for only five years and that the Director will determine whether to renew the permit pursuant to OAR 690-502-0200. OWRD will conduct its five-year review of the permit beginning six months prior to the end of each five-year permit period, provided that the Applicant provides a written reminder and copy of this Settlement Agreement to OWRD's Water Right Section manager at least 240 days prior to the end of each five-year permit period. If OWRD's periodic review discloses that the permit must be terminated, OWRD will, if possible, provide the Applicant with 45-days written notice prior to permit termination.
6. Except as provided below, the Parties agree that this Settlement Agreement does not preclude the Applicant (including each of the individual parcel owners) from using the well described in the permit (referred to herein as the "Common Well") for exempt purposes authorized in ORS 537.545. In particular, the Parties agree that the Common Well may be used for single or group domestic purposes in an amount not to exceed 15,000 gallons per day pursuant to ORS 537.545(1)(d). The Parties agree that the Common Well may be used for watering any lawn or noncommercial garden not exceeding one-half acre in area pursuant to ORS 537.545(1)(b), meaning that in any one year, only one of the eight parcels may irrigate from the Common Well subject to the exempt well statute rather than subject to the terms and conditions contained in the permit. The Parties agree that exempt and permitted irrigation uses from the Common Well are not additive.
7. The use of water for irrigation from the Common Well shall be limited to one half acre per parcel, for a total of four acres. However, individual parcel holders may only use water from the Common Well under this permit if they are not simultaneously using water for irrigation from an individual exempt well.
8. The Applicant agrees to comply with the water level measurement and reporting conditions contained in the groundwater permit for application G-16018.
9. To minimize evaporative losses, the Applicant will irrigate only during the hours of 8:00 PM to 9:00 AM.
10. 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.
11. Each Party to this Settlement Agreement certifies that they have had a reasonable opportunity to review and request changes to the Settlement Agreement, and that they have signed this Settlement Agreement of their own free will and accord.




12. Each Party to this Settlement Agreement certifies that they have read the entire Settlement Agreement, including the draft Final Order and draft Permit, and understand and agree with the contents thereof.
13. The Parties agree that nothing in this Settlement Agreement establishes factual, legal, or policy precedent.
14. This Settlement Agreement may be signed in counterparts.

**SIGNATURE PAGE FOR SETTLEMENT AGREEMENT
ON WATER RIGHT APPLICATION G-16018**



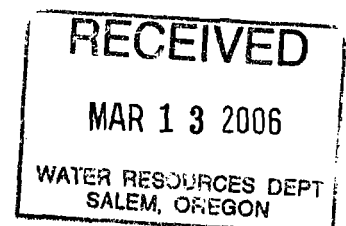
Larry Keith on Behalf of
Rainbow Heights Homeowners Association

3-7-06
Date



Dwight French
Administrator of Water Rights and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

2-14-06
Date



Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16018

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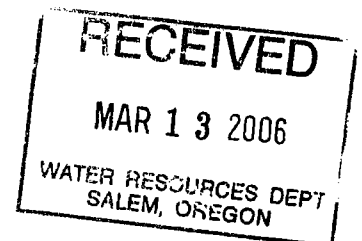
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Application History

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The proposed use would not impair or be detrimental to the public interest.



Order

Application G-16018 therefore is approved as provided in the Settlement Agreement, and Permit G-XXXXX is issued as limited by conditions in the Settlement Agreement.

DRAFT - DO NOT SIGN

Dwight French
Administrator of Water Rights
and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

Date

This document was prepared by Jerry Gainey. If you have any questions about any of the statements contained in this document I am likely the best person to answer your questions. You can reach me at 503-986-0812.

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 Water Rights Information Group at 503-986-0801.

Address all other correspondence to: Water Rights Section, Oregon Water Resources Department, 725 Summer St. NE, Suite A, Salem, OR 97301-1266.

DRAFT This is not a permit. DRAFT

STATE OF OREGON

COUNTY OF MARION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

RAINBOW HEIGHTS HOMEOWNERS ASSOCIATION
1299 CASCADE VIEW LANE SE
SALEM, OR 97306

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

APPLICATION FILE NUMBER: G-16018

SOURCE OF WATER: A WELL IN POWELL CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 4.0 ACRES

MAXIMUM RATE: 0.05 CUBIC FOOT PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: MAY 28, 2003

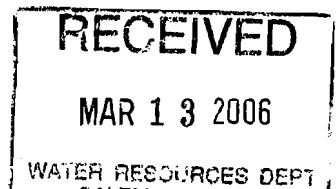
WELL LOCATION: NE $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 27, T8S, R3W, W.M.; 930 FEET
SOUTH & 850 FEET WEST FROM NE CORNER, SECTION 27

SPECIFIC CONDITIONS

The amount of water used for irrigation under this right, together with the amount secured for irrigation under any other right, or the amount used pursuant to ORS 537.545(1)(b), for the parcels described below is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 1.0 acre-foot for each acre irrigated during the irrigation season of each year.

The only permissible method of irrigation that can be used on the parcels described below under this permit is drip or an equally efficient irrigation method approved by the Department.

Irrigation under this permit, together with any other irrigation right for the same parcels described below, including the right to use water for irrigation on said parcels from an exempt well pursuant to ORS



537.545, is limited to 0.5 acre per each parcel, for a total of 4.0 acres. The Department received revised application maps for six of the eight parcels between January 6, 2006 and February 14, 2006, being lots 600, 601, 602, 603, 701, and 703. Before water may be used under this permit on any of the remaining two parcels, being lots 700 and 702, the applicant must submit a place of use map for that particular parcel to the Department for review and approval.

Except as provided herein, nothing in this permit prevents users of the well identified in this permit from using water for exempt purposes listed in ORS 537.545. Exempt use of water for irrigation from this well under ORS 537.545(1)(b) and any permitted irrigation uses from this well are not additive. Individual parcel holders may only use water from the well under this permit if they are not simultaneously using water for irrigation from an individual exempt well. If an individual parcel holder were to use water for irrigation from an individual exempt well, then such use is not governed by this permit.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE 1/4 NE 1/4 0.5 ACRE PARCEL 1 PARTITION PLAT 1991-08
NE 1/4 NE 1/4 0.5 ACRE PARCEL 1 PARTITION PLAT 1993-13
NE 1/4 NE 1/4 0.5 ACRE PARCEL 2 PARTITION PLAT 1991-13
NE 1/4 NE 1/4 0.5 ACRE PARCEL 3 PARTITION PLAT 1991-06
NE 1/4 NE 1/4 0.5 ACRE PARCEL 1 PARTITION PLAT 1991-48
NE 1/4 NE 1/4 0.5 ACRE PARCEL 2 PARTITION PLAT 1991-48
NE 1/4 NE 1/4 0.5 ACRE PARCEL 1 PARTITION PLAT 1990-102
NE 1/4 NE 1/4 0.5 ACRE PARCEL 3 PARTITION PLAT 1990-102

SECTION 26

TOWNSHIP 8 SOUTH, RANGE 3 WEST, W.M.

This permit expires on October 1, 2010. This permit may be renewed for additional periods of time, not to exceed five years each, if the Director finds the groundwater resource can probably support the continued use. Failure to comply with the conditions of this permit may affect the determination of whether the resource can probably support the continued use.

Measurement, recording and reporting conditions:

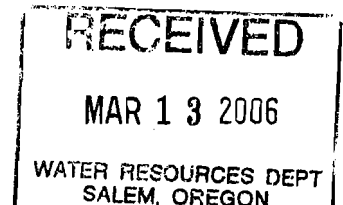
- A. Before water use may begin under this permit, the permittee shall install a meter or other suitable measuring device as approved by the Director. The permittee shall maintain the meter or measuring device in good working order, shall keep a complete record of the amount of water used each month 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, measuring device, and moisture sensor(s); provided however, where the meter, measuring device, or moisture sensor is located within a private structure, the watermaster shall request access upon reasonable notice.

OTHER CONDITIONS

- (1) Use of water from the well, as allowed under this permit, shall be controlled or shut off if the well displays:
 - (a) An average water level decline of three or more feet per year for five consecutive years; or
 - (b) A total water level decline of fifteen or more feet; or
 - (c) A hydraulic interference decline of fifteen or more feet in any neighboring well providing water for senior exempt uses or wells covered by prior rights.
- (2) The water user shall install a meter or other measuring device suitable to the Director, and shall submit an annual report of water used to the Department by December 1 of each year.
- (3) The permittee/appropriator shall be responsible for complying with each of the following requirements for measuring water levels in the well.
 - (a) Use of water from the well under this permit shall not begin until an initial static water level in the well has been measured and submitted to the Department.
 - (b) In addition to the measurement required in subsection (a) of this section, a water level measurement shall be made each year during the period March 1 through March 31 and submitted to the Department's groundwater/hydrology section within 30 days from the date of measurement.



- (c) All water level measurements shall be made by a qualified individual. Qualified individuals are certified water rights examiners, registered geologists, registered professional engineers, licensed land surveyors, licensed water well constructors, licensed pump installers, or the permittee/appropriator.
 - (d) Any qualified individual measuring a well shall use standard methods of procedure and equipment designed for the purpose of well measurement. The equipment used shall be well suited to the conditions of construction at the well. A list of standard methods of procedure and suitable equipment shall be available from the Department.
 - (e) The permittee/appropriator shall submit a record of the measurement to the Department on a form available from the Department. The record of measurement shall include both measurements and calculations, shall include a certification as to their accuracy signed by the individual making the measurements, and for the measurement in subsection (b) of this section shall be submitted to the Department within 30 days from the date of measurement. The Department shall determine when any of the declines cited in section (1) are evidenced by the well measurement required in section (3).
- (4) To minimize evaporative losses, the Applicant will irrigate only during the hours of 8:00 PM to 9:00 AM.

Failure to provide March static water level measurements will likely result in regulation of water use from the well(s) authorized under this permit, until compliance with the annual measurement requirement is met.

For the purpose of considering subsequent renewals of this permit, the Department will be using the first March static water level measurement as the reference static water level.

STANDARD CONDITIONS

If the number, location, or construction of any well deviates from that proposed in the permit application or permit conditions, the conclusions of the Proposed Final Order and

Final Order under which this permit was granted may be revised, conditions may be appropriately revised, or 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) under this permit 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 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.

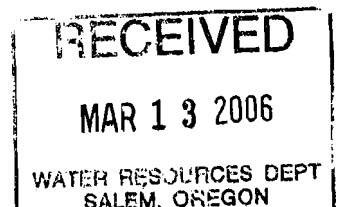
Failure to comply with any of the provisions of this permit may result in action including, but not limited to, restrictions on the use, civil penalties, or cancellation of the permit.

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 land-use 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 to the use shall be made on or before October 1, 2010. 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).

Dwight French
Administrator of Water Rights
and Adjudications
for
Phillip C. Ward, Director
Oregon Water Resources Department

Date

Mailing List for Draft Permit Copies

Application #G-16018
[REDACTED]

Original mailed to (when permit issued, include copy of permit map):

Applicant: RAINBOW HEIGHTS HOMEOWNERS ASSOCIATION, ATTN: LARRY KEITH, 1299 CASCADE VIEW LANE SE, SALEM, OR 97306

Copies sent to:

1. WRD - File # G-16018
2. Water Availability: Ken Stahr

PFO and Map Copies sent to:

3. WRD - Watermaster # 16
4. Regional Manager: NWR

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

5. Don Knauer, PO Box 5416, Salem OR 97304

"\$10 LETTER" sent to Interested Persons who have not protested or paid for copies

7. See Attached List

CASEWORKER : Gaineyjw

