Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-17016

Final Order

Appeal Rights
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 March 3, 2008, Daniel Heath and Bear Creek Quarter Horse Ranch LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on August 26, 2008. The protest period closed October 10, 2008, and no protest was filed.

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

Order

Application G-17016 is therefore approved as proposed by the Proposed Final Order. Upon payment of outstanding fees in the amount of $300.00, 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 November 17, 2008

E. Timothy Wall

for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Jeana Eastman. 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 503-986-0859.

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.

STATE OF OREGON

COUNTY OF UNION

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DANIEL HEATH
BEAR CREEK QUARTER HORSE RANCH LLC
55959 HWY 244
LA GRANDE, OR 97850

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

APPLICATION FILE NUMBER: G-17016

SOURCE OF WATER: WELL 1, WELL 2, AND WELL 3 IN BEAR CREEK BASIN

PURPOSE OR USE: IRRIGATION USE ON 290.8 ACRES

MAXIMUM RATE: 2.5 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: MARCH 3, 2008

WELL LOCATIONS:

WELL 1: SW ¼ SW ¼, SECTION 14, T3S, R36E, W.M.; 100 FEET SOUTH AND 600 FEET EAST FROM NW CORNER, SW ¼ SW ¼, SECTION 14

WELL 2: NE ¼ SE ¼, SECTION 15, T3S, R36E, W.M.; 650 FEET NORTH AND 200 FEET WEST FROM SE CORNER, NE ¼ SE ¼, SECTION 15

WELL 3: SE ¼ SE ¼, SECTION 15, T3S, R36E, W.M.; 250 FEET SOUTH AND 600 FEET WEST FROM NE CORNER, SE ¼ SE ¼, SECTION 15

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:

SW ¼ SW ¼ 29.0 ACRES
SE ¼ SW ¼ 40.0 ACRES
SECTION 14

SE ¼ NE ¼ 20.0 ACRES
NE ¼ SE ¼ 38.0 ACRES
NW ¼ SE ¼ 20.0 ACRES
SE ¼ SE ¼ 35.0 ACRES
SECTION 15

NE ¼ NE ¼ 40.0 ACRES
SECTION 22

NE ¼ NW ¼ 40.0 ACRES
NW ¼ NW ¼ 8.0 ACRES
SE ¼ NW ¼ 20.8 ACRES
SECTION 23
TOWNSHIP 3 SOUTH, 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, 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.

Use of water under authority of this permit may be regulated if analysis of data available after the permit is issued discloses that the appropriation 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 in effect as of the priority date of the right or as those quantities may be subsequently reduced.

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 in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial 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.

The well(s) shall be cased and sealed in such a manner to develop a single basalt aquifer.

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 not be valid, 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 diversion, 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 Chapter 635, Division 415, Section 030 adopted November 13, 1991 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.

The use of water shall be limited when it interferes substantially with any prior surface or ground water rights.

Completion of construction and complete application of the water to the use shall be made on or before October 1, 2013. 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 _____, 2008

DRAFT - THIS IS NOT A PERMIT

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for Phillip C. Ward, Director
Water Resources Department