

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-15113

**Final Order**

*Appeal Rights*

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 of this order must be filed within the 60 day time period specified by ORS 183.484(2).

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 29, 2000, Mark Herbert for Happy Acres Water Compnay submitted an application to the Department for a water use permit. On July 27, 2004, the Department issued a Proposed Final Order concluding that the proposed use will ensure the preservation of the public welfare, safety and health and proposing to approve the application. The protest period closed September 10, 2004, and no protest was filed.

As required by OAR 690-505-0615, the applicant has submitted proposed mitigation that meets the requirements of OAR 690-505-0610(2)-(5). Pursuant to OAR 690-505-0620, a permit shall not be issued until the applicant provides documentary evidence that mitigation water, in an amount satisfying the mitigation obligation, is legally protected instream.

As required by OAR 690-050-0620, the following ground water mitigation conditions and information, along with other conditions in the attached draft permit shall be contained in the permit, when issued, for Application G-15113.

Mitigation Obligation: 7.1 acre-feet in the General Zone of Impact located anywhere in the Deschutes River above the Madras gage, below Lake Billy Chinook.

Mitigation Source: 7.1 permanent Mitigation Credits within the General Zone of Impact from \_\_\_\_\_, originating from Mitigation Project MR# XXXX, or if credits are temporary or require

ongoing maintenance, the replacement mitigation project(s) as identified by the Mitigation Bank pursuant to the \_\_\_\_\_ Charter, within the General Zone of Impact.

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.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the terms and conditions of a valid contract, or a satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department prior to use of water.

The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, or subsequent certificate(s).

## Order


As proposed, Application G-15113 will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall only be issued upon approval of a mitigation project that results in 7.1 mitigation credits, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact have been obtained.

In addition, permit recording fees in the amount of \$250.00 are required to be submitted before a permit may be issued.

*This final order is issued approving application G-15113 contingent upon the required mitigation being provided, and permit recording fees paid before a permit may be issued. This final order shall expire 5 years after issuance unless the required mitigation is provided. OAR 690-505-0620(2).*

DATED September 22, 2004

  
Phillip C. Ward, Acting Director  
Water Resources Department

*This document was prepared by Anita Huffman. If you have any questions about any of the statements contained in this document I am the most likely the best person to answer your questions. You can reach me at 503-986-0815.*

*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 Renee Moulun at 503-986-0824.*

*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 Ste A, Salem OR 97301-1271; Fax: 503-986-0901.*

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

HAPPY ACRES WATER COMPANY  
19819 TENNESSEE ROAD  
BEND, OREGON 97701

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

APPLICATION FILE NUMBER: G-15113

SOURCE OF WATER: A WELL IN DESCHUTES RIVER BASIN

PURPOSE OR USE: GROUP DOMESTIC EXPANDED FOR 14 HOUSEHOLDS

MAXIMUM RATE: 0.049 CUBIC FOOT PER SECOND

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: MARCH 29, 2000

WELL LOCATION: SW $\frac{1}{4}$  NE  $\frac{1}{4}$ , SECTION 23, T16S, R12E, W.M.; 560 FEET  
NORTH & 670 FEET EAST FROM CENTER, SECTION 19

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW  $\frac{1}{4}$  NE  $\frac{1}{4}$

SW  $\frac{1}{4}$  NE  $\frac{1}{4}$

SE  $\frac{1}{4}$  NE  $\frac{1}{4}$

SECTION 19

TOWNSHIP 16 SOUTH, RANGE 12 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.

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Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for life of the permit and subsequent certificate(s). Regulation of the use and/or cancellation of the permit, or subsequent certificate(s) will occur if the required mitigation is not maintained.

If mitigation is from a secondary right for stored water from a storage project not owned or operated by the permittee, the use of water under this right is subject to the terms and conditions of a valid contract, or a satisfactory replacement, with the owner/operator of the storage project, a copy of which must be on file in the records of the Water Resources Department prior to use of water.

The permittee shall provide additional mitigation if the Department determines that average annual consumptive use of the subject appropriation has increased beyond the originally mitigated amount.

Failure to comply with these mitigation conditions shall result in the Department regulating the ground water permit, or subsequent certificate(s), proposing to deny any permit extension application for the ground water permit, or subsequent certificate(s).

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 use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows so long as mitigation as required herein is maintained.

#### **STANDARD CONDITIONS**

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 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. 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 ten 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 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, 2009. 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 \_\_\_\_\_, 2004

**DRAFT - THIS IS NOT A PERMIT**

Phillip C. Ward, Acting Director  
Water Resources Department

**ASSIGNMENT OF PERMIT:** Pursuant to ORS 537.220, this permit may be assigned to a party other than the permittee named hereon, if the land the permit is associated with changes ownership, or if the permittee is an organization whose name changes as a result of sale or merger. Request for Assignment forms are available from the Oregon Water Resources Department web site at <http://www.wrd.state.or.us/>, or may be requested from the Department at 503-986-0801 or Water Right Application Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271.

**MAILING ADDRESS CHANGES:** If the mailing address of the permittee named hereon changes, it is important that the Oregon Water Resources Department be informed of the change. Address changes must be submitted in writing with the permittee's signature to Water Right Application Section, Oregon Water Resources Department, 725 Summer St NE Ste A, Salem OR 97301-1271.

**REAL ESTATE TRANSACTIONS:** Pursuant to ORS 537.330, in any transaction for the conveyance of real estate that includes any portion of the lands described in this permit, the seller of the real estate shall, upon accepting an offer to purchase that real estate, also inform the purchaser in writing whether any permit, transfer approval order, or certificate evidencing the water right is available and that the seller will deliver any permit, transfer approval order or certificate to the purchaser at closing, if the permit, transfer approval order or certificate is available.

**CULTURAL RESOURCES PROTECTION LAWS:** Permittees involved in ground-disturbing activities should be aware of federal and state cultural resources protection laws. ORS 358.920 prohibits the excavation, injury, destruction or alteration of an archeological site or

object, or removal of archeological objects from public and private lands without an archeological permit issued by the State Historic Preservation Office. 16 USC 470, Section 106, National Historic Preservation Act of 1966 requires a federal agency, prior to any undertaking to take into account the effect of the undertaking that is included on or eligible for inclusion in the National Register. For further information, contact the State Historic Preservation Office at 503-378-4168, extension 232.

Application G-15113    Water Resources Department  
Basin 5  
huffmaam

PERMIT DRAFT  
District 11