

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15074

Superceding Final Order

Appeal Rights

Under the provisions of ORS 527.170 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 527.621(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 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). 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 23, 1999, Michael Tennant for West Bend Property Co., LLC. submitted an application to the Department for a water use permit. On September 8, 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 November 12, 2004, and no protest was filed.

As required by OAR 690-505-0615, the applicant must submit 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-15074.

Mitigation Obligation: 31.6 acre-feet in the General Zone of Impact (anywhere in the Deschutes River subbasin above the Madras gage, located on the Deschutes River below Lake Billy Chinook)

Mitigation Source: 31.6 permanent Mitigation Credits within the General Zone of Impact associated with mitigation project XXXXXX (Transfer XXXXXX) which is a permanent instream transfer. Or, if credits are temporary or require ongoing maintenance, the replacement mitigation project(s) as identified by the Mitigation Bank pursuant to the XXXXXX Charter.

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).

On December 2, 2004, the Department issued a Final Order approving the application.

Based upon continued review, the Department has determined that the findings of the Final Order issued December 2, 2004 require modification to include clarification of the volume allowed for the proposed use.


Order

As proposed, Application G-15074 will ensure the preservation of the public welfare, safety and health. Application G-15074 shall be approved with the above modifications and as provided on the attached draft permit, and a permit consistent with the attached draft permit shall only be issued upon approval of a mitigation project that results in 31.6 mitigation credits, or suitable 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 superceding final order is issued approving application G-15074 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 February 3, 2005


Phillip C. Ward, Director

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 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.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

WEST BEND PROPERTY CO., L.L.C.
2677 N WORDWAY AVE
BEND, OR 97702

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

APPLICATION FILE NUMBER: G-15074

SOURCE OF WATER: A WELL IN DESCHUTES RIVER BASIN

PURPOSE OR USE: AGRICULTURE USE; IRRIGATION OF 10.0 ACRES; AND STORAGE AND MAINTENANCE FOR RECREATION USE

MAXIMUM RATE AND VOLUME: 0.234 CUBIC FOOT PER SECOND, BEING NO MORE THAN 0.134 CUMULATIVE CUBIC FOOT PER SECOND WITH A MAXIMUM VOLUME OF 6.67 ACRE FEET FOR AGRICULTURE USE, AND A MAXIMUM VOLUME OF 18.0 ACRE FEET FOR IRRIGATION; AND 0.10 CUBIC FOOT PER SECOND WITH A MAXIMUM VOLUME OF 6.93 ACRE FEET FOR POND MAINTENANCE OF A RESERVOIR WITH AN 8.0 ACRE SURFACE AREA

PERIOD OF USE: MARCH, APRIL, OCTOBER AND NOVEMBER FOR AGRICULTURE USE; MARCH 1 THROUGH OCTOBER 31 FOR IRRIGATION, AND YEAR ROUND FOR POND MAINTENANCE

DATE OF PRIORITY: DECEMBER 23, 1999

WELL LOCATION: NE $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 36, T17S, R11E, W.M.; 1300 FEET SOUTH & 1400 FEET EAST FROM NORTHWEST CORNER, SECTION 36

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 $\frac{1}{4}$ NW $\frac{1}{4}$	1.8 ACRES	AGRICULTURE AND IRRIGATION
NW $\frac{1}{4}$ NW $\frac{1}{4}$	5.0 ACRES	AGRICULTURE AND IRRIGATION AND POND MAINTENANCE

SW ¼ NW ¼	2.4 ACRES	AGRICULTURE AND IRRIGATION AND POND MAINTENANCE
SE ¼ NW ¼	0.8 ACRE	AGRICULTURE AND IRRIGATION

SECTION 36
TOWNSHIP 17 SOUTH, RANGE 11 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.

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

GROUND WATER MITIGATION CONDITIONS

- Mitigation Obligation: 31.6 acre-feet in the General Zone of Impact located anywhere on the Deschutes River above the Madras gage, below Lake Billy Chinook.
- Mitigation Source: 31.6 Permanent Mitigation Credits within the General Zone of Impact associated with Mitigation Project

_____ (transfer _____), which is a permanent instream transfer. Or, if credits are temporary or require ongoing maintenance, the replacement mitigation project(s) as identified by the Mitigation Bank pursuant to the _____ Charter.

Mitigation water must be legally protected instream for instream use within the General Zone of Impact and committed for the 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, 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, and proposing to cancel the ground water permit, or subsequent certificate(s).

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.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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 _____, 2005

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department

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.

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.