

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-14697

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, 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).

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 no subject to judicial review.

Application History

On March 10, 1998, Sondra L. Kaufeldt, submitted an application to the Department for a water use permit. On August 18, 1998, the Department issued a Proposed Final Order concluding water is available for the proposed use and that the proposed use would ensure the preservation of the public welfare, safety and health. The protest period closed **October 2, 1998**, and no protest was received.

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 describe the mitigation obligation required for the proposed use and the corresponding mitigation conditions required.

On December 6, 1999, Ms. Kaufeldt was notified about the need for mitigation for groundwater uses located within the Deschutes Ground Water Study Area. Ms. Kaufeldt requested to place application G-14697 on Administrative Hold pending the results of the basin-wide

mitigation plan. On August 25, 2003, the applicant was informed of the mitigation obligation for the use proposed under application G-14697.

On July 29, 2005, House Bill 3494, enacted by the 73rd Oregon Legislative Assembly, was signed by the Governor. Under Section 2 of this 2005 Act, Oregon Administrative Rules 690-505-0600 through 690-505-0630, certified effective by the Secretary of State on September 27, 2002, satisfy the requirements relating to mitigation under ORS 390.805 to 390.925, 537.322 to 537.360 and 537.505 to 537.795.

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.

On March 30, 2005, Ms. Kaufeldt submitted a mitigation proposal to provide 56.9 mitigation credits within the General Zone of Impact. The applicant is proposing to purchase mitigation credits and/or transfer existing water rights to provide the mitigation.

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-14697:

Mitigation Obligation: 56.9 acre-feet in the General Zone of Impact (anywhere in the Deschutes Basin above the Madras gage, which is located on the Deschutes River below Lake Billy Chinook)

Mitigation Source: 56.9 Mitigation Credits from a chartered mitigation bank, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), 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 with the above modifications to the Proposed Final Order, Application G-14697 will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence that 56.9 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, payment of outstanding permit recording fees in the amount of \$250.00, are required. Said fees are due and payable prior to the issuance of a permit.

DATED September 1, 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.

DRAFT

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

SONDRA L. KAUFELDT
66505 GERKING MARKET RD
BEND, OREGON 97701

ALTERNATIVE ADDRESS:
6954 N VISTA STREET
SAN GABRIEL, CA 91775

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

APPLICATION FILE NUMBER: G-14697

SOURCE OF WATER: A WELL IN DESCHUTES RIVER BASIN

PURPOSE OR USE: IRRIGATION OF 35.0 ACRES

MAXIMUM RATE: 0.438 CUBIC FOOT PER SECOND

PERIOD OF USE: APRIL 1 THROUGH OCTOBER 15

DATE OF PRIORITY: MARCH 10, 1998

WELL LOCATION: SE $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 1, T16S, R11E, W.M.; 664 FEET SOUTH & 599 FEET EAST FROM NW CORNER OF THE SE $\frac{1}{4}$ OF THE SE $\frac{1}{4}$, SECTION 1

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:

SE $\frac{1}{4}$ SE $\frac{1}{4}$ 35.0 ACRES
SECTION 1
TOWNSHIP 16 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.

Mitigation Obligation: 56.9 acre-feet in the General Zone of Impact (anywhere in the Deschutes basin above the Madras gage which is located below Lake Billy Chinook)

Mitigation Source: 56.9 Mitigation Credits from a chartered mitigation bank, or suitable replacement mitigation that meets the requirements of OAR 690-505-0610(2)-(5), within the General Zone of Impact.

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.

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.

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.

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).

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, 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 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