

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number S-85630

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 not subject to judicial review.

Final Order

Application History

On June 2, 2003, MEHRTEN HOMER submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on March 23, 2004. The protest period closed May 7, 2004, and no protest was filed.

The proposed use would not impair or be detrimental to the public interest. However, no permit shall be issued until the permittee has obtained written authorization, or easement or ownership of all lands involved in the proposed use, including the point of diversion locations and any lands crossed by the proposed ditch, pipeline or other means of conveyance and provided the Department with a copy of the written authorization, easement or evidence of ownership.

Further, the Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the source and use.

Order

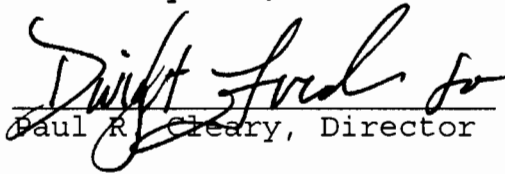
Upon payment of outstanding permit recording fees and the submission of the name and mailing address for the entity governing

State Highway 19; as well as documentation that you have obtained easement or written authorization permitting access to lands not owned by you, Application S-85630 shall be approved as to the modifications to the Proposed Final Order and as provided on the attached draft permit.

Permit recording fees are required in the amount of \$150.00. The submission of written authorization or easement permitting access to lands not owned by you and fees are due and payable no later than 60 days from the date of this Final Order. Failure to submit the required information and pay the required permit recording fees within 60 days from the date of this Final Order may result in the proposed rejection of Application S-85630.

If you need to request additional time to submit the required fees and easement or written authorization, the written request should be received in the Salem office of the Department by the deadline above. The Department will evaluate the request and determine whether or not the request may be granted.

DATED May 20 , 2004


Paul R. Cleary, Director

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

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, 158 12th ST. NE Salem, OR 97301-4172, Fax: 503-986-0901

STATE OF OREGON

COUNTY OF WHEELER

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

MEHRTEN HOMER
PO BOX 485
FOSSIL, OR 97830

(541) 763-4907

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

APPLICATION FILE NUMBER: S-85630

SOURCE OF WATER: HOVER CREEK, A TRIBUTARY OF BUTTE CREEK

PURPOSE OR USE: IRRIGATION USE ON 230.0 ACRES

MAXIMUM RATE: 4.75 CUBIC FEET PER SECOND

PERIOD OF USE: JANUARY 1 THROUGH FEBRUARY 28

DATE OF PRIORITY: JUNE 2, 2003

POINT OF DIVERSION LOCATIONS:

POD 1: SW $\frac{1}{4}$ NW $\frac{1}{4}$, SECTION 23, T6S, R21E, W.M.; 10 FEET NORTH & 630 FEET EAST FROM W1/4 CORNER, SECTION 23

POD 2: NE $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 22, T6S, R21E, W.M.; 2000 FEET NORTH & 1000 FEET WEST FROM S1/4 CORNER, SECTION 22

POD 3: NW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 22, T6S, R21E, W.M.; 1900 FEET NORTH & 1330 FEET WEST FROM S1/4 CORNER, SECTION 22

POD 4: NW $\frac{1}{4}$ SE $\frac{1}{4}$, SECTION 21, T6S, R21E, W.M.; 2520 FEET NORTH & 1650 FEET WEST FROM SE CORNER, SECTION 21

POD 5: NW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 21, T6S, R21E, W.M.; 1700 FEET NORTH & 1150 FEET EAST FROM SW CORNER, SECTION 21

POD 6: NW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 29, T6S, R21E, W.M.; 350 FEET SOUTH & 1500 FEET WEST FROM NE CORNER, SECTION 29

POD 7: SW $\frac{1}{4}$ NE $\frac{1}{4}$, SECTION 29, T6S, R21E, W.M.; 1830 FEET SOUTH & 1620 FEET WEST FROM NE CORNER, SECTION 29

POD 8: SW $\frac{1}{4}$ SW $\frac{1}{4}$, SECTION 29, T6S, R21E, W.M.; 1530 FEET SOUTH & 900 FEET WEST FROM C-W1/16 CORNER, SECTION 29

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-FORTIETH of one cubic foot per second and 4.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 1.9 ACRES
 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 0.3 ACRE
 SECTION 20

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 14.2 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 0.3 ACRE
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 0.6 ACRE
 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 3.4 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 2.4 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 13.5 ACRES
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 9.5 ACRES
 SECTION 21

SW $\frac{1}{4}$ NE $\frac{1}{4}$ 8.3 ACRES
 SE $\frac{1}{4}$ NE $\frac{1}{4}$ 8.0 ACRES
 SW $\frac{1}{4}$ NW $\frac{1}{4}$ 7.0 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 2.4 ACRES
 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 3.7 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 14.2 ACRES
 NE $\frac{1}{4}$ SE $\frac{1}{4}$ 0.1 ACRE
 NW $\frac{1}{4}$ SE $\frac{1}{4}$ 4.0 ACRES
 SECTION 22

SW $\frac{1}{4}$ NW $\frac{1}{4}$ 2.6 ACRES
 SECTION 23

NW $\frac{1}{4}$ NE $\frac{1}{4}$ 16.7 ACRES
 SW $\frac{1}{4}$ NE $\frac{1}{4}$ 17.3 ACRES
 SE $\frac{1}{4}$ NW $\frac{1}{4}$ 12.8 ACRES
 NE $\frac{1}{4}$ SW $\frac{1}{4}$ 4.0 ACRES
 NW $\frac{1}{4}$ SW $\frac{1}{4}$ 28.8 ACRES
 SW $\frac{1}{4}$ SW $\frac{1}{4}$ 8.8 ACRES
 SECTION 29

NE $\frac{1}{4}$ SE $\frac{1}{4}$ 11.9 ACRES
 SE $\frac{1}{4}$ SE $\frac{1}{4}$ 33.3 ACRES
 SECTION 30

TOWNSHIP 6 SOUTH, RANGE 21 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.

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.

The use may be restricted if the quality of the source stream or downstream waters decrease to the point that those waters no longer meet existing state or federal water quality standards due to reduced flows.

The permittee shall install, maintain, and operate fish screening to prevent fish from entering the proposed diversion. The permittee shall also install a fishway at the obstruction that will provide adequate upstream and downstream passage for fish. The permittee may submit evidence that the Oregon Department of Fish and Wildlife (ODFW) has determined screens and/or fishways are not necessary. The required screens and fishways are to be in place, functional, and approved by ODFW before diversion of any water.

STANDARD CONDITIONS

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 allowed herein may be made only at times when sufficient water is available to satisfy all prior rights, including prior rights for maintaining instream flows.

The Director finds that the proposed use(s) of water described by this permit, as conditioned, will not impair or be detrimental to the public interest.

Complete application of the water to the use shall be made on or before October 1, 2008. 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

Paul R. Cleary, 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.