

Oregon Water Resources Department  
Water Rights Division

Water Rights Application  
Number G-14721

**Superseding 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 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 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.

*Findings of Fact*

On April 13, 1998, Deschutes Valley Water District submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on July 13, 2004, concluding that with the mitigation proposed by the applicant, 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 August 27, 2004, and no protest was filed.

On November 5, 2004, the Department issued a Final Order approving the application contingent upon the submission of satisfactory mitigation. The Final Order expires five years after issuance unless the required mitigation is provided.

On June 24, 2009, the applicant submitted a request to provide mitigation under an incremental development plan. The date of the first increment is the year 2009 through 2014, and the volume of water being used in the first increment is 214.0 acre feet, which requires a mitigation obligation of 128.4 acre feet.

On July 9, 2009, the applicant provided documentary evidence that 128.4 mitigation credits have been obtained from the Deschutes River Conservancy Mitigation Bank, a chartered mitigation bank, which satisfies the first increment of mitigation. The mitigation credits obtained by the applicant were generated from Mitigation Projects MP-127 and MP-128, which are based on instream leases that generated mitigation credits available for use in the General Zone of Impact.

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 and the November 5, 2004 Final Order require modification to correctly include the following conditions:

The permittee shall provide mitigation prior to each stage of development under the permit, as described in the incremental development mitigation plan on file with the Department, and in accordance with the standards of the Deschutes Ground Water Mitigation Rules, OAR Chapter 690, Division 505.

The permittee shall not increase the rate or amount of water diverted, as described in the incremental development mitigation plan, prior to increasing the corresponding mitigation.

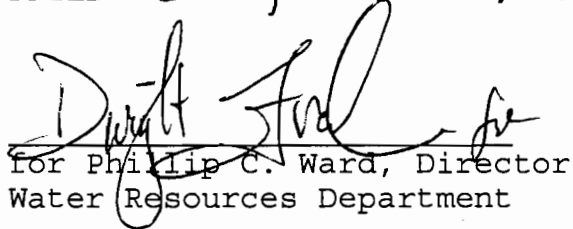
The permittee shall seek and receive Departmental approval prior to changing the incremental mitigation development plan and related mitigation obligation for each stage of permit development.

The permittee shall report to the Department the progress of implementing the incremental mitigation development plan and related mitigation no later than April 1 of each year. This annual notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.

Order

Application G-14721 therefore is approved with the above modifications to the November 5, 2004 Final Order, and Permit G-16548 is issued due to submission of documentary evidence that 128.4 mitigation credits within the General Zone of Impact have been obtained and satisfy the first stage of incremental development.

DATED July 16, 2009

  
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 questions about how to file a protest or a request for standing, please refer to the section in this Final Order entitled "Hearing and Appeal Rights". 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.*