

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-16009

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.

Application History

On May 9, 2003, Fraser Brothers LLC submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on April 27, 2004. The protest period closed June 11, 2004, and no protest was filed.

On June 25, 2009, the Department issued a Final Order and draft permit approving Application G-16009. On August 25, 2009, the Department issued a Superseding Final Order withdrawing the June 25, 2009 Final Order. This Superseding Final Order is issued to describe modifications to the Proposed Final Order.

On August 24, 2009, the applicant amended the application from irrigation of 38.5 acres and supplemental irrigation of 128.5 acres to supplemental irrigation of 167.0 acres and submitted a revised application map. Upon further review, the Department determined that all lands are underlain by primary irrigation rights evidenced by Certificate 4007 and Transfer Application T-8446.

Under OAR 690-310-0240(3), the applicant may amend the use from primary irrigation to supplemental irrigation because it will not enlarge the proposed use of water.

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 correctly describe the measurement, recording, and reporting conditions and additional ground water conditions.

The Proposed Final Order described the following conditions:

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.

The well shall be continuously cased and continuously sealed to minimum depth of 80 feet below land surface. However, if during well construction, it becomes apparent that the well can be constructed to eliminate hydraulic connection with surface water in a manner other than specified in permit, the permittee can contact a Department Hydrogeologist or the Ground Water/Hydrology Section Manager to request a modification of the permit condition. The permittee shall submit, writing, a rough well log and a proposed construction design for approval by the Department. The new depth of casing seal and seal will be incorporated into the permit file and any certificate issued for application G-16009.

The conditions as modified in the attached permit are:

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each point of appropriation. The permittee shall maintain the meter in good working order.

- B. The permittee 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.
- C. The permittee shall allow the watermaster access to the meter; provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.
- D. The Director may provide an opportunity for the permittee to submit alternative measuring and reporting procedures for review and approval.

The well shall produce ground water only from the alluvial ground water reservoir at a depth no shallower than 80 feet below land surface.

The following conditions are included in the attached permit:

Prior to using water from any well listed on this permit, the permittee shall ensure that the well has been assigned an OWRD Well Identification Number (Well ID tag), which shall be permanently attached to the well. The Well ID shall be used as a reference in any correspondence regarding the well, including any reports of water use, water level, or pump test data.

If the riparian area is disturbed in the process of developing a point of appropriation, the permittee shall be responsible for restoration and enhancement of such riparian area in accordance with ODFW's Fish and Wildlife Habitat Mitigation Policy OAR 635-415. For purposes of mitigation, the ODFW Fish and Wildlife Habitat Mitigation Goals and Standards, OAR 635-415, shall be followed.

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

Order

Application G-16009 therefore is approved with the above modifications to the Proposed Final Order, and Permit G-16595 is issued as limited by the conditions set forth therein.

DATED October 29, 2009



for Phillip C. Ward, Director
Water Resources Department

This document was prepared by Kerry Kavanagh. 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 503-986-0816.

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.