

Oregon Water Resources Department

Water Rights Section

Water Rights Application

Number G-17058

Superseding Final Order

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 May 27, 2008, City of Sisters submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on April 6, 2010, 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 May 21, 2010, 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.

The applicant submitted a mitigation proposal to provide 241.8 acre-feet of mitigation water within the Whychus Creek Zone of Impact. The applicant is proposing to obtain mitigation by purchasing mitigation credits, completing a mitigation project, and/or through an offset. One mitigation credit is equivalent to one acre-foot of mitigation 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 the following conditions:

Within five years of permit issuance, the permittee shall submit a Water Management and Conservation Plan, addressing use under this permit, consistent with OAR 690-086. The Director may approve an extension of this time line to complete the required Water Management and Conservation Plan. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department. No water may be diverted if a Water Management and Conservation Plan is not submitted within five years of permit issuance, unless an extension of this time has been approved.

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.

On June 17, 2010, the Water Resources Department issued a Final Order approving Application G-17058 contingent upon the required mitigation being provided and the payment of permit recording fees.

Subsequently, the Department discovered the June 17, 2010 Final Order erroneously indicated all 241.8 permanent mitigation credits must be obtained prior to permit issuance, rather than only the first increment of mitigation consistent with an approved incremental development mitigation plan.

Conclusions of Law

The Department therefore concludes that water is available in the amount necessary for the proposed use; the proposed use will not result in injury to existing water rights; and the proposed

use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Order

The June 17, 2010 Final Order issued for Application G-17058 is superseded by this instrument and is of no further force or effect.

Application G-17058 is approved with the above modifications to the Proposed Final Order.

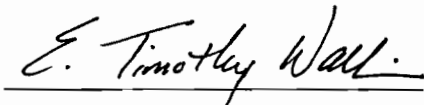
A permit consistent with the attached draft permit shall be issued upon:

- a) the applicant providing satisfactory mitigation, by purchasing mitigation credits, completing a mitigation project, and/or through an offset, meeting the requirements of OAR 690-505-0610(2)-(5), according to an approved incremental development plan; and
- b) the submission of permit recording fees in the amount of \$600.

This Superseding Final Order is issued approving Application G-17058 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

JULY 8, 2010



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 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.

STATE OF OREGON

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO:

CITY OF SISTERS
 PO BOX 39 150 N FIR ST
 SISTERS OR 97759

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

APPLICATION FILE NUMBER: G-17058

SOURCE OF WATER: FOUR WELLS IN WHYCHUS CREEK BASIN

RATE: 2.0 CUBIC FEET PER SECOND, FURTHER LIMITED TO 604.6 ACRE FEET PER YEAR

DATE OF PRIORITY: MAY 27, 2008

USE: MUNICIPAL USE

PERIOD: YEAR ROUND

Authorized Points of Appropriation:

| | Twp | Rng | Mer | Sec | Q-Q | Measured Distances |
|------------------------|------|------|-----|-----|-------|---|
| WELL 1 (DESC 3023) | 15 S | 10 E | WM | 9 | NW SW | 2950 FEET SOUTH AND 650 FEET EAST FROM NW CORNER, SECTION 9 |
| WELL 2 (DESC 1034) | 15 S | 10 E | WM | 5 | NW SW | 1335 FEET NORTH AND 1210 FEET EAST FROM SW CORNER, SECTION 5 |
| WELL 3 (DESC 57902) | 15 S | 10 E | WM | 4 | SE NW | 1890 FEET SOUTH AND 2325 FEET EAST FROM NW CORNER, SECTION 4 |
| WELL 4 | 15 S | 10 E | WM | 8 | SW SW | 230 FEET NORTH AND 1125 FEET EAST FROM SW CORNER, SECTION 8 |

Authorized Place of Use: WITHIN THE CITY OF SISTERS SERVICE BOUNDARY, INCLUDING:

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|-------|
| 15 S | 10 E | WM | 4 | NE NW |
| 15 S | 10 E | WM | 4 | SW NW |
| 15 S | 10 E | WM | 4 | SE NW |
| 15 S | 10 E | WM | 4 | NE SW |
| 15 S | 10 E | WM | 4 | NW SW |
| 15 S | 10 E | WM | 4 | SW SW |
| 15 S | 10 E | WM | 4 | SE SW |
| 15 S | 10 E | WM | 4 | NE SE |
| 15 S | 10 E | WM | 4 | NW SE |
| 15 S | 10 E | WM | 4 | SW SE |
| 15 S | 10 E | WM | 4 | SE SE |
| 15 S | 10 E | WM | 5 | SW NE |
| 15 S | 10 E | WM | 5 | SE NE |
| 15 S | 10 E | WM | 5 | SW NW |
| 15 S | 10 E | WM | 5 | SE NW |
| 15 S | 10 E | WM | 5 | NE SW |
| 15 S | 10 E | WM | 5 | NW SW |

| Twp | Rng | Mer | Sec | Q-Q |
|------|------|-----|-----|-------|
| 15 S | 10 E | WM | 5 | SW SW |
| 15 S | 10 E | WM | 5 | SE SW |
| 15 S | 10 E | WM | 5 | NE SE |
| 15 S | 10 E | WM | 5 | NW SE |
| 15 S | 10 E | WM | 5 | SW SE |
| 15 S | 10 E | WM | 5 | SE SE |
| 15 S | 10 E | WM | 6 | NE SE |
| 15 S | 10 E | WM | 6 | NW SE |
| 15 S | 10 E | WM | 6 | SW SE |
| 15 S | 10 E | WM | 6 | SE SE |
| 15 S | 10 E | WM | 8 | NE NE |
| 15 S | 10 E | WM | 8 | NW NE |
| 15 S | 10 E | WM | 8 | SE NE |
| 15 S | 10 E | WM | 8 | NE NW |
| 15 S | 10 E | WM | 9 | NE NE |
| 15 S | 10 E | WM | 9 | NW NE |
| 15 S | 10 E | WM | 9 | SW NE |
| 15 S | 10 E | WM | 9 | SE NE |
| 15 S | 10 E | WM | 9 | NE NW |
| 15 S | 10 E | WM | 9 | NW NW |
| 15 S | 10 E | WM | 9 | SW NW |
| 15 S | 10 E | WM | 9 | SE NW |
| 15 S | 10 E | WM | 9 | NE SE |
| 15 S | 10 E | WM | 9 | NW SE |
| 15 S | 10 E | WM | 9 | SW SE |
| 15 S | 10 E | WM | 9 | SE SE |

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 meters 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 meters; 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 Department requires the water user to obtain, from a qualified individual (see below), and report annual static water levels for each well on the permit. The static water level shall be measured in the month of March. Reports shall be submitted to the Department within 30 days of measurement.

The permittee shall report an initial March static water-level measurement once well construction is complete and annual measurements thereafter. Annual measurements are required whether or not the well is used. The first annual measurement will establish a reference level against which future measurements will be compared. However, the Director may establish the reference level based on an analysis of other

water-level data. The Director may require the user to obtain and report additional water levels each year if more data are needed to evaluate the aquifer system.

All measurements shall be made by a certified water rights examiner, registered professional geologist, registered professional engineer, licensed well constructor or pump installer licensed by the Construction Contractors Board. Measurements shall be submitted on forms provided by, or specified by, the Department. Measurements shall be made with equipment that is accurate to at least the standards specified in OAR 690-217-0045. The Department requires the individual performing the measurement to:

- A. Associate each measurement with an owner's well name or number and a Department well log ID; and
- B. Report water levels to at least the nearest tenth of a foot as depth-to-water below ground surface; and
- C. Specify the method of measurement; and
- D. Certify the accuracy of all measurements and calculations reported to the Department.

The water user shall discontinue use of, or reduce the rate or volume of withdrawal from, the well(s) if any of the following events occur:

- A. Annual water-level measurements reveal an average water-level decline of three or more feet per year for five consecutive years; or
- B. Annual water-level measurements reveal a water-level decline of 15 or more feet in fewer than five consecutive years; or
- C. Annual water-level measurements reveal a water-level decline of 25 or more feet; or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority.

The period of restricted use shall continue until the water level rises above the decline level which triggered the action or the Department determines, based on the permittee's and/or the Department's data and analysis, that no action is necessary because the aquifer in question can sustain the observed declines without adversely impacting the resource or causing substantial interference with senior water rights. The water user shall not allow excessive decline, as defined in Commission rules, to occur within the aquifer as a result of use under this permit. If more than one well is involved, the water user may submit an alternative measurement and reporting plan for review and approval by the Department.

Within five years of permit issuance, the permittee shall submit a Water Management and Conservation Plan, addressing use under this permit, consistent with OAR 690-086. The Director may approve an extension of this time line to complete the required Water Management and Conservation Plan. The time line for submittal of a plan under this permit does not alter the time lines for submittal of a plan under any other order of the Department. No water may be diverted if a Water Management and Conservation Plan is not submitted within five years of permit issuance, unless an extension of this time has been approved.

Ground Water Mitigation Conditions:

1. Mitigation Obligation: 241.8 acre-feet of mitigation water in the Whychus Creek Zone of Impact, located anywhere in the Whychus Creek Basin above river mile 16.
2. Mitigation Source: mitigation credits, a mitigation project, and/or offset.
3. Mitigation water must be legally protected instream in the Whychus Creek Zone of Impact 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.

4. 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.
5. 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.
6. 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.
7. 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.
8. 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.
9. 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 maintenance and terms and conditions of a valid contract or 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.
10. 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).

Scenic Waterway Condition:

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 reduced subsequently. However, the use of ground water allowed under the terms of this permit will not be subject to regulation for Scenic Waterway flows, provided the required mitigation is maintained.

STANDARD CONDITIONS

1. 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.
2. If the number, location, source, or construction of any well deviates from that proposed in the permit application or required by permit conditions, this permit may be subject to cancellation, unless the Department authorizes the change in writing.
3. 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.
4. 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.

5. 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.
6. 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.
7. 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-practice technologies or conservation practices to achieve this end.
8. By law, the land use associated with this water use must be in compliance with statewide land-use goals and any local acknowledged comprehensive land-use plan.
9. Completion of construction and complete application of the water to the use shall be made within 20 years of the date of permit issuance. 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.
10. 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.

Issued

DRAFT – NOT A PERMIT

for Phillip C. Ward, Director
Water Resources Department