

**Oregon Water Resources Department
Water Rights Division**

Water Rights Application
Number G-16359

Proposed Final Order

Summary of Recommendation: The Department recommends that the application be denied because the use is not allowable under Oregon Administrative Rule 690-507-0030(3)(a).

Application History

On December 30, 2004, LES PETERSON submitted an application to the Department for the following water use permit:

- Amount of Water: 4.38 CUBIC FEET PER SECOND (CFS)
- Use of Water: IRRIGATION USE ON 350.0 ACRES
- Source of Water: A WELL IN BIRCH CREEK BASIN
- Area of Proposed Use: Umatilla County within SECTION 4 and SECTION 9, TOWNSHIP 5 NORTH, RANGE 36 EAST, W.M.

On February 18, 2005, the Department mailed the applicant notice of its Initial Review, determining that "*The use of 4.38 cubic feet per second from a well in Birch Creek Basin for irrigation use on 350.0 acres is allowable from March 1 through October 31 of each year.*" The Initial Review also stated the conclusions are subject to change if a water management and conservation plan is approved by the Water Resources Department for the City of Milton-Freewater before the Proposed Final Order protest deadline passes. The applicant did not notify the Department to stop processing the application within 14 days of that date.

On February 22, 2005, the Department gave public notice of the application in its weekly notice. The public notice included a request for comments, and information for interested persons about both obtaining future notices and a copy of the proposed final order.

No written comments were received within 30 days.

On March 24, 2005, the Water Resources Department issued a Final Order approving a Water and Conservation Plan for the City of Milton-Freewater.

On May 20, 2005, Mike Zwart of the Department's Groundwater Section determined there is not a documented barrier to ground water movement separating the proposed well from the City of Milton-Freewater's municipal wells and there will be interference with the city's wells.

In reviewing applications, the Department may consider any relevant sources of information, including the following:

- comments by or consultation with another state agency
- any applicable basin program
- any applicable comprehensive plan or zoning ordinance
- the amount of water available
- the rate and duty for the proposed use
- pending senior applications and existing water rights of record
- designations of any critical groundwater areas
- the Scenic Waterway requirements of ORS 390.835
- applicable statutes, administrative rules, and case law
- any general basin-wide standard for flow rate and duty of water allowed
- the need for a flow rate and duty higher than the general standard
- any comments received

Findings of Fact

The Umatilla Basin Program **does not allow** IRRIGATION USE.

Senior water rights exist on A WELL IN BIRCH CREEK BASIN, or on downstream waters.

A WELL IN BIRCH CREEK BASIN is not within or above a State Scenic Waterway.

The Groundwater Section finds, per OAR 390.835(9), there is not a preponderance of evidence that the proposed use of groundwater 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.

Groundwater Findings Under OAR 690-09

The Department determined, consistent with OAR 690-09-0040(4), that the proposed ground water use will not have the potential for substantial interference with the nearby surface water sources.

In making this determination, the Department considered whether:

- (a) There is a hydraulic connection from the proposed well(s) to any surface water sources.
- (b) The point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) The rate of appropriation is greater than five cubic feet per second, if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (d) The rate of appropriation is greater than one percent of the pertinent adopted minimum perennial streamflow or instream

- water right with a senior priority date, if one is applicable, or of the discharge that is equaled or exceeded 80 percent of time, as determined or estimated by the Department, and if the point of appropriation is a horizontal distance less than one mile from the surface water source;
- (e) The ground water appropriation, if continued for a period of 30 days, would result in stream depletion greater than 25 percent of the rate of appropriation, if the point of appropriation is a horizontal distance less than one mile from the surface water source.

According to the Department's rules, the potential for substantial interference is assumed if (a) and either (b) or (c) or (d) or (e) are met. For this application, the Department determined that there is no potential for substantial interference, because either (a) is not met, or (b), (c), (d) or (e) are not met, or both.

An assessment of groundwater availability has been completed by the Department's Groundwater/Hydrology section. A copy of this assessment is in the file. The proposed use of groundwater will, if properly conditioned, avoid injury to existing rights and the resource.

The proposed well is not within a designated critical ground water area.

Conclusions of Law

Under the provisions of ORS 537.621, the Department must presume that a proposed use will ensure the preservation of the public welfare, safety and health if the proposed use is allowed in the applicable basin program established pursuant to ORS 536.300 and 536.340 or given a preference under ORS 536.310(12), if water is available, if the proposed use will not injure other water rights and if the proposed use complies with rules of the Water Resources Commission.

The Umatilla Basin Program **does not allow** the proposed use.

No preference for this use is granted under the provisions of ORS 536.310(12).

Water is available for the proposed use.

The proposed use would not injure other water rights.

The proposed use complies with other rules of the Water Resources Commission not otherwise described above.

The proposed use is compatible with applicable land use plans.

No proposed flow rate and duty of water higher than the general basin-wide standard is needed.

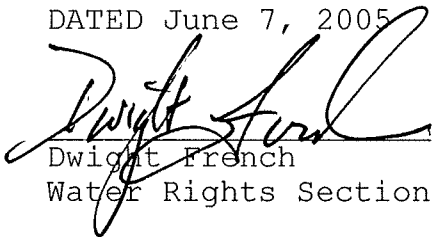
For these reasons, the required presumption **has not** been established.

The Department therefore concludes that water is available in the amount of water necessary for the proposed use; the proposed use would not result in injury to existing water rights; and the proposed use would not ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

Recommendation

The Department recommends that the application be denied.

DATED June 7, 2005



Dwight French
Water Rights Section Manager

*If you have any questions,
please check the information
box on the last page for the
appropriate names and
phone numbers.*

Protest Rights and Standing

Under the provisions of 537.621(7), you have the right to protest this proposed final order. Your protest must be in writing, and must include the following:

- Your name, address, and telephone number;
- A description of your interest in the proposed final order, and, if you claim to represent the public interest, a precise statement of the public interest represented;
- A detailed description of how the action proposed in this proposed final order would impair or be detrimental to your interest;
- A detailed description of how the proposed final order is in error or deficient, and how to correct the alleged error or deficiency;
- Any citation of legal authority to support your protest, if known; and
- If you are not the applicant, the protest fee of \$250 required by ORS 536.050 and proof of service of the protest upon the applicant.
- If you are the applicant, a statement of whether or not you are requesting a contested case hearing. If you do not request a hearing, the Department will presume that you do not wish to contest the findings of the proposed final order.

- If you do not protest this Proposed Final Order and if no substantive changes are made in the final order, you will not have an opportunity for judicial review, protest or appeal of the final order when it is issued.
- *Persons other than the applicant who support the proposed final order may request standing for the purposes of participating in any contested case proceeding on the proposed final order or for judicial review of a final order.*
- *Requests for standing shall meet the requirements described in OAR 690-310-160 and shall be accompanied by the \$50.00 standing fee established under ORS 536.050.*

Your protest or request for standing must be received in the Water Resources Department no later than **July 22, 2005**.

After the protest period has ended, the Director will either issue a final order or schedule a contested case hearing. The contested case hearing will be scheduled only if a protest has been submitted and if

- upon review of the issues, the director finds that there are significant disputes related to the proposed use of water, or
- the applicant requests a contested case hearing within 30 days after the close of the protest period.

This document was prepared by Kerry Lefever. 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.

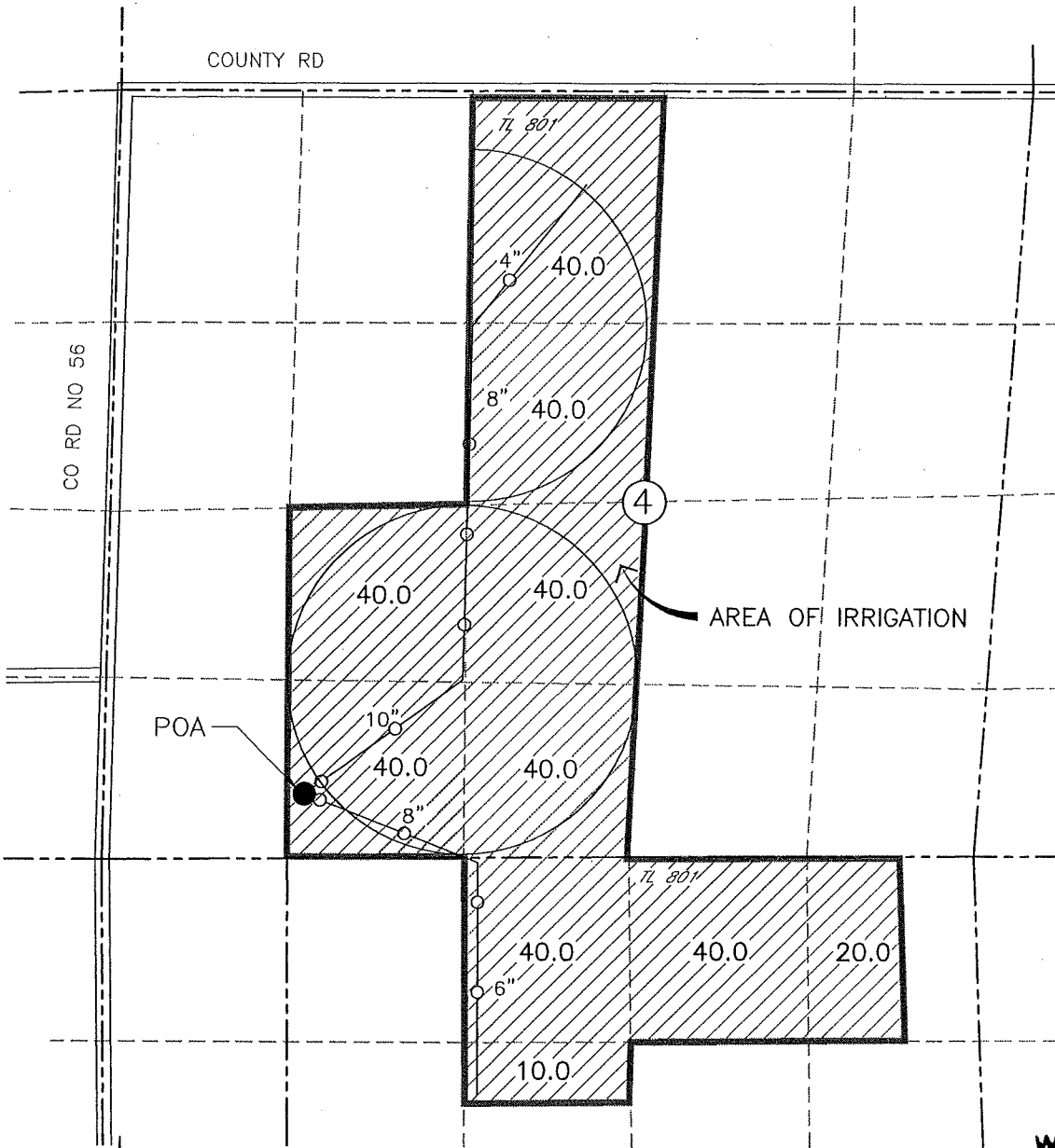
If you have questions about how to file a protest or if you have previously filed a protest and want to know the status, please contact Mike Reynolds at 503-986-0820.

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.

GROUNDWATER APPLICATION
 LES PETERSON
 T5N, R36E, WM
 UMATILLA CO



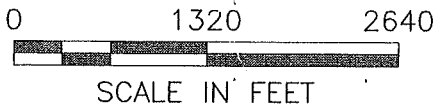
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DEC 30 2004

WATER RESOURCES DEPT
 SALEM, OREGON

PROPOSED POINT OF APPROPRIATION
 WELL LOCATED 480'N AND 130'E FROM THE
 SW CORNER OF SECTION 4

app # G-16359



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NOTE:
 THE PURPOSE OF THIS MAP IS TO IDENTIFY THE APPROXIMATE LOCATION
 OF THE WATER RIGHT. IT IS NOT INTENDED TO PROVIDE INFORMATION
 RELATIVE TO THE LOCATION OF PROPERTY OWNERSHIP BOUNDARY LINES.



