

Oregon Water Resources Department
Water Rights Division

Water Rights Application
Number G-15002

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 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 no subject to judicial review.

Application History

On June 24, 1999, Doug McLaughlin submitted an application to the Department for a water use permit on behalf of Terrebonne Domestic Water District. On August 15, 2000, the Department issued a Proposed Final Order concluding that, water is not available in the amount necessary for the proposed use; and the proposed use would not ensure the preservation of the public welfare, safety and health as described in ORS 537.525. The protest period closed September 29, 2000, and no protest was received.

On June 1, 2001, the applicant was notified of an opportunity to continue the administrative hold on processing pending submission of the mitigation proposals for the Deschutes Groundwater Study.

On August 25, 2003, the applicant was notified of the mitigation obligation for the proposed use. 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.

On June 17, 2004, the applicant's agent, Russ Dodge, of HGE Inc., submitted a revision of the application to reflect an appropriation rate of 0.52 cubic foot per second (CFS), with a maximum annual volume of 371.0 acre-feet (AF). The Department notified the applicants of the revised mitigation obligation of 148.4 AF of mitigation water.

On July 29, 2005, House Bill 3494, enacted by the 73rd Oregon Legislative Assembly, was signed by the Governor. Under Section 2 of this 2005 Act, Oregon Administrative Rules (OAR) 690-505-0600 through 690-505-0630, certified effective by the Secretary of State on September 27, 2002, satisfy the requirements relating to mitigation under ORS 390.805 to 390.925, 537.322 to 537.360, and 537.505 to 537.795.

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.

On May 1, 2006, the applicants submitted further revision of the rate and volume of appropriation for the proposed use. The rate was revised to 0.5 CFS, with a maximum volume of 362.0 AF. The mitigation obligation was revised to 144.8 AF. On October 17, 2006, the applicants agent submitted information to clarify the incremental mitigation proposal to provide mitigation credits within the Crooked River Zone of Impact. The incremental mitigation shall be provided, subject to rate of permit development, as follows:

INCREMENT #	DATE OF PROPOSED IMPLEMENTATION	MAXIMUM VOLUME	MITIGATION AMOUNT	MITIGATION SOURCE
1	2011	20.0 AF	8.0 AF	Credits from a mitigation bank
2	2030	100.0 AF	40.0 AF	Credits from unknown source
3	2040	100.0 AF	40.0 AF	Credits from an unknown source
4	2049	142.0 AF	56.8 AF	Credits from an unknown source

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 permit conditions as required by OAR 690-050-0620. The mitigation conditions, along with other conditions in the attached draft permit shall be contained in the permit, when issued, for Application G-15002 read:

Mitigation Obligation: 144.8 acre-feet in the Crooked River Zone of Impact (Anywhere in the Crooked River Basin above river mile 13.8.)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

The first stage of incremental development was met with _____ AF of mitigation, being _____ temporary mitigation credits (or other suitable replacement mitigation that meets the requirement of OAR Chapter 690, Division 505) from a chartered mitigation bank.

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 totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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.
- B. The permittee shall allow the watermaster access to the meter(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

Mitigation water must be legally protected instream for instream use within the Crooked River Zone of Impact and committed for 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.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

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.

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, or subsequent certificate(s).

Order

Application G-15002 therefore is approved with the above modifications to the Proposed Final Order, and as conditioned, will ensure the preservation of the public welfare, safety and health.

A permit consistent with the attached draft permit shall be issued only upon submission of documentary evidence demonstrating that 8.0 AF of mitigation water (credits), or an alternate amount of mitigation in conjunction with a modified incremental mitigation development plan, meeting the requirements of OAR 690-505-0610(2)-(5), within the Crooked River Zone of Impact, have been obtained and satisfy the first stage of incremental development.

In addition, permit recording fees in the amount of \$250.00 are required to be submitted before a permit may be issued.

This final order is issued approving application G-15002 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 December 7, 2006



Phillip C. Ward, Director *for*

This document was prepared by Anita Huffman. 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 503-986-0815.

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.

DRAFT

This is not a permit.
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

TERREBONNE DOMESTIC WATER DISTRICT
PO BOX 31
TERREBONNE, OR 97760

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

APPLICATION FILE NUMBER: G-15002

SOURCE OF WATER: A WELL IN THE IN DESCHUTES RIVER BASIN

PURPOSE OR USE: QUASI-MUNICIPAL USE

MAXIMUM RATE/VOLUME: 0.5 CUBIC FEET PER SECOND, LIMITED TO A MAXIMUM ANNUAL VOLUME OF 362.0 ACRE FEET (AF), FURTHER LIMITED BY THE CORRESPONDING MITIGATION PROVIDED UNDER THE INCREMENTAL MITIGATION DEVELOPMENT PLAN

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: JUNE 24, 1999

WELL LOCATION:

SE ¼ SW ¼, SECTION 16, T14S, R13E, W.M.; 1086 FEET NORTH & 1406 FEET EAST FROM SW CORNER OF SECTION 16

THE PLACE OF USE IS LOCATED AS FOLLOWS:

WITHIN THE SERVICE BOUNDARY OF THE TERREBONNE DOMESTIC WATER DISTRICT; BEING A PORTION OF:

SECTION 16
TOWNSHIP 14 SOUTH, RANGE 13 EAST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter at each diversion point. The totalizing flow meter(s) must be installed and maintained in good working order consistent with those standards identified in OAR 690-507-645(1) through (3). 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.

- B. The permittee shall allow the watermaster access to the meter(s); provided however, where any meter is located within a private structure, the watermaster shall request access upon reasonable notice.

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

GROUND WATER MITIGATION CONDITIONS

Mitigation Obligation: 144.8 acre-feet of mitigation water in the Crooked River Zone of Impact (anywhere in the Crooked River above River Mile 13)

Mitigation Source: Mitigation Credits or a Mitigation Project, in accordance with the incremental development plan on file with the Department, meeting the requirements of OAR Chapter 690, Division 505 (Deschutes Ground Water Mitigation Rules).

The first stage of incremental development was met with _____ AF of mitigation, being _____ temporary mitigation credits (or other suitable replacement mitigation that meets the requirement of OAR Chapter 690, Division 505) from a chartered mitigation bank.

Mitigation water must be legally protected instream for instream use within the Crooked River Zone of Impact and committed for 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.

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 terms and conditions of a valid contract, or a 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 prior to use of water.

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.

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 Department 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.

Within two years of permit issuance, the permittee shall submit a new or updated Water Management and Conservation Plan pursuant to OAR Chapter 690, Division 86.

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).

STANDARD CONDITIONS

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.

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.

The use shall conform to such reasonable rotation system as may be ordered by the proper state officer.

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.

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 shall be limited when it interferes with any prior surface or ground water rights.

Actual construction of the well shall begin by _____, 200__. Complete application of water to the use shall be made on or before October 1, 200__. 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 _____, 2006

DRAFT - THIS IS NOT A PERMIT

Phillip C. Ward, Director
Water Resources Department