

**Oregon Water Resources Department
Water Rights Services Division**

Water Rights Application
Number S-87184

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 22, 2008, Gordon Miller submitted an application to the Department for a water use permit. The Department issued a Proposed Final Order on January 20, 2009 recommending approval of the proposed use of surface water. The protest period closed March 5, 2009.

Scott and Kevin Anselm filed a timely protest on February 27, 2009. The protest questioned whether there was water available for appropriation from the identified source. The protest included concerns about the application that were either curable or outside the Department's jurisdiction.

To overcome the presumption that a proposed use will not impair or be detrimental to the public interest, ORS 537.153(2) requires that a protest demonstrate, by a preponderance of evidence, that one or

more of the criteria for establishing the presumption are not satisfied, or that a specific public interest under ORS 537.170(8) would be impaired or detrimentally affected, and how the interest is impaired or detrimentally affected.

The protest questioned whether one of the criteria for establishing the presumption that a proposed use will not impair or be detrimental to the public interest was met: whether there was sufficient water available to satisfy the requested amount, and to meet senior rights. The protest did not provide any information to establish, by a preponderance of evidence, that there was not sufficient water.

The protest did not provide any other information to establish by a preponderance of evidence that any specific interest under ORS 537.170(8) would be impaired or detrimentally affected. Therefore, the presumption that the proposed use would not impair or be detrimental to the public interest has not been overcome by a preponderance of evidence. ORS 537.153(2).

The Department's continuing evaluation reveals that the Proposed Final Order requires modification to correctly describe the measurement, recording, and reporting conditions.

The Proposed Final Order described the following measurement, recording, and reporting conditions:

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 diversion. The permittee shall maintain the meter(s) in good working order.
- 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.
- C. The Director may require the permittee to keep and maintain a record of the amount (volume) of water used, and may require the permittee to report water use on a periodic schedule as established by the Director. In addition, the Director may require the permittee to report general water-use information the periods of water use and the place and nature of use of water under the permit. The Director may provide an opportunity for the permittee to submit alternative reporting procedures for review and approval.

The measurement, recording, and reporting 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 diversion. The permittee shall maintain the meter in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted each month, and shall submit a report which includes the recorded report 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.

Order

Application S-87184 therefore is approved with the above modifications to the Proposed Final Order, and Permit S-54696 is issued as limited by the conditions set forth therein.

DATED May 19, 2011

E. Timothy Wall

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.