

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

Water Rights Application
Number G-15565

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.

Findings of Fact

On July 20, 2001, David and Marganne Oxley submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on May 3, 2005, proposing to deny the application because the proposed use of ground water from four wells at the requested rate of 8.02 cubic feet per second (CFS) had the potential for substantial interference with an over-appropriated surface water source.

The applicants filed a timely protest on May 23, 2005.

On November 1, 2010, the application was amended to appropriate ground water only from Well 1 (KLAM 52922/KLAM 53630), at a rate of 4.0 CFS for supplemental irrigation of 331.0 acres.

On June 8, 2011, the Department completed a fourth Public Interest Review based on the November 1, 2010 amendments to the application.

Ground Water Findings Under OAR 690-009 on June 8, 2011:

The Department determined, consistent with OAR 690-009-0040, that the proposed ground water use will not have the potential for substantial interference with surface water.

In making this determination, the Department considered the following factors:

- (a) Whether there is hydraulic connection from the proposed well(s) to any surface water sources.
- (b) Whether or not the point of appropriation is a horizontal distance less than one-fourth mile from the surface water source;
- (c) Whether or not 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) Whether or not 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) Whether 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.
- (f) Whether there is the potential for a reduction in streamflow or surface water supply; or
- (g) Whether there is the potential to impair or detrimentally affect the public interest as expressed by an applicable closure on surface water appropriation, minimum perennial streamflow, or instream water right with a senior priority date; or
- (h) The percentage of the ground water appropriation that was, or would have become, surface water; or
- (i) Whether potential interference would be immediate or delayed; or
- (j) The potential for a cumulative adverse impact on streamflow or surface water supply.

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. In reviewing this application (a) was met but (b), (c), (d) or (e) were not met.

In considering factors (f) through (i), the Department estimated the monthly percentage of ground water appropriation that would become surface water, the timing of potential interference, and the potential reduction in streamflow using equations and graphical techniques described in OAR 690-009-0040(4)(d). Calculations were based on estimates of hydrogeologic parameters in the proposed area of appropriation. The total interference was found to be 0.019 cfs or less (with the greatest interference occurring in November) during the period of proposed use, representing less than 1% of the 80% natural streamflow¹. No facts were identified that would suggest the proposed ground water use would have the potential for cumulative adverse impacts on a surface water source.

Because the level of interference was less than 1% of the 80% natural streamflow, the Department has determined there is sufficient evidence to conclude there is no potential for substantial interference with the surface water source for that period. After considering elements (f) through (j) the Department found that there was no potential for substantial interference.

Conclusions of Law

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 source, rate, and acreage to reflect the November 1, 2010 amendment, and to incorporate the June 8, 2011 Public Interest Review.

Order

Application G-15565 is therefore approved with these modifications to the Proposed Final Order. **Upon payment of outstanding fees in the amount of \$325, a permit shall be issued authorizing the proposed water use.**

Failure to meet this requirement within 60 days from the date of this Final Order may result in the proposed rejection of the application.

If you need to request additional time, your written request should be received in the Salem office of the Department within 60 days of this Final Order. The Department will evaluate the request and determine whether or not the request may be approved.

¹"80% natural streamflow" is the rate of discharge of the affected stream that is statistically equaled or exceeded during a given month during four out of five years.

DATED August 4, 2011

E. Timothy Wallin

E. Timothy Wallin, Water Rights Program Manager
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 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.

DRAFT

This is not a permit.

DRAFT

STATE OF OREGON

COUNTY OF KLAMATH

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

DAVID AND MARGANNE OXLEY
24550 S POE VALLEY RD
KLAMATH FALLS, OR 97603

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

APPLICATION FILE NUMBER: G-15565

SOURCE OF WATER: WELL 1 (KLAM 52922/KLAM 53630) IN LOST RIVER BASIN

PURPOSE OR USE: SUPPLEMENTAL IRRIGATION OF 331.0 ACRES

MAXIMUM RATE: 4.0 CUBIC FEET PER SECOND

PERIOD OF USE: MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: JULY 20, 2001

WELL LOCATION: NE ¼ SW ¼, SECTION 3, T40S, R11E, W.M.; 3400 FEET SOUTH
& 1600 FEET EAST FROM NW CORNER, SECTION 3

The amount of water used for irrigation under this right, together with the amount secured under any other right existing for the same lands, is limited to a diversion of ONE-EIGHTIETH of one cubic foot per second and 3.0 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

NW ¼ NE ¼ 41.4 ACRES
SW ¼ NE ¼ 41.2 ACRES
NE ¼ NW ¼ 41.6 ACRES
NW ¼ NW ¼ 32.0 ACRES
SW ¼ NW ¼ 35.9 ACRES
SE ¼ NW ¼ 41.2 ACRES
NE ¼ SW ¼ 28.8 ACRES
NW ¼ SW ¼ 30.2 ACRES
NW ¼ SE ¼ 38.7 ACRES

SECTION 3

TOWNSHIP 40 SOUTH, RANGE 11 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 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 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.

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 of 35 feet below land surface (35 feet blsd at well KLAM 52922/KLAM 53630 having well tag L38824 = 4083 feet elevation) which is a decline of 25 or more feet below a reference level of 10 feet below land surface (10 feet blsd at well KLAM 52922/KLAM 53630 having well tag L38824 = 4108 feet elevation); or
- D. Hydraulic interference leads to a decline of 25 or more feet in any neighboring well with senior priority; or
- E. The Department's Groundwater Section-approved static ground water level measurements at well KLAM 51131 is 50 or more feet below land surface (50 feet blsd at well KLAM 51131 = 4059 feet elevation), or the static ground water level measurements at well KLAM 50623 is 60 or more feet below land surface (60 feet blsd at well KLAM 50623 = 4059 feet elevation).

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.

Dedicated Measuring Tube: Wells with pumps shall be equipped with an unobstructed, dedicated measuring tube pursuant to figure 200-5 in OAR 690-200. For existing wells with a pump installed, installation of the measuring tube shall occur when the pump is removed or replaced and/or when the well is deepened or reconstructed or altered.

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.

STANDARD CONDITIONS

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.

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.

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 well(s) 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.

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 state or federal water quality standards due to reduced flows.

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.

Prior to receiving a certificate of water right, the permit holder shall submit to the Water Resources Department the results of a pump test meeting the Department's standards for each point of appropriation (well), unless an exemption has been obtained in writing under OAR 690-217. The Director may require water-level or pump-test data every ten years thereafter.

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.

Completion of construction and application of the water shall be made within five years of the date of permit issuance. If beneficial use of permitted water has not been made before this date, the permittee may submit an application for extension of time, which may be approved based upon the merit of the application.

Within one year after making beneficial use of water, the permittee shall submit a claim of beneficial use, which includes a map and report, prepared by a Certified Water Rights Examiner.

Issued

DRAFT - THIS IS NOT A PERMIT

E. Timothy Wallin, Water Rights Program Manager
for Phillip C. Ward, Director
Water Resources Department