

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

Water Rights Application  
Number G-17422

**Superseding 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 September 13, 2010, La Pine Water District submitted an application to the Department for a water use permit.

The Department issued a Proposed Final Order on June 14, 2011, 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 July 29, 2011, 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 405.2 acre feet of mitigation water within the Little Deschutes Zone of Impact. The applicant is proposing to obtain mitigation by obtaining mitigation credits. 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 correctly describe the condition below.

The Proposed Final Order contained the following condition:

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.

The condition, as modified in the attached draft permit, is:

Completion of construction and application of the water shall be made within 20 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.

On September 13, 2011, the Department issued a Final Order which incorrectly identified the dates of the Proposed Final Order and the protest period deadline. The Department finds that the September 13, 2011 Final Order requires modification to correct the error.

#### **Order**

This document supersedes the September 13, 2011 Final Order for Application G-17422. The September 13, 2011 Final Order is of no further force or effect.

Application G-17422 is therefore approved with the modifications to the Proposed Final Order described above. A permit consistent with the attached draft permit shall be issued only upon the applicant providing satisfactory mitigation according to an approved incremental development plan, and submission of permit recording fees in the amount of \$900.

*This Final Order is issued approving Application G-17422 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 of the September 13, 2011 Final Order (being September 13, 2016) unless the required mitigation is provided. OAR 690-505-0620(2).*

DATED October 21, 2011

*Walt Hank for*

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.  
STATE OF OREGON

DRAFT

COUNTY OF DESCHUTES

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

LA PINE WATER DISTRICT  
PO BOX 2460  
LA PINE, OR 97739-2460

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

APPLICATION FILE NUMBER: G-17422

SOURCE OF WATER: WELL 1 (DESC 54968) AND WELL 2 (DESC 55049) IN LITTLE  
DESCHUTES RIVER BASIN

PURPOSE OR USE: MUNICIPAL

MAXIMUM RATE: 1.4 CUBIC FEET PER SECOND, WITH A MAXIMUM ANNUAL VOLUME OF  
1013.0 ACRE FEET

PERIOD OF USE: YEAR ROUND

DATE OF PRIORITY: SEPTEMBER 13, 2010

WELL LOCATIONS:

WELL 1 (DESC 54968): NW ¼ SE ¼, SECTION 18, T22S, R11E, W.M.; 1240  
FEET SOUTH AND 804 FEET EAST FROM C1/4 CORNER, SECTION 18

WELL 2 (DESC 55049): NW ¼ SE ¼, SECTION 18, T22S, R11E, W.M.; 1143  
FEET SOUTH AND 1085 FEET EAST FROM C1/4 CORNER, SECTION 18

THE PLACE OF USE IS LOCATED WITHIN THE LA PINE WATER DISTRICT SERVICE  
BOUNDARY

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 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.

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.

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

**Ground Water Mitigation Conditions:**

Mitigation Obligation: 405.2 acre-feet of mitigation water in the Little Deschutes Zone of Impact.

Mitigation Source: mitigation credits

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. The annual report shall include the annual volume of water used, the source of mitigation, and any offset used for that period. This annual notification is not necessary if the permittee has completed development and submitted a Claim of Beneficial Use to the Department.

Mitigation water must be legally protected instream in the Little Deschutes 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.

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.

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.

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**

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.

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 20 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