

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

Water Rights Application
Number G-17474

Prior to the issuance of a permit, the Department must receive Permit recording fees in the amount of \$400.00.

In addition, final dam designs and specifications for Upper Reservoir must be submitted to the Department and approved by the Department's dam-safety engineer prior to permit issuance of this ground water application proposing to store ground water in Upper Reservoir.

Please include your application number on any documents submitted, including your check made out to the Oregon Water Resources Department.

Proposed Final Order

Summary of Recommendation: The Department recommends that the attached draft permit be issued with conditions.

Application History

On July 6, 2011, Robert L and Leanna R McKee submitted an application to the Department for the following water use permit:

- Amount of Water: 6.4 ACRE FEET (AF)
- Use of Water: STORAGE OF GROUNDWATER IN UPPER RESERVOIR (TO BE CONSTRUCTED UNDER APPLICATION R-87735) FOR IRRIGATION OF 103.0 ACRES
- Source of Water: DRAIN TILES IN SALT CREEK BASIN
- Area of Proposed Use: YAMHILL COUNTY WITHIN SECTION 31, TOWNSHIP 5 SOUTH, RANGE 4 WEST, W.M.; AND SECTION 6, TOWNSHIP 6 SOUTH, RANGE 4 WEST, W.M.

On May 11, 2012, the Department mailed the applicant notice of its Initial Review, determining that "The storage of 6.4 AF of ground water from drain tiles in Salt Creek Basin for irrigation of 103.0 acres is allowable November 1 through April 30. Stored water may be diverted from the reservoir for irrigation March 1 through October 31, contingent upon approval of Application R-87735." The applicant did not notify the Department to stop processing the application within 14 days of that date.

On May 15, 2012, 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 obtaining future notices and a copy of the Proposed Final Order. No written comments were received within 30 days.

On May 16, 2012, the Department received clarification from the applicant that he owns all the property where the proposed use of water will be appropriated, transported, and applied.

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

- any applicable basin program
- applicable statutes, administrative rules, and case law
- the amount of water available
- the rate and duty for the proposed use
- 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
- pending senior applications and existing water rights of record
- any applicable comprehensive plan or zoning ordinance
- recommendations by other state agencies
- the Scenic Waterway requirements of ORS 390.835
- designations of any critical ground water areas
- any comments received

Findings of Fact

The Department has determined, based upon Oregon Administrative Rule (OAR) 690-009, that the drain tiles will produce ground water from unconfined alluvium within a quarter mile of the banks of surface water and is therefore presumed to be hydraulically connected to surface water, being Salt Creek (OAR 690-502-0240). Such hydraulically connected ground water is classified the same as the surface source under OAR 690-502-0240. Therefore, the appropriation of water from drain tiles in Salt Creek Basin for storage for irrigation use is not allowed May 1 through October 31 under OAR 690-502-0150(4)(a), the Willamette Basin Program.

Stored water may be used for irrigation from March 1 through October 31.

An assessment of ground water availability has been completed by the Department's Ground Water/Hydrology section. A copy of this assessment is in the file. Ground water will likely be available within the capacity of the resource, and the proposed use of ground water will avoid injury to existing ground water rights.

Ground Water Findings Under OAR 690-009

The Department determined, consistent with OAR 690-009-0040(4), that the proposed ground water use will have the potential for substantial interference with surface water, namely Salt Creek.

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.

For this application, the Department determined that there is the potential for substantial interference because of the following items described above: (a), (b), (d), (e)

In accordance with OAR 690-033-0330, an interagency team reviewed this proposed use for potential adverse impacts on sensitive, threatened and endangered fish populations. This team consisted of representatives from the Oregon Departments of Water Resources (WRD), Environmental Quality (DEQ), Fish and Wildlife (ODFW), and Agriculture. WRD and ODFW representatives included both technical and field staff. The interagency team recommended that additional limitations or conditions of use be imposed on this application as follows:

Water may be appropriated for storage November 1 through April 30.

The use may be restricted if the quality of the source stream or downstream waters decreases to the point that those waters no longer meet state or federal water quality standards due to reduced flows.

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.

Water should only be diverted to fill the reservoir when state and federal water quality standards and downstream instream water rights are being met. Once the reservoir is full, all water from drain tiles should be bypassed in a manner that does not impact water quality.

Because the proposed use of ground water has the potential for substantial interference with surface water, an assessment of surface water availability has been completed. This assessment compared a calculation of natural streamflow minus the consumptive portion of all relevant rights of record. A copy of this calculation is in the file. This calculation determined that surface water is available for further appropriation (at an 80 percent exceedance probability) November 1 through May 31.

Senior water rights exist on drain tiles in Salt Creek Basin, or on downstream waters.

Drain tiles in Salt Creek Basin are not within or above a State Scenic Waterway.

The Department finds that the amount of water requested, 6.4 AF, is an acceptable amount.

The proposed ground water use 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 proposed use requested in this application is allowed in the Willamette Basin Program.

Water is available for the proposed use.

The proposed use will not injure other water rights.

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

The application is in compliance with the State Agency Coordination Program regarding land use.

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

For these reasons, the required presumption has been established.

Under the provisions of ORS 537.621, once the presumption has been established, it may be overcome by a preponderance of evidence that either:

- (a) One or more of the criteria for establishing the presumption are not satisfied; or
- (b) The proposed use would not ensure the preservation of the public welfare, safety and health as demonstrated in comments, in a protest . . . or in a finding of the department that shows:
 - (A) The specific aspect of the public welfare, safety and health under ORS 537.525 that would be impaired or detrimentally affected; and
 - (B) Specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected.

In this application, all criteria for establishing the presumption have been satisfied, as noted above. The presumption has not been overcome by a preponderance of evidence that the proposed use would impair or be detrimental to the public interest.

The Department therefore concludes that the proposed use would ensure the preservation of the public welfare, safety and health as described in ORS 537.525.

When issuing permits, ORS 537.628(1) authorizes the Department to include limitations and conditions which have been determined necessary to protect the public welfare, safety, and health. The attached draft permit is conditioned accordingly.

Recommendation

The Department recommends that the attached draft permit be issued with conditions.

DATED October 30, 2012

E. Timothy Wallin

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

Protests

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), you can protest this Proposed Final Order. Protests must be received in the Water Resources Department no later than **December 14, 2012**. Protests 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 the 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;
- To affect the department's determination that the proposed use in this application will, or will not, ensure the preservation of the public welfare, safety and health as described in ORS 537.525, ORS 537.621(2)(b) requires that a protest demonstrate, by a preponderance of evidence any of the following: (a) One or more of the criteria for establishing the presumption are, or are not, satisfied; or (b) The specific aspect of the public welfare, safety and health under

ORS 537.525 that would be impaired or detrimentally affected, and specifically how the identified aspect of the public welfare, safety and health under ORS 537.525 would be impaired or be adversely affected;

- If you are the applicant, the protest fee of \$300 required by ORS 536.050; and
- If you are not the applicant, the protest fee of \$600 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.*

Requests for Standing

Under the provisions of ORS 537.153(7) (for surface water) or ORS 537.621(8) (for ground water), persons other than the applicant who support a Proposed Final Order can request standing for purposes of participating in any contested case proceeding on the Proposed Final Order or for judicial review of a Final Order.

Requests for standing must be received in the Water Resources Department no later than **December 14, 2012**. Requests for standing must be in writing, and must include the following:

- The requester's name, mailing address and telephone number;
- If the requester is representing a group, association or other organization, the name, address and telephone number of the represented group;
- A statement that the requester supports the Proposed Final Order as issued;
- A detailed statement of how the requester would be harmed if the Proposed Final Order is modified; and
- A standing fee of \$150. If a hearing is scheduled, an additional fee of \$350 must be submitted along with a request for intervention.

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 either:

- 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.

If you do not request a hearing within 30 days after the close of the protest period, or if you withdraw a request for a hearing, notify the Department or the administrative law judge that you will not appear or fail to appear at a scheduled hearing, the Director may issue a Final Order by default. If the Director issues a Final Order by default, the Department designates the relevant portions of its files on this matter, including all materials that you have submitted relating to this matter, as the record for purpose of proving a *prima facie* case upon default.

You may be represented by an attorney at the hearing. Legal aid organizations may be able to assist a party with limited financial resources. Generally, partnerships, corporations, associations, governmental subdivisions or public or private organizations are represented by an attorney. However, consistent with OAR 690-002-0020 and OAR 137-003-0555, an agency representative may represent a partnership, corporation, association, governmental subdivision or public or private organization if the Department determines that appearance of a person by an authorized representative will not hinder the orderly and timely development of the record in this case.

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 respective sections in this Proposed Final Order entitled "Protests" and "Requests for Standing". 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 YAMHILL

DRAFT PERMIT TO APPROPRIATE THE PUBLIC WATERS

THIS DRAFT PERMIT IS HEREBY ISSUED TO

ROBERT L AND LEANNA R MCKEE
24903 SW PERRYDALE RD
AMITY, OR 97101

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

APPLICATION FILE NUMBER: G-17474

SOURCE OF WATER: DRAIN TILES IN SALT CREEK BASIN

PURPOSE OR USE: STORAGE IN UPPER RESERVOIR, TO BE CONSTRUCTED UNDER APPLICATION R-87735, FOR IRRIGATION; AND IRRIGATION OF 103.4 ACRES

MAXIMUM VOLUME: 6.4 ACRE FEET EACH YEAR

PERIOD OF USE: STORAGE - NOVEMBER 1 THROUGH APRIL 30
IRRIGATION FROM RESERVOIR - MARCH 1 THROUGH OCTOBER 31

DATE OF PRIORITY: JULY 6, 2011

DRAIN TILES/UPPER RESERVOIR LOCATION: NW ¼ SE ¼, SECTION 31, T5S, R4W, W.M.; 350 FEET SOUTH AND 400 FEET EAST FROM C1/4 CORNER, SECTION 31

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 2.5 acre-feet for each acre irrigated during the irrigation season of each year.

THE PLACE OF USE IS LOCATED AS FOLLOWS:

SW ¼ NE ¼ 13.4 ACRES
SE ¼ NW ¼ 3.3 ACRES
NE ¼ SW ¼ 7.3 ACRES
SW ¼ SW ¼ 0.6 ACRE
SE ¼ SW ¼ 15.6 ACRES
NW ¼ SE ¼ 12.3 ACRES AND STORAGE
SW ¼ SE ¼ 26.0 ACRES
SECTION 31
TOWNSHIP 5 SOUTH, RANGE 4 WEST, W.M.

THE PLACE OF USE IS LOCATED AS FOLLOWS (continued):

NE $\frac{1}{4}$ NW $\frac{1}{4}$ 5.6 ACRES
NW $\frac{1}{4}$ NW $\frac{1}{4}$ 18.9 ACRES
SECTION 31
TOWNSHIP 6 SOUTH, RANGE 4 WEST, W.M.

Measurement, recording and reporting conditions:

- A. Before water use may begin under this permit, the permittee shall install a totalizing flow meter or other suitable measuring device as approved by the Director at each point of diversion/appropriation. The permittee shall maintain the meter or measuring device in good working order.
- B. The permittee shall keep a complete record of the amount of water diverted/stored each month, and shall submit a report which includes the recorded water-use/water-storage 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 or measuring device; provided however, where any meter or measuring device 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.

All drain tiles that are used as a source of water under this permit shall be tied to a common diversion point, which shall be equipped with a suitable measuring device as approved by the Director.

The storage of water allowed herein is subject to the installation and maintenance of an outlet pipe, or the provision of other means to evacuate water when determined necessary by the Water Resources Director to satisfy prior downstream rights.

Surface water shall not be appropriated to fill or maintain the reservoir without a water right permitting the diversion and use of such surface water.

The permittee is required to pass all surface water flow for which a water-use authorization does not exist.

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.

The permittee is required to pass all surface water for which a storage right does not exist. The Director may require the user to measure inflow and outflow, above and below the reservoir respectively, to ensure that surface-water flow is not impeded. Measurement devices and their implementation must be acceptable to the Director, and the Director may require that data be recorded on a specified periodic basis and reported to the Department annually or more frequently.

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

Mailing List for PFO Copies

Application #G-17474

PFO Date October 30, 2012

Original mailed to applicant:

ROBERT L AND LEANNA R MCKEE
24903 SW PERRYDALE RD
AMITY, OR 97101

Copies Mailed By: _____ (SUPPORT STAFF) on: _____ (DATE)
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SENT VIA EMAIL:

1. WRD - Watermaster # 16

Protest/ Standing Dates checked _____
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Copies sent to:

1. WRD - File # G-17474
2. WRD - Water Availability: Ken Stahr

Copies sent to Other Interested Persons (CWRE, Agent, Well Driller, Commenter, etc.)

3. Leland Hardy, PE, CWRE, H&R Engineering, LLC, 690 Loring Dr NW, Salem, OR 97304

CASEWORKER : Kerry Kavanagh